





THE LIBRARY  
OF  
THE UNIVERSITY  
OF CALIFORNIA  
LOS ANGELES

SCHOOL OF LAW

GIFT OF  
Lender-Moss Co.





















# INTOXICATING LIQUORS

---

*The Law Relating to the Traffic in  
Intoxicating Liquors and  
Drunkenness*

---

BY

W. W. WOOLLEN

(Of the Indianapolis Bar)

Author of *Indiana Trial Procedure, Etc.*

AND

W. W. THORNTON

(Of the Indianapolis Bar)

Author of *Oil and Gas, Gifts and Advancements, Etc.*

---

VOLUME I

---

CINCINNATI

THE W. H. ANDERSON COMPANY

1910

INTOXICATING  
LIQUORS

v.1

T  
W 8855;  
1910

Copyright  
THE W. H. ANDERSON COMPANY  
1910



## PREFACE

---

The subject of Intoxicating Liquors, both socially and legally, has greatly gained in importance in the last quarter of a century. Not since 1892 has the law relating to them been systematically treated in a work devoted entirely to their consideration. Since then questions relating to the control of the liquor traffic have been repeatedly before the courts, and more cases have been reported since that time than had been reported previously thereto in all English-speaking countries. It would seem that all questions that can possibly be raised concerning the traffic and control of intoxicating liquors have been presented to the courts for their consideration. It therefore seems that the time is ripe for a work covering the entire subject of Intoxicating Liquors.

Not only does the present work treat of the Traffic in and Control of the Manufacture and Sale of Intoxicating Liquors, but it also treats of all questions to which they have any relation, and in so doing it covers a broader field than has ever been undertaken heretofore in any legal work. Thus, the subject of Drunkenness is treated at length—its effect upon Contracts, Wills, Divorce, as a defense for the Commission of Crime, Negligence, Guardians for Drunkards, Life Insurance, and similar phases—as it has never before been treated in one work. The only subject omitted is that of the laws, rules and regulations of the United States for the taxation and licensing of intoxicating liquors as a source of revenue. Copies of these rules and regulations are furnished gratuitously by the United States Treasury Department, are frequently changed by rulings of that department, and constitute a volume of several hundred pages.

The two volumes of this work contain nearly 27,000 citations.

It has been the aim of the authors to cite all cases bearing upon the subject of **Intoxicating Liquors**, and they have assiduously endeavored to do this, and they believe that very few cases, and none of real importance, have escaped them. No case, however, has been cited that has been reported since January 1, 1910, the date of going to press.

In their endeavors to make the work as complete as possible they have aimed to cite all cases reported in England, Ireland, Scotland, Quebec, Ontario, British Columbia, the British Northwest Territories, Nova Scotia, New Brunswick, Newfoundland, Australia, New Zealand, and in the British Possessions of South Africa. In their examination of the reports of these countries, and especially the last three, they have found many important questions discussed and decided.

In an examination of the cases of England the authors have been greatly aided by the last edition (19 Ed.) of Patterson's Licensing Acts of that country, a work noted for its accuracy and comprehensiveness, and but little known in this country. The authors have not hesitated, at times, to quote extensively from this most excellent work where they thought the subject treated would be of value to the American practitioner.

It is believed, because of the careful examination that has been made of the Canadian decisions, that this work will be of value to the Canadian practitioner.

In the citation of cases it has been the constant endeavor of the authors to give reference to the West Publishing Company's Reporters wherever a case has appeared in any of them, and they have also endeavored to give duplicate references to well established and correct systems of reported cases of the several States and Territories.

The authors' thanks are due to Mr. Willitts A. Bastian of the Indianapolis Bar, for a revision of the proof sheets and valuable suggestions concerning obscure and inaccurate expressions.

W. W. WOOLLEN,  
W. W. THORNTON.

Indianapolis, Ind., July 1, 1910.

# TABLE OF CONTENTS.

---

## PART I. INTOXICATING LIQUORS.

---

### CHAPTER I.

#### DEFINITIONS—JUDICIAL NOTICE.

##### ARTICLE I.—DEFINITIONS.

SECTION.	PAGE.
1. Liquor, meaning and strength.....	1
2. Liquor, continued.....	4
3. Mixed liquors.....	5
4. "Intoxicating," statute defining—Evidence—Statute constitutional .....	6
5. Intoxicating liquors—Use as a beverage.....	8
6. Intoxicating liquors—Amount necessary to produce intoxication .....	13
7. Intoxicating and spirituous liquors distinguished.....	14
8. Intoxicating and non-intoxicating, how distinguished.....	15
9. Alcohol an intoxicant—Judicial notice.....	15
10. Alcohol continued.....	16
11. Fermented liquor—Cider.....	18
12. Compound liquors—Mixtures.....	19
13. Distilled liquors.....	21
14. Spirit or spirits—Judicial notice.....	21
15. Spirituous liquors distinguished.....	22
16. Spirituous and intoxicating liquors distinguished.....	23
17. Wine as an intoxicating liquor.....	26
18. Wine, intoxicating quality when not a question.....	28
19. Wine as a spirituous or fermented liquor.....	28
20. Wine, when a question of fact—Burden of proof.....	29
21. Port wine an intoxicant.....	29



SECTION.	PAGE.
22. Blackberry wine an intoxicant.....	30
23. Champagne, when included as a liquor....	30
24. Sherry wine.....	31
25. Spirits and wine distinguished— <i>Aqua vita</i> .....	31
26. Malt liquor not included in “vinous and spirituous liquors”..	31
27. Whiskey an intoxicant—How made—Judicial notice.....	32
28. Whiskey cocktail—Sale, when a violation of law.....	33
29. Gin and alcoholic liquor—Judicial notice.....	34
30. Brandy an intoxicant—Burden of proof.....	35
31. Brandy peaches, sale of not prohibited.....	36
32. Malt liquors—Judicial notice.....	37
33. Beer and ale distinguished—History.....	39
34. Beer defined—Presumption—Judicial notice.....	40
35. Lager beer a malt liquor and intoxicant.....	45
36. Schenk beer, intoxicating quality a question of fact.....	45
37. Strong and spirituous liquors—Beer.....	46
38. Ale .....	47
39. Cider .....	48
40. Medicines—Compounds .....	51
41. Camphor gum not an intoxicant.....	54
42. Cinnamon and lemon essence—Cologne.....	55
43. Common cordial a spirituous liquor—Godfrey’s Cordial....	56
44. Empire Tonic Bitters—Proprietary medicines.....	57
45. Home bitters—Medicines—Instructions—Evidence.....	58
46. Busby’s Bitters—Judicial notice.....	59
47. Mead—Metheglin .....	60
48. Wilson’s Rocky Mountain Herb Bitters.....	60
49. Intoxication—Drunkenness—Drunkard .....	61
50. Intemperate habit.....	64
51. Habitual drunkenness.....	64
52. Habitual drunkard.....	64
53. Habitual intemperance.....	66
54. Confirmed drunkard.....	68
55. Saloon defined—Limited to one room.....	68
56. Saloon keeper.....	70
57. Tippling house.....	71
58. Liquor shop.....	71
59. Tavern keeper.....	71
60. Sample room.....	72
61. Dramshop—Dramshop keeper .....	72
62. Bar defined....	73
63. Barroom .....	73
64. Barroom fixtures.....	75
65. Barkeeper .....	75
66. Dram .....	76
67. Dealer .....	76

# TABLE OF CONTENTS.

vii

SECTION.	PAGE.
68. Wholesaler and retailer.....	76
69. Common seller.....	77
70. Rectifier .....	77

## ARTICLE II.—JUDICIAL NOTICE.

71. Distiller .....	78
72. Judicial knowledge—General rule.....	78
73. Spirituous, distilled or alcoholic liquors.....	79
74. Vinous liquors.....	82
75. Ale .....	82
76. Beer—Primary and secondary meaning.....	83
77. Mead or metheglin.....	85
78. Proof of quality of liquor.....	85

## CHAPTER II.

### CONSTITUTIONALITY OF STATUTES.

79. Control of liquor traffic falls under police power.....	90
80. Definition and extent of police power.....	92
81. Police power, continued—Legislative power.....	94
82. Police power not the power of eminent domain.....	96
83. State cannot surrender police power.....	97
84. Police power impairing the obligation of a contract.....	98
85. Police power limited by Federal Constitution.....	99
86. Blackstone's enumeration of police powers.....	100
87. Sumptuary argument insufficient to defeat liquor legislation.	101
88. No natural right to sell intoxicating liquors.....	102
89. Right to sell liquors at common law—Nuisance.....	103
90. Natural right not a judicial question.....	105
91. Motive for passage of law or ordinances.....	106
92. Prohibitory law, basis of constitutionality.....	107
93. Prohibiting manufacture of intoxicating liquors.....	110
94. Constitution prohibiting the granting of a license—Ohio Con- stitution .....	120
95. Effect of adopting constitutional prohibitory measure on prior statute .....	121
96. Contracts prohibiting.....	122
97. Past contracts for sale of intoxicating liquors.....	123
98. Effect of prohibition upon liquors on hand at time of its adoption .....	124
99. Keeping liquors.....	127
100. Corporate charters, change—Police power.....	128
101. Prohibition in particular places and localities.....	129

SECTION.	PAGE.
102. Confining liquor sales to certain districts.....	132
103. Agricultural fairs.....	133
104. Educational institutions.....	134
105. Religious assemblies.....	136
106. License, State may refuse.....	138
107. State may permit sales under a license—Biblical prohibition.	140
108. Fourteenth Amendment, effect of or power to regulate sale of intoxicating liquors.....	147
109. Fourteenth Amendment—Keeping saloon.....	151
110. Privileges and immunities of other States.....	152
111. "Import" defined—Statute in violation of Constitution....	153
112. Discrimination against liquors of other States.....	155
113. Manufacture for shipment out of State.....	159
114. Non-intoxicating liquors—Declaring liquors to be intoxicat- ing .....	162
115. Regulation of sales and saloons.....	163
116. Permitting persons to go into saloon at prohibited times....	165
117. Delegation of power to license and regulate sales of liquors..	166
118. Compelling towns to engage in liquor traffic.....	171
119. Monopoly of sale.....	172
120. Territorial power to enact liquor laws.....	173
121. State engaging in liquor traffic—Dispensary laws.....	174
122. Carolina dispensary and Wilson laws construed—Discrimina- tion .....	176
123. <i>Ex post facto</i> —Municipal legislation.....	179
124. No property right in license—Annulling a license.....	180
125. Revocation of license.....	185
126. Amount of license fees.....	186
127. Increasing amount of fee before license has expired.....	187
128. License for and sale by druggists.....	188
129. Limiting license to certain class of persons.....	188
130. Discrimination in granting license.....	190
131. Discretionary power to grant a license.....	194
132. Appeal to courts from granting, refusing or revoking license.	195
133. Taxes and fees.....	198
134. Fees must be uniform.....	201
135. Bell Punch law—Uniformity—Discrimination.....	203
136. Consent of voters to license—Validity of statutes requiring..	204
137. Assent of neighbors may be required.....	206
138. Indiana statute—Remonstrance.....	208
139. Sales to minors, drunkards, insane persons and Indians.....	210
140. Limiting sales to certain purposes.....	211
141. Screens—Validity and enforcement of law requiring.....	211
142. Sunday laws—Municipal ordinance.....	214
143. Women as employes and visitors in saloons.....	217

SECTION.	PAGE.
144. Record of sales.....	219
145. Restitution of internal revenue—Licenses and receipts— Exposure of license.....	220
146. Minimum quantity that may be sold at one time.....	221
147. Owner of premises—Liability under statute.....	221
148. Civil damages.....	223
149. Requiring licensee to give bond.....	224
150. Inspection of liquors—Ingredients.....	224
151. “Bling Pig” or “Blind Tiger” law.....	225
152. <i>Ex post facto</i> law—Change of remedy.....	225
153. Local option—Its two phases.....	227
154. Local option not special legislation.....	227
155. Local option laws—Delegated power.....	229
156. Local option laws—Constitutionality.....	234
157. Local option law, why not unconstitutional.....	235
158. Local option laws, why not unconstitutional— <i>Continued</i> ....	236
159. Local option, not in violation of Fourteenth Amendment....	238
160. Local option—Alabama Constitution—Notice of enactment of law.....	241
161. Local option law in Territories.....	242
162. Local option not destructive of property.....	242
163. Special legislation for village.....	243
164. Local option constitutional provisions.....	244
165. Local prohibitory laws, when constitutional.....	247
166. Special legislation.....	249
167. Proceedings <i>in rem</i> .....	251
168. Search and seizure of liquors illegally kept.....	253
169. Destruction of intoxicating liquors.....	255
170. Nuisance—Abatement.....	256
171. Enjoining the maintenance of liquor establishments.....	258
172. Amount of penalty—Unusual punishment.....	259
173. <i>Ex post facto</i> law defined—Heavier subsequent punishment..	260
174. British-North American Act.....	262
175. Closing saloons.....	263
176. Evidence, statute regulating.....	263
177. Jury trial, when it can be secured by appeal.....	269
178. Double punishment—State and municipalities.....	270
179. Double punishment—Conflict of jurisdiction.....	273
180. Imprisonment for debt.....	275
181. Support of penitentiary—Imitation liquor.....	276
182. Removal of officers for drunkenness.....	276
183. Drunkenness.....	277
184. Inebriate asylums.....	277
185. Miscellaneous decisions.....	278
186. When courts will not consider constitutional question.....	279
187. Title of statutes—Valid statutes.....	283



SECTION.	PAGE.
188. Title of statute—Invalid statute.....	291
189. Statute or ordinance only in part valid.....	293
190. Construction of statute.....	295

## CHAPTER III.

## INTERSTATE COMMERCE.

191. Statutes drawn in general terms, how construed.....	297
192. What constitutes interstate commerce.....	298
193. Original packages.....	300
194. What constitutes original packages—Size of packages.....	307
195. Original packages—Illustrations.....	308
196. Discrimination against citizens of other States.....	311
197. Right of consignee to sell imported liquors.....	313
198. Right of importer to sell in original packages.....	316
199. "Wilson Law," origin and constitutionality.....	317
200. Wilson Law construed—"Arrival" defined.....	321
201. Liquors in transit—When transit ceases.....	325
202. Wilson Law—Effect upon State laws.....	327
203. Importing liquors for private use.....	328
204. Leaving liquor unreasonable length of time in carrier's possession .....	330
205. License—Tax—Regulating sale.....	330
206. Prohibiting solicitation of orders.....	333
207. Sales beyond State lines.....	336
208. Sales to minors and drunkards.....	336
209. Burden on defendant to show he is protected by the interstate commerce law.....	336
210. Liability of officers serving warrant.....	337
211. Shipping liquor under false brand.....	337
212. Carrier refusing to accept liquors for transportation.....	337

## CHAPTER IV.

## REGULATING LIQUOR TRAFFIC.

213. Extent of discussion in this chapter.....	340
214. Statutory requirements as to location of barroom.....	340
215. Arrangement of room.....	343
216. Screens and curtains.....	344
217. Removal of saloon.....	347
218. Keeping more than one bar—Barroom.....	347
219. More than one license.....	347

## TABLE OF CONTENTS.

xi

SECTION.	PAGE.
220. Beneficial interest in more than one license.....	347
221. Lamp burning until closing time.....	347
222. Keeping door locked.....	348
223. List of employes.....	348
224. Music in saloon.....	348
225. Obstruction of officer's entrance on premises.....	349
226. Display of license.....	352
227. Signs .....	352
228. Sale in unmarked measure.....	352
229. Registration of sales.....	354
230. Sales on credit.....	355
231. Entering saloon in violation of orders not an offense.....	356
232. Permitting minors to "enter and remain" in a saloon.....	357
233. Minor willfully misstating his age.....	358
234. Permitting drunkennes on premises—Selling to drunken man.....	359
235. Found drunk on licensed premises.....	361
236. Power to exclude drunken man from premises.....	362
237. Permitting employe to drink storage liquors—Premises.....	363
238. Women in saloons—Wine rooms.....	364
239. Prostitutes visiting premises.....	365
240. Permitting premises to be a brothel.....	367
241. Knowingly harboring thief on premises.....	368
242. Gambling on premises.....	369
243. Suffering gambling or betting on premises—English statute.....	378
244. Servant permitting gambling—Knowledge of gaming.....	375
245. Keeping a betting house.....	376
246. Public dispensary.....	281
247. Sales by public agents.....	382
248. Agent's liability on his bond.....	385
249. Transportation or conveyance of liquors.....	385
250. Limiting number of saloons.....	387
251. Saloon for negroes.....	388
252. Liquor sales carried on with other business.....	388
253. Criminal liability of owner and landlords.....	388
254. Police regulations, enforcement by mandamus.....	390

## CHAPTER V.

## MUNICIPAL REGULATION.

255. Creation of public corporations—Ordinances.....	393
256. Municipal power, how conferred and construed.....	395
257. Municipal control—Legislative power—Police power.....	397
258. Discretionary powers of municipal corporations.....	398
259. Exclusive municipal power, effect.....	400

SECTION.	PAGE.
260. Powers delegated to and by municipal corporations.....	403
261. Municipal regulations beyond corporate limits.....	405
262. Reasonableness of ordinance.....	408
263. Extent of power of municipality to grant licenses.....	410
264. Power to license—Use and grant.....	411
265. Power to require a license—Instances.....	413
266. Power to grant a license, what includes.....	417
267. Ordinances necessary to exaction of a license.....	419
268. Delegation by city of power to require a license.....	420
269. Number of licenses.....	420
270. Restricting saloons to specified parts of the city.....	421
271. License ordinance, when not invalid.....	425
272. Discriminating ordinance, when not unconstitutional.....	428
273. Exacting license, requirement when not discriminating.....	429
274. Bond of licensee.....	430
275. Municipal power to prohibit.....	430
276. Power to prohibit includes power to license.....	434
277. Prohibitory ordinance, not in violation of common law rights.....	435
278. Regulation and prohibition distinguished.....	436
279. Limitation on power of city to enact ordinance.....	437
280. Power to regulate sale of liquor—Valid ordinance.....	438
281. Power to regulate sale of liquors—Invalid ordinance.....	441
282. Amount of license fees or taxes.....	442
283. License fees, limitation.....	446
284. Right of different jurisdictions to exact license.....	447
285. License, different jurisdictions may require.....	449
286. United States license, effect.....	450
287. Keeping liquors for sale or saloon open.....	452
288. Ordinance, when not conflicting with statute—Keeping liquor for unlawful sale.....	453
289. Prohibiting owner to enter saloon on Sunday.....	454
290. Declaring sale of liquors a nuisance.....	455
291. Regulating days and hours.....	456
292. Sales on Sundays, election days or holidays.....	460
293. Sales at prohibited hours.....	460
294. Picnic and social gatherings.....	461
295. Physician's prescriptions.....	462
296. Sales to minors and drunkards.....	462
297. Prohibiting sales in State having local option laws.....	463
298. Women not licensing—Constitutional law.....	464
299. Women in saloons.....	464
300. Wine rooms.....	465
301. Requiring a county license.....	466
302. Repeal of statute by implication, when not accomplished....	466
303. Regulation of saloon room—Location of saloon.....	467
304. Lights burning in saloon.....	468

# TABLE OF CONTENTS.

xiii

SECTION.	PAGE.
305. Screens—Exposure of room to view.....	468
306. Prohibiting the carriage of liquors.....	469
307. Police visiting saloon.....	469
308. Penalties essential—Heavier for subsequent offense.....	469
309. Penalties, greater and additional—Infliction.....	469
310. Revocation of license—Conditional ordinance.....	471
311. Ordinance annulled by subsequent statute.....	473
312. Exceptions to prohibitory ordinances.....	473
313. Ordinance in part void.....	473
314. Ordinance in conflict with Constitution.....	474
315. City conducting a dispensary.....	475
316. Appointment of liquor agents.....	476
317. Duties and powers of liquor agents.....	476

## CHAPTER VI.

### LICENSES.

318. Definition .....	478
319. A personal trust.....	480
320. Imposes no public duties—Purpose of license.....	481
321. Not a tax.....	481
322. License distinguished from a tax.....	483
323. Inherent and common law right to sell liquors without a license .....	485
324. License to sell not a vested right.....	487
325. License not property.....	488
326. Neither a contract nor property.....	489
327. Effect of enactment of prohibition and a license law.....	491
328. Repeal of licensing laws after license issued.....	492
329. License by implication.....	492
330. Taken subject to subsequent legislation.....	494
331. Annulment of license by change of law.....	495
332. License prospective, not retrospective.....	497
333. Retroactive effect of license.....	499
334. Impossibility to secure a license.....	501
335. Neglect or improper refusal to grant a license.....	504
336. Performance of requisites to obtain a license not a license...	505
337. What a license does and does not authorize.....	507
338. Agent or servant, when protected by license of his principal..	510
339. Sale by servant when his master holds no license—illegal sales	512
340. Servant's license no protection for his master.....	515
341. Partnership license.....	516
342. Number of licenses an individual may or is required to hold.	520
343. City may require license in addition to a State license.....	521



SECTION.	PAGE.
344. City license not a defense to a State violation.....	522
345. United States license—State license.....	523
346. U. S. Government license no defense to the State license....	524
347. Duration of license.....	525
348. Expired license.....	526
349. "On" and "off" license.....	527
350. Void license—Collateral attack.....	528

## CHAPTER VII

## PERSONS ENTITLED TO A LICENSE.

351. Eligibility .....	530
352. Married women—Female.....	536
353. Corporations .....	537
354. Joint and partnership licenses.....	538
355. Manufacturers .....	539
355a. Wholesalers.....	544
356. Hotel keeper—Innkeeper.....	544
357. Restaurant in capitol building.....	546
358. Holder of house.....	546
359. Boat license .....	547
360. Canteen—Street railway car.....	549
361. Who must have a license.....	549
362. Wholesalers .....	553
363. Native or domestic wines.....	555

## CHAPTER VIII.

## ISSUANCE OF LICENSES

364. Authority to grant.....	557
365. How license law construed.....	559
366. The application, its form.....	560
367. Delegation of power to license.....	566
368. Oath of applicant.....	567
369. Notice of application.....	567
370. Recommendation of applicant.....	573
371. Consent to granting of license.....	575
372. Consents where saloon has been abandoned or discontinued..	579
373. Saloon near dwelling, consent of owners.....	581
374. What is a dwelling requiring consent of owners.....	583
375. Signers to consent on recommendation.....	584
376. Saloon near church—Distance, how measured.....	589
377. Saloon near schoolhouse.....	593

## TABLE OF CONTENTS.

XV

SECTION.	PAGE.
378. Saloon near fair or factory .....	596
379. Saloon in resident part of city.....	596
380. Moral qualification of applicant .....	598
381. Residence of applicant.....	600
382. Remonstrance .....	601
383. Signatures to remonstrance—Power of attorney to sign— Revocation .....	605
384. Who may remonstrate .....	607
385. Withdrawal of signatures from remonstrance.....	609
386. A majority remonstrance .....	611
387. Day for hearing application, appointing.....	615
388. Hearing application .....	617
389. Continuance of hearing—Adjourned meeting.....	619
390. Evidence at hearing .....	621
391. Licensing board acting upon its own information.....	625
392. Discretion of licensing board .....	627
393. Character of discretion .....	632
394. Discretion of municipalities in granting licenses.....	634
395. Review or control of discretion of licensing boards.....	635
396. Reasons for refusal .....	636
397. Unsuitable buildings or place.....	640
398. Limiting number of saloons.....	643
399. Order granting or refusing the license.....	645
400. Mandamus to secure a license.....	647
401. Mandamus under the English Licensing Acts.....	653
402. Injunction to restrain issuance of license.....	658
403. Liability for refusing license.....	659
404. Appeal from order granting or refusing license.....	661
405. Writ of prohibition .....	667
406. From what orders an appeal may be taken.....	668
407. Persons entitled to appeal—Parties.....	668
408. Rights of licensee pending appeal .....	671
409. Sale pending appeal to Supreme Court.....	672
410. <i>Certiorari</i> .....	673
411. Renewal of license.....	677
412. Collateral attack upon a license— <i>Quo warranto</i> .....	682
413. Void license .....	684
414. Member of licensing board a prohibitionist—Interest.....	685
415. Criminal liability of licensing officer.....	685

## CHAPTER IX.

## THE FORM OF THE LICENSE.

416. The form .....	687
417. Conditions inserted in license.....	689
418. The place licensed .....	689

## CHAPTER X.

## TRANSFER OF LICENSE.

SECTION.	PAGE.
419. License to sell intoxicating liquors not transferable.....	693
420. Statute permitting transfer.....	695
421. Assignment not a transfer .....	699
422. Death of licensee.....	699
423. Bankruptcy or insolvency—Receiver .....	701
424. Mortgage of license—Judicial sale .....	703
425. Transfer of license to other premises—Pennsylvania.....	705
426. Transfer under English statutes .....	706
427. Transfer under English and Colonial statutes—Cases.....	709

## CHAPTER XI.

## REVOCATION OF LICENSE.

427a. State may authorize a revocation.....	713
428. Repeal of statute ..	715
429. Causes for revocation—Fraud in procuring license.....	716
430. License issued for a prohibition territory.....	717
431. Violation of the law.....	717
432. Violation of statute by licensee's agent or servant.....	721
433. Upon conviction of an offense against the liquor laws.....	721
434. Violation of terms of bond.....	723
435. Conducting place disorderly.....	723
436. House used as a brothel.....	724
437. Ordinance providing for a revocation.....	726
438. New York statute—False statements.....	727
439. False statements in application under New York statute....	728
440. Erroneous statements as to place in application for a license.	732
441. License issued by mistake.....	732
442. The license to be revoked .....	733
443. Revocation after assignment for prior illegal acts.....	733
444. What board or court may revoke a license.....	733
445. Mandamus to compel a revocation .....	734
446. Who may commence proceedings.....	735
447. Who to be made defendant—Assignment of license.....	736
448. The petition for revocation .....	737
449. Joint proceedings to revoke several licenses.....	739
450. Notice of proceedings for revocation.....	740
451. The answer .....	742
452. Trial .....	743
453. Dismissal of proceedings—Expiration of license.....	746

## TABLE OF CONTENTS.

xvii

SECTION.	PAGE.
454. Estoppel to revoke .....	746
455. Appeal— <i>Certiorari</i> .....	747
456. Effect of revocation—Stay of proceedings.....	750
457. Costs .....	751
458. Rebate of fees .....	752
459. Liability of city for mistakenly revoking license.....	752
460. Action on bond when license forfeited.....	753

## CHAPTER XII.

## BOND OF LICENSEE.

461. Power to require a bond.....	754
462. No statute requiring a bond.....	755
463. Statute unconstitutional—Local option .....	755
464. Giving bond a condition precedent to granting a license.....	756
465. Retroactive effect .....	757
466. Form .....	757
467. Who may be sureties thereon .....	761
468. Approval and filing .....	762
469. Void license .....	765
470. Cancellation of bond .....	765
471. Breach of conditions of bond.....	766
472. Breach of conditions—Offenses as to minors.....	770
473. Liability of sureties .....	773
474. Transfer of license .....	776
475. Persons entitled to sue on bond.....	776
476. A civil action—Agent .....	778
477. Judgment of forfeiture on conviction, a prerequisite to suit .....	778
478. Effect of judgment against principal upon surety—Evidence.....	779
479. Attacking validity of license and proceedings therefor.....	779
480. Pleading .....	780
481. Evidence .....	782
482. Amount of damages recoverable on bond.....	784
483. Compromise of liability .....	785

## CHAPTER XIII.

## LICENSE FEES AND TAXES.

484. Definition of license fee.....	786
485. License fee—Police power—Restraint of trade.....	786
486. License fee, when not a tax—Police regulation.....	787
487. Uniformity of taxation.....	790



SECTION.	PAGE.
488. Liability for fee or tax.....	793
489. Amount of fee or tax.....	795
490. Payable in money.....	798
491. Payment in advance.....	799
492. To what officer payable.....	800
493. Suit to collect.....	802
494. Tax lien—Landlord's property—Prospective statute.....	802
495. Disposition of fees and taxes collected.....	806
496. Refunding fees or taxes paid under void or illegal ordinance or statute.....	809
498. Refunding fees or taxes, continued—No statute requiring it..	812
498. Refunding fees or taxes, continued—Cases allowing.....	814
499. Refunding fees or taxes, continued—Payment under mistake of fact.....	816
500. Rebate of fees or taxes under statute.....	817

## CHAPTER XIV

## DRUGGISTS AND PHYSICIANS.

501. Druggists' exemption from liability.....	821
502. No druggist or other person licensed.....	823
503. Statutes requiring druggists to have licenses.....	824
504. Sales by employe of druggist.....	826
505. Good faith in making sales.....	827
506. Druggists making unlawful sales.....	829
507. Druggists' sales in prohibition States.....	830
508. Sales by druggists upon prescriptions.....	831
509. Prescriptions for Sunday and holiday sales.....	836
510. Kind of prescriptions.....	837
511. Registration and reports of sales.....	840
512. Sales by physicians.....	842
513. Physicians illegally giving a prescription.....	844

## CHAPTER XV.

## LOCAL OPTION.

## ART. I. ADOPTION OF LOCAL OPTION.

## ART. II. VIOLATION OF LOCAL OPTION LAW.

## ART. I. ADOPTION OF LOCAL OPTION.

514. Distinctive feature of local option statutes.....	847
515. Sufficiency of petition for an election.....	849

## TABLE OF CONTENTS.

xix

SECTION.	PAGE.
516. Attorney in fact under Indiana statute.....	854
517. Separate petitions and remonstrances.....	856
518. Withdrawal from petition or remonstrance.....	858
519. Qualifications of petitioners..	860
520. Territory embraced in petition—Description of territory....	862
521. Including “dry” territory in petition or order.....	864
522. To whom and the manner in which the petition must be presented—Filing .....	865
523. Notice of hearing.....	868
524. Order for election.....	868
525. Board of Supervisors in Michigan.....	876
526. Signing record.....	877
527. Appeal from order for election.....	878
528. Petition and order for re-submission.....	879
529. Time and place of holding an election.....	882
530. Notice of time and place of holding an election.....	884
531. Time of holding an election.....	891
532. Conduct of the election.....	894
533. Qualifications of election officers.....	896
534. Ballots .....	897
535. Who may vote.....	901
536. Canvass of ballots and return of result.....	902
537. Majority vote, what is—When not defeated.....	904
538. Vote necessary to adopt local option.....	905
539. Declaration of the result of the election.....	907
540. The order of prohibition.....	911
541. Order for publication concerning prohibition order.....	914
542. Publishing notices of order and result of election.....	914
543. When local option takes effect.....	917
544. Contesting validity of election.....	919
545. Mandamus, when not a local option remedy.....	925
546. Prior laws, how affected by local option.....	927
547. Former laws, when not repealed.....	930
548. Changing boundary of district.....	932
549. Repeal of local option by vote.....	939
550. Local option ordinance, when not invalid.....	942
551. Eminent domain, power of not involved.....	942
552. Cost of election.....	943
553. Consent of local authorities.....	943
554. Juror’s qualification in local option case.....	944
555. Local prohibitory or local option statutes.....	945

## ARTICLE II. VIOLATION OF LOCAL OPTION LAW.

556. Sale of liquors.....	948
557. Shipping liquors into local option territory.....	949

SECTION.	PAGE.
558. Bringing liquors within local option territory.....	952
559. Soliciting orders in local option district.....	952
560. Sale under license. ....	954
561. Time for license expiring or lapsing.....	954
562. Transportation of intoxicating liquors.. ....	955
563. Under what statute prosecutions to be brought.....	957
564. Proof that local option was in force.....	958

## CHAPTER XVI.

## WHAT LIQUORS ARE PROHIBITED.

565. Statutory provisions.....	960
566. Intoxicating liquors.....	961
567. Intoxicating liquors, continued.....	962
568. Spirituous ....	965
569. Ale and beer—Malt liquors....	966
570. Wine—Vinous liquors.....	967
571. Cider .....	967
572. Fruit preserved in intoxicating liquors.....	968
573. Drugs or medicines .....	969
574. Manufacture .....	972
575. Whether liquor is intoxicating a question for the jury.....	972

## CHAPTER XVII.

## ABATEMENT AND INJUNCTION.

576. Statute necessary to secure an injunction.....	974
577. Grounds for abatement.....	975
578. Statutory offense....	976
579. Offense which authorizes an abatement or granting of in- junction .....	977
580. No intention to violate the statute.....	980
581. Grounds for injunction.....	980
582. Temporary injunction.....	981
583. Process—Notice .....	982
584. Defenses .....	983
585. Parties plaintiff.....	984
586. Parties defendant.....	986
587. Pleading—Complaint ....	988
588. Pleading—Answer .....	990
589. Evidence .....	991
590. Trial .....	996

# TABLE OF CONTENTS.

xxi

SECTION.	PAGE.
591. Judgment .....	997
592. Bond for continuance of use of premises.....	1000
593. Violation of injunction—Punishment.....	1000
594. Appeal—Review .....	1003
595. Costs—Attorney fees .....	1004

## CHAPTER XVIII.

### SEARCHES AND SEIZURES.

596. Constitutionality of search and seizure laws.....	1007
597. Federal and State jurisdictions, conflict.....	1011
598. Due process of law, statute violating.....	1013
599. Seizure, power to make—Ministerial and judicial power, distinguished .....	1013
600. Nature of search and seizure proceedings.....	1015
601. Jurisdiction of inferior courts—Presumption.....	1017
602. Affidavit based upon belief.....	1018
603. What seizable—Justification .....	1020
604. Search and seizure laws of Maine.....	1023
605. Municipal power. ....	1024
606. Permit to sell, violation—Iowa statute.....	1025
607. Replevin of liquors after seizure .....	1026
608. Officers, seizure—When from, and liability.....	1029
609. Seizure of liquors in Indian country.....	1030
610. Statutes forbidding recovery of damages.....	1031
611. Complaint .....	1033
612. Complaint, statutory form sufficient.....	1034
613. <i>Videlicet</i> , use and limitations in complaint.....	1035
614. Description of persons and liquors.....	1036
615. "Place" and "premises,"—Meaning—Pleading.....	1037
616. Description of premises—Rules of construction.....	1038
617. Common resort, place—Averment.....	1040
618. Place, description—Pleading—Evidence—Variance.....	1041
619. Description of liquors, what sufficient.....	1042
620. Unlawful intent. averment.....	1044
621. Affidavit to complaint, sufficiency.....	1045
622. Power to search without a warrant.....	1046
622a. Sufficiency of warrant.....	1047
623. Description in warrant of liquors and their ownership.....	1048
624. Description of place in warrant, sufficiency.....	1049
625. Place, designation of, when sufficient... ..	1050
626. Adjoining properties, sufficiency of warrant to search.....	1052
627. More than one building may be searched.....	1053
628. Complaint and warrant, when not conflicting.....	1054



SECTION.	PAGE.
629. Variations between warrant and complaint.....	1056
630. Search warrants, when not served.....	1057
631. Warrant protects officer.....	1060
632. False imprisonment—Evidence.....	1060
633. Return of warrant, sufficiency.....	1061
634. Officers' return of warrant as evidence.....	1063
635. Illegal keeping—Evidence, sufficiency.....	1063
636. Notice to claimants—Service and waiver.....	1066
637. Warehouseman and bailees, liquors in their possession.....	1069
638. Claims to property.....	1071
639. <i>Onus probandi</i> — <i>Prima facie</i> case—Evidence.....	1071
640. Forfeiture and fine, pleading and evidence.....	1073
641. Judgment—Review—Costs.....	1074
642. Disposition of property.....	1076
643. Seizure and arrest without warrant, when justifiable.....	1076
644. Arrest without warrant, when not justified.....	1078

## CHAPTER XIX.

KEEPING LIQUOR FOR UNLAWFUL SALE—KEEPING PLACE FOR  
SALE OF LIQUOR.

646. Keeping liquor for unlawful sale.....	1080
647. Unlawfully keeping liquor for sale, continued.....	1082
648. Unlawfully keeping liquor for sale, continued.....	1085
649. Unlawfully keeping liquor for sale, continued.....	1088
650. Wife of defendant keeping liquors for sale.....	1090
651. Unlawful sale and unlawful keeping distinct offenses.....	1091
652. Keeping liquors at place of business.....	1092
653. Keeping place for sale of liquors.....	1093
654. Keeping place for sale of liquors, continued.....	1097
655. Keeping liquor nuisance.....	1100
656. Saloon at common law as a nuisance.....	1105
657. Nuisance under general statute on nuisance.....	1107
658. Keeping "blind tiger".....	1108
659. Keeping disorderly house.....	1108
660. Carrying on the liquor business.....	1111
661. A common seller of liquors.....	1114
662. Exposing liquor for sale.....	1116
663. Keeping tippling house—Definition.....	1117

## CHAPTER XX.

## KEEPING PREMISES CLOSED—SALES TO TRAVELERS.

664. Keeping open defined.....	1118
665. Keeping open and selling distinguished.....	1120

# TABLE OF CONTENTS.

xxiii

SECTION.	PAGE.
666. Legal holidays defined.....	1121
667. Keeping saloon open at prohibited times.....	1122
668. Keeping open at prohibited times, continued.....	1125
669. Keeping open at prohibited times, continued.....	1131
670. Selling or exposing liquor for sale or opening premises during closing hours—English cases.....	1135
671. Closing premises.....	1141
672. Constable demanding visitor's address.....	1142
673. Stranger found on the premises.....	1143
674. Permitting persons to enter saloon.....	1146
675. Liability of servant keeping saloon open.....	1148
676. Sales to travelers at prohibited times in England.....	1148
677. Sales to travelers at prohibited times in English colonies..	1152
678. Sales at railway stations in England at prohibited times....	1154
679. What time statute adopts.....	1155

## CHAPTER XXI.

### SALES AND GIFTS.

680. Illegal sale a statutory offense.....	1158
681. Sale by child.....	1158
682. Licensee under no obligation to sell liquor.....	1159
683. Sales or gifts without a license.....	1159
684. Definition of sales—Examples.....	1161
685. Executory contract of sale.....	1164
686. Sale where statute does not forbid a barter or exchange....	1164
687. Barter or exchange.....	1166
688. Exchange of liquors—Loan.....	1167
689. "Otherwise dispose of" liquors.....	1168
690. Furnishing intoxicating liquors.....	1169
691. Sale of saloon business.....	1169
692. Sale by corporation.....	1170
693. Sale on credit.....	1171
694. Burden on defendant to show he was not the salesman.....	1172
695. Gifts .....	1173
696. A gift of liquor as an act of hospitality or in kindness.....	1174
697. Treating guests at a social gathering.....	1176
698. Sale neither a gift nor a barter.....	1176
699. Delivery .....	1178
700. Ownership of liquors.....	1180
701. Purchase by request of unlicensed dealer.....	1181
702. Sale by restaurant or hotel keeper.....	1182
703. Purposes for which liquor was obtained.....	1183
704. Motive in making sale.....	1183

SECTION.	PAGE.
705. Mistake in selling intoxicating liquor—Intent.....	1184
706. Purchase of liquor by one person for another.....	1186
707. Purchase with view to prosecute seller.....	1187
708. In what quantities sales prohibited.....	1189
709. Sale at wholesale.....	1191
710. Sales by distillers or brewers.....	1194
711. Devices to avoid charge of illegal sales—Examples.....	1196
712. What facts show a sale.....	1199
713. What facts show a sale, continued.....	1202
714. What facts show a sale, continued.....	1206
715. What evidence shows a sale.....	1210
716. What facts do not show a sale.....	1211
717. What facts do not show a sale, continued.....	1213
718. What facts do not show a sale, continued.....	1216
719. Aiding and abetting a sale.....	1218
720. Purchaser not liable to prosecution.....	1220
721. Serving police officer on duty.....	1221

## CHAPTER XXII.

## SALES AND GIFTS TO MINORS, DRUNKARDS, SLAVES, INDIANS AND NATIVES.

ART. I. To MINORS.

ART. II. To SLAVES.

ART. III. To DRUNKARDS.

ART. IV. To INDIANS AND NATIVES

## ARTICLE I.—To MINORS

722. Sales and gifts to minors prohibited.....	1222
723. Minor need not drink the liquor.....	1226
724. Aiding in procuring liquor.....	1227
725. Minor acting as purchaser or messenger for adult.....	1227
726. Adult acting as agent for minor.....	1229
727. Treating a minor.....	1230
728. Permitting liquor to be given to a minor.....	1231
729. Sale or gift with consent of parent or guardian.....	1231
730. Furnishing liquor to minor.....	1234
731. Knowledge that purchaser is a minor when essential to com- mission of offense.....	1235
732. Vendor's ignorance of purchaser's minority no defense....	1237
733. Vendor's ignorance of purchaser's minority a defense.....	1238
734. Sales in sealed and corked bottles or vessels.....	1243
735. Sales to students.....	1244

# TABLE OF CONTENTS.

XXV

## SECTION.

PAGE.

### ARTICLE II.—To SLAVES.

736. Sales or gifts to slaves.....	1245
------------------------------------	------

### ARTICLE III.—To DRUNKARDS.

737. Sales to intoxicated persons.....	1247
738. Who is an intoxicated person.....	1249
739. No knowledge purchaser is intoxicated.....	1251
740. Civil liability.....	1252
741. Sales or gifts to habitual drunkards or intemperate persons.	1252
742. Who is an habitual drunkard or intemperate person.....	1253
743. Knowledge purchaser is an habitual drunkard or intemperate person .....	1255
744. Sale to drunkard after notice not to sell him.....	1256
745. Sales to idiots and insane persons.....	1257
746. Sale to convict.....	1258

### ARTICLE IV.—To INDIANS AND NATIVES.

747. Introducing liquor into the Indian country.....	1258
748. What is not an introduction of liquor into Indian country..	1260
749. Sales to Indians.....	1261
750. State legislation.....	1264
751. Sale to natives under British Government.....	1264

## CHAPTER XXIII.

### SALES AT PROHIBITED PLACES.

752. Sales out of territory for which license is issued.....	1266
753. License for premises.....	1267
754. Sales off premises.....	1267
755. Sales off premises—English cases.....	1271
756. Selling in premises which have been enlarged.....	1276
757. Sales near church or schoolhouse.....	1277
758. Within prohibited distance of another saloon.....	1279
759. Sale of liquors to be sent by common carriers.....	1279
760. Place of order taken deemed place of sale.....	1282
761. Place order taken made place of sale.....	1283
762. Sale by agent subject to approval by principal.....	1284
763. Seller taking order without but delivering liquor within prohibited district.....	1284



SECTION.	PAGE.
764. Seller retaining title until purchaser actually receives the liquor .....	1287
765. Seller taking order in but delivering liquor without prohibited territory.....	1287
766. Soliciting or taking orders by agent.....	1288
767. Liquors shipped into prohibition territory without order taken .....	1288
768. Sale of liquors to be drunk on premises—American decisions	1289
769. Sale of liquor to be consumed on premises—English decisions	1294
770. Sale of liquors to be drunk "about" the premises.....	1296
771. Refreshment saloon or restaurant.....	1296
772. Sale at hotel.....	1297
773. Sale at military canteen.....	1298
774. Sales at theaters.....	1298
775. Sales at dwelling house.....	1299
776. Sales on boat.....	1299
777. Sales of native wine in barroom.....	1300
778. Sales at public place.....	1300

## CHAPTER XXIV.

## SALES AND GIFTS AT PROHIBITED TIMES.

779. Public policy.....	1302
780. Sunday, election and holiday violations.....	1303
781. Sales or gifts on Sundays .....	1305
782. Facts sufficient to show a sale on Sunday.....	1308
783. Sunday sales or gifts—Guests.....	1309
784. Sales at hotels and restaurants.....	1312
785. Trafficking in liquors on Sunday.....	1313
786. Sales on prohibited hours.....	1314
787. Supplying liquors to private friends and lodges after closing hours.....	1316
788. Sales on holidays.....	1318
789. Election days.....	1319
790. Under what statute prosecution for sales at prohibited times brought.....	1322

## CHAPTER XXV

## CLUB SALES.

791. Incorporated clubs—Cases holding must have licenses.....	1324
792. Incorporated clubs—Cases holding need not have licenses—Transactions not sales.....	1325

SECTION.	PAGE.
793. Club in existence when licensing act adopted.....	1331
794. Statute expressly applying to club.....	1332
795. Club required to have a license—Drainshop defined.....	1333
796. Club's liability for occupation tax .....	1338
797. Club sales in prohibition territory.....	1339
798. Schemes to evade the statute— <i>Bona fides</i> of incorporation..	1339
799. <i>Quasi</i> club sales.....	1342
800. Sales to non-members.....	1344
801. Steward or servant of club liable.....	1345

## CHAPTER XXVI.

## MASTER'S LIABILITY FOR ACTS OF SERVANT.

802. Agent directed to make sales that are unlawful.....	1348
803. Agent's authority.....	1351
804. Agent in charge of premises—Barkeeper.....	1353
805. Evidence must show authority to bind master—Sales by bartender .....	1356
806. Statute making master liable for illegal sale by his servant.	1357
807. Sale by bartender to minor, intoxicated person or habitual drunkard .....	1359
808. Sale out of hours at prohibited times.....	1360
809. Evidence sufficient to show illegal sale was authorized.....	1361
810. Keeping saloon open.....	1362
811. Neglect of servant to keep records.....	1363
812. Permitting persons on premises.....	1363
813. Sales by partners .....	1364
814. Sale by member of defendant's family.....	1366
815. Sales by wife of husband's liquors.....	1367
816. Husband's liability for sale of wife's liquors.....	1368
817. Liability of wife.....	1369
818. Joint liability of husband and wife.....	1371
819. Liability of agent for sales—Who is unprotected by a license	1371
820. Liability of agent for acts in violation of law.....	1374
821. Joint or several liability of principal and agent.....	1376
822. Sale by agents in local option territory.....	1378
823. Soliciting in interdicted territory.....	1379
824. Agent for purchaser participating in illegal sale.....	1379

## CHAPTER XXVII.

## ADULTERATION—INSPECTION.

## ART. I. STATE DECISIONS.

## ART. II. PURE FOOD AND DRUGS ACT.

## ARTICLE I.—STATE DECISIONS.

SECTION.	PAGE.
825. Constitutionality of statute forbidding adulteration—Inspection .....	1382
826. Offense of selling adulterated liquors.....	1383
827. Inspection .....	1384
828. Filing affidavit and giving bond liquors are pure.....	1385

## ARTICLE II.—PURE FOOD AND DRUGS ACT.

829. United States Pure Food and Drug Act of 1906.....	1386
830. What drugs and foods covered by Act—Statute.....	1386
831. "Drug" and "Food" defined.....	1387
832. Adulteration and misbranding—Statute.....	1388
833. Adulteration of drugs defined—Statute.....	1389
834. Adulteration of confectionery defined—Statute.....	1390
835. Adulteration of food defined—Statute.....	1390
836. Requisites of brand—Approval.....	1392
837. Name and address of manufacturer.....	1393
838. Mixtures or compounds with distinctive names.....	1394
839. Substances named in drugs or foods.....	1395
840. Statement of weight or measure.....	1397
841. Labeling wine.....	1398
842. Labeling whisky.....	1399
843. Misbranded drugs defined ..	1402
844. Misbranded food defined—Adulteration.....	1410
845. Misbranding .....	1411
846. Guaranteed goods.....	1414
847. Exports and imports of foods and drugs.....	1416
848. Original unbroken packages.....	1423

## CHAPTER XXVIII.

## INDICTMENT.

849. Certainty .....	1441
850. Following the terms of the statute..	1443

## TABLE OF CONTENTS.

XXIX

SECTION.	PAGE.
851. Duplicity .....	1444
852. Allegations in the disjunctive.....	1450
853. Joinder of counts.....	1451
854. Verification and source of information.....	1454
855. Surplusage .....	1455
856. Referring to the statute.....	1456
857. Character, occupation or condition of accused.....	1457
858. Intent of vendor.....	1459
859. Knowledge—Notice .....	1460
860. Adoption and violation of local option laws.....	1462
861. Violation of local option laws.....	1466
862. Violation of local option laws—Texas.....	1471
863. Violation of local statute.....	1474
864. Unlawful nature of act.....	1476
865. Violation of municipal ordinance.....	1477
866. Place as element of the offense.....	1478
867. Time as an element of an offense.....	1483
868. Alleging a continuendo.....	1486
869. Purpose or object of sale.....	1487
870. Description, kind and properties of liquors.....	1490
871. Setting out name of liquors—Averments as to properties... ..	1495
872. Charging quantity of liquor sold, when necessary.....	1497
873. Charging sale of "less than" a specified quantity.....	1498
874. Charging sale of a "drink" or "one glass".....	1500
875. When quantity sold need not be alleged.....	1500
876. Price paid for liquor.....	1501
877. Designating purchaser necessary.....	1502
878. Designating purchaser not necessary.....	1504
879. How purchaser described—Name unknown.....	1508
880. Negating defenses and exceptions.....	1509
881. Negating authority to sell.....	1512
882. Negating special authority.....	1514
883. Negating licenses.....	1515
884. Sufficiency of negation of license.....	1517
885. Negation of legal purpose or circumstances.....	1520
886. Sufficiency of negation of particular licenses or licenses for particular purposes .....	1522
887. Negations as to physicians and druggists.....	1523
888. Negative averments as to kind of liquor or package.....	1527
889. Manufacturing liquor.....	1527
890. Transportation of liquor.....	1527
891. Keeping liquor for illegal sale.....	1529
892. Carrying on liquor business—Common seller.....	1532
893. Screens maintaining—Obstructing view.....	1535
894. Sale without first giving bond.....	1537
895. Keeping open at prohibited times.....	1538

SECTION.	PAGE.
896. Keeping place for unlawful sale of liquors—Tippling house.	1541
897. Maintaining liquor nuisance.....	1545
898. Description of house or place constituting the nuisance as illegally kept .....	1550
899. Time of maintaining nuisance.....	1552
900. Sale of liquor to be drunk on premises.....	1552
901. Location of saloon in residence part of city.....	1553
902. Sales in general.....	1553
903. Devices or evasions to conceal sale.....	1559
904. Sale or gift to minor.....	1560
905. Sale or gift to minor without permit.....	1562
906. Sale to drunkard or intoxicated person.....	1564
907. Sale to drunkard after notice given.....	1564
908. Sale or gift on Sunday.....	1566
909. Sale or gift on election day.....	1568
910. Sale or gift within prohibited area.....	1570
911. Second offense.....	1571
912. Physicians' prescription.....	1573
913. Music in saloon. ....	1573
914. Employing women in saloon.....	1573
915. Sale of liquors from unstamped cask.....	1574
916. Failure to exhibit license or tax receipt.....	1574
917. Gambling in saloon.....	1575
918. Miscellaneous .....	1576

## CHAPTER XXIX.

## EVIDENCE.

919. Competency of witness.....	1578
920. Spies and informers.....	1579
921. Admissions and declarations of accused.....	1581
922. Confessions of accused—Accused intoxicated.....	1583
923. <i>Prima facie</i> evidence—Power of Legislature to declare.....	1584
924. Burden of proof in general.....	1586
925. Presumption .....	1590
926. Connecting accused with unlawful acts shown.....	1593
927. Incriminating or exculpatory circumstances.....	1594
928. Effort to avoid detection.....	1596
929. Sales .....	1597
930. Evidence to show sale—Incriminating evidence.....	1601
931. Other sales—Other crimes.....	1608
932. Refusal to sell to others incompetent evidence.....	1614
933. Sale by or to agent or servant—Sale by wife.....	1614
934. Sale or gift—Variance.....	1621



## TABLE OF CONTENTS.

XXXI

SECTION.	PAGE.
935. Proof who was purchaser—Variance.....	1623
936. Sales to two or more persons.....	1624
937. Joint liability.....	1625
938. Sale to "person unknown".....	1626
939. Sale to minor.....	1627
940. Sale to intoxicated person.....	1630
941. Sale to habitual drunkard.....	1631
942. Sunday sales.....	1633
943. Sale of liquors to be drunk on premises.....	1634
944. Club sales.....	1635
945. Quantity of liquor sold.....	1636
946. Proof of license.....	1637
947. Sale unauthorized—License.....	1642
948. Special authority to make the sale.....	1645
949. Documentary evidence.....	1646
950. Time of violation of statute.....	1649
951. Proof of time in a continuing offense.....	1655
952. Ownership and possession of liquors.....	1655
953. Keeping for unlawful sale.....	1658
954. Carrying on business of liquor selling.....	1665
955. Common seller.....	1667
956. Exposing liquors.....	1669
957. Keeping place for unlawful sale of liquors—Nuisance.....	1669
958. Liquor nuisance.....	1675
959. Local option—Proof of adoption.....	1679
960. Local option law—Evidence to show violation.....	1688
961. Intoxicating quality of liquors—Proof.....	1694
962. Chemical analysis of liquors—Expert testimony.....	1706
963. Proof as to kind of liquor.....	1710
964. Place of offense.....	1714
965. Persons jointly indicted.....	1715
966. Prior conviction or acquittal.....	1716
967. Second offense.....	1723
968. Permitting females in saloon—Keeping a wine room.....	1724
969. Illegal transportation of liquors.....	1725
970. "C. O. D."—Express agent's liability.....	1726
971. Keeping saloon open.....	1727
972. United States license, probative effect as evidence.....	1728
972a. Proof of intoxication—Opinion of witness.....	1733
973. Miscellaneous .....	1737

## CHAPTER XXX.

## TRIAL AND JUDGMENT.

974. Jurisdiction .....	1738
975. Statute of limitations.....	1739

SECTION.	PAGE.
976. Repeal of statute.....	1740
977. Form of proceedings.....	1741
978. Preliminary proceedings.....	1742
979. Who may institute proceedings.....	1743
980. Defendant's plea.....	1744
981. Election between offenses.....	1744
982. Jury trial.....	1747
983. Juror's competency.....	1749
984. Juror's qualifications in criminal prosecutions.....	1749
985. Question for the jury.....	1751
986. Qualifications of judge.....	1755
987. Verdict.....	1755
988. Sentence and punishment.....	1759
989. Excessive punishment.....	1762
990. Separate sentences—Separate counts.....	1764
991. Joint defendants.....	1765
992. Second offense—Excessive penalty.....	1765
993. Informer—When entitled to part of penalty.....	1766
994. Double liability.....	1767
995. Lien of fine and costs on premises used.....	1767

## CHAPTER XXXI.

## RIGHTS IN AND CONTRACTS CONCERNING INTOXICATING LIQUORS.

996. At common law.....	1771
997. Property in intoxicating liquors.....	1771
998. Attachment of liquors—When not maintainable.....	1772
999. Larceny of intoxicating liquors.....	1773
1000. Mortgage or pledge of intoxicating liquors.....	1774
1001. Mortgage of license to sell liquors.....	1775
1002. Statutes forbidding recovery of possession or value of liquors.....	1776
1003. Wrongful conversion of intoxicating liquors.....	1776
1004. Insurance of liquors.....	1777
1005. Sales without license—Liquors illegally sold.....	1779
1006. Divisible and entire contract.....	1781
1007. Payments upon amounts partly illegal.....	1783
1008. Contracts violating policy of liquor laws.....	1783
1009. Repudiation of executory contract.....	1785
1010. Validity of contract determined by law of place.....	1785
1011. Place of sale in determining its legality.....	1786
1012. Sale of liquors to be illegally resold.....	1789
1013. Sales to unlicensed dealers.....	1791
1014. Sale to insane person.....	1793

SECTION.	PAGE.
1015. Sale of liquor to be shipped into prohibition State.....	1793
1016. Soliciting orders forbidden.....	1798
1017. Recovery on foreign sales forbidden by statutes.....	1800
1018. Sale to house of prostitution.....	1800
1019. Recovering back money paid on illegal sales.....	1801
1020. Burden to show illegality of sale.....	1805
1021. Bills and notes.....	1806
1022. Contract in restraint of trade—Measure of damages.....	1808
1023. Covenants in deed not to use premises for sale of intoxicating liquors.....	1808
1024. Avoiding leases.....	1810
1025. Covenant not to build public house on land.....	1812
1026. Covenant to take all beer from landlord.....	1815
1027. Miscellaneous covenants as to public houses and servants..	1819
1028. Contracts of sale of licensed premises.....	1830

---

## PART II.

### DRUNKENNESS.

---

#### CHAPTER XXXII.

##### CIVIL DAMAGES.

- I. RIGHT OF ACTION.
- II. GROUNDS OF ACTION.
- III. DEFENSES.
- IV. PERSONS ENTITLED TO SUE.
- V. PERSONS LIABLE.
- VI. ACTIONS.
- VII. EVIDENCE.
- VIII. DAMAGES.
- IX. TRIAL AND REVIEW.

##### ARTICLE I.—RIGHT OF ACTION.

1029. Remedy under common law.....	1837
1030. Remedy under statute .....	1839
1031. Constitutionality of statute.....	1840

## ARTICLE II.—GROUNDS OF ACTION.

SECTION.	PAGE.
1032. Construction of statute.....	1843
1032a. Right of action in general.....	1844
1033. Illegality of sale.....	1847
1034. Sale contrary to notice.....	1850
1035. Injuries to person—Mental suffering.....	1853
1036. Injuries to property.....	1856
1037. Injuries to means of support.....	1859
1038. Proximate cause of injury.....	1863
1039. Injuries produced by an intoxicated person.....	1863
1040. Injuries produced by reason of intoxication of any person..	1866
1041. Sales causing death of purchaser.....	1869
1042. Commission of crimes by intoxicated person.....	1875
1043. Injury to person and property by reason of crime of drunken person.....	1875
1044. Injury to means of support by reason of punishment of drunken person.....	1879

## ARTICLE III.—DEFENSES.

1045. In general.....	1881
1046. License or authority.....	1885
1047. Contributory act or negligence.....	1886
1046. Release or discharge.....	1891

## ARTICLE IV.—PERSONS ENTITLED TO SUE.

1049. In general.....	1892
1050. Husbands .....	1895
1051. Wives—Death of Husband—Divorce.....	1896
1052. Parents .....	1898
1053. Children .....	1904
1054. Posthumous child.....	1906

## ARTICLE V.—PERSONS LIABLE.

1055. In general—Sales by servants.....	1907
1056. Joint tort-feasors.....	1912
1057. Sureties on dealer's bonds.....	1920
1058. Owners or lessors of premises.....	1924

## ARTICLE VI.—ACTIONS.

1059. Time to sue—Statute of limitations.....	1931
1060. Parties .....	1932
1061. Pleadings .....	1936
1062. Issues—Proof—Variance .....	1942

## ARTICLE VII.—EVIDENCE.

SECTION.	PAGE.
1062a. Presumption and burden of proof.....	1946
1062b. Admissibility in general.....	1950
1062c. Sale or participation therein by defendant.....	1955
1063. Nature and extent of injury.....	1962
1064. Character and habits of plaintiff.....	1969
1065. Character and habits of intoxicated person—Mortality tables .....	1970
1066. Pecuniary conditions of persons or parties.....	1973
1067. Weight and sufficiency of evidence.....	1974
1068. Nature and properties of liquors.....	1975

## ARTICLE VIII.—DAMAGES.

1069. General Rule—Cost of medical services.....	1977
1070. Injury to means of support.....	1978
1071. Mental suffering.....	1982
1072. Exemplary damages.....	1983
1073. Excessive damages.....	1992
1074. Mitigation of damages.....	1994

## ARTICLE IX.—TRIAL AND REVIEW.

1075. Questions for jury.....	1998
1076. Who made the sales.....	1999
1077. Proximate cause of the injury.....	1999
1078. Plaintiff contributing to the injury.....	2001
1079. Plaintiff's injury to property or support.....	2002
1080. Instructions in general.....	2003
1081. Instructions invading province of jury.....	2004
1082. Hypothetical instructions.....	2005
1083. Instructions on exemplary damages.....	2005
1084. Intoxication cause of injury.....	2006
1085. Instructions on measure of damages.....	2006
1086. What constitutes intoxication.....	2007
1087. Injury to property.....	2007
1088. Unlawful sales.....	2008
1089. Judgment against principal, when binding on surety.....	2008
1090. Lien of judgment on premises used.....	2010
1091. Costs .....	2014



## CHAPTER XXXIII.

## GUARDIANS AND ASYLUMS FOR DRUNKARDS.

SECTION.	PAGE.
1092. Constitutionality of statutes for the appointment of guardians for drunkards.....	2015
1093. The inquisition.....	2017
1094. Revocation of guardianship.....	2018
1095. Sale of ward's property by his guardian.....	2020
1096. Contracts—Statute of limitations—Suits.....	2020
1097. Inebriate asylums.....	2021

## CHAPTER XXXIV.

## DRUNKENNESS AS A CRIME.

1098. Drunk in a public place.....	2024
1099. Drunkenness at a private residence.....	2026
1100. Permitting drunkenness on licensed premises.....	2027
1101. Found drunk on licensed premises.....	2030
1102. Being a common drunkard.....	2030
1103. Drunkenness in office.....	2031
1104. What intoxication by statute is made criminal.....	2031
1105. Arrest for drunkenness.....	2032
1106. Arrest without warrant for liquor offenses.....	2035
1107. Miscellaneous .....	2036

## CHAPTER XXXV.

## DRUNKENNESS AS A DEFENSE IN CRIMINAL PROSECUTIONS.

1108. Voluntary intoxication no excuse for the commission of crime—Reasons for rule.....	2045
1109. Voluntary drunkenness as an excuse—Continued.....	2045
1110. Involuntary intoxication.....	2046
1111. Evidence of physical incapacity.....	2048
1112. Aggravating crime.....	2048
1113. Assault and battery.....	2049
1114. Drunkenness producing permanent disability or insanity— Delirium tremens.....	2049
1115. What degree of insanity is a defense.....	2054
1116. Dipsomania—Oenomania .....	2058
1117. Instructions to jury—Cases of delirium tremens.....	2058
1118. Provocation .....	2059

## TABLE OF CONTENTS.

xxxvii

SECTION.	PAGE.
1119. Intoxication reducing the grade of homicide—Evidence....	2060
1120. Intoxication reducing the grade of homicide—Malice—Pre- meditation .....	2064
1121. Extent of intoxication to reduce the degree of the offense..	2069
1122. Incapacity to deliberate, reducing homicide below second degree .....	2072
1123. Specific intent—Assault with intent.....	2073
1124. Assault with intent to commit rape.....	2075
1125. Conspiracy to commit murder.....	2076
1126. Attempt to commit suicide.....	2077
1127. Burglary .....	2077
1128. Forgery .....	2078
1129. Larceny and robbery.....	2078
1130. Self-defense .....	2080
1131. Willful drunkenness—Previously formed intent.....	2081
1132. Burden to show the incapacity to form a criminal intent..	2081
1133. Instructions concerning the reduction of the degree of the offense .....	2083
1134. Drunken insane person.....	2086
1135. Voluntary use of drugs.....	2086
1136. Texas statute.....	2087
1137. Miscellaneous .....	2091

## CHAPTER XXXVI.

## CONTRACTS OF A DRUNKEN MAN.

1138. Mere drunkenness as a ground for a rescission of a con- tract .....	2092
1139. Voluntary intoxication.....	2097
1140. Intoxication produced by the other party.....	2099
1141. Taking advantage of intoxicated party.....	2101
1142. Fraud of other party.....	2103
1143. Habitual drunkards.....	2104
1144. Habitual drunkenness.....	2105
1145. Knowledge of drunken condition of party.....	2106
1146. Inadequacy of consideration—Unfair contract.....	2107
1147. What kind of contracts may be avoided.....	2108
1148. Implied contracts.....	2109
1149. Intoxication of maker of note.....	2110
1150. Marriage .....	2113
1151. Family settlements.....	2115
1152. Replevin bail or bail bond.....	2115
1153. Contract void or voidable.....	2116
1154. Ratification .....	2117

SECTION.	PAGE.
1155. Inquisition—Prior contracts—Finding as evidence.....	2118
1156. Time of drunkenness.....	2121
1157. Burden to show drunkenness.....	2122
1158. Rescinding contract and restoring consideration.....	2123
1159. Who may show intoxication of party.....	2127
1160. Obtaining relief.....	2128

## CHAPTER XXXVII.

## WILLS.

1161. Present intoxication.....	2132
1162. Habits of intoxication—Habitual drunkard.....	2135
1163. Drunkenness as evidence of incapacity.....	2137
1164. Drunkenness in connection with conduct and condition— Sufficiency of evidence.....	2139
1165. Drunkenness in connection with the nature of the act....	2142
1166. Drunkenness in connection with undue influence.....	2145
1167. Point of time under investigation.....	2147
1168. Presumption—Burden of proof.....	2149
1169. Inquisition of drunkenness.....	2150
1170. Ratification of a previously executed will.....	2151
1171. Gift .....	2152

## CHAPTER XXXVIII.

## DIVORCE.

1172. Drunkenness as a ground for divorce.....	2153
1173. Degree of drunkenness necessary to authorize the granting of a divorce.....	2155
1174. Pleadings .....	2159
1175. Wasting his estate.....	2160
1176. Proof .....	2160
1177. Defenses .....	2161
1178. Custody of children.....	2163
1179. Drunkenness as cruelty.....	2164
1180. Drunkenness connected with cruelty.....	2165
1181. Drunkenness as evidence of cruelty.....	2167
1182. Drunkenness as effecting desertion.....	2167
1183. Judicial separation—English statute.....	2167

## CHAPTER XXXIX.

## NEGLIGENCE.

SECTION.	PAGE.
1184. Intoxicated person may recover when negligently injured..	2170
1185. Contributory negligence of a drunken man.....	2172
1186. Contributory negligence of a drunkard—When rule does not apply.....	2175
1187. What is contributory negligence in a drunken man.....	2176
1188. Concurring negligence of both parties.....	2178
1189. Trespassing drunken man.....	2180
1190. Drunken person on railroad crossing.....	2185
1191. Defective highway.....	2186
1192. Drunken physician or surgeon.....	2187
1193. Miscellaneous instances.....	2188
1194. Sale of poison to drunken man.....	2189
1195. Drunken man liable for injuries he inflicts.....	2189
1196. Burden of proof—Presumption.....	2190
1197. Intoxication only evidence of contributory negligence—Ques- tion for jury.....	2191
1198. Weight of evidence and its sufficiency.....	2195
1199. Question for jury.....	2197
1200. Master's liability to his servant for drunken servant's negligence .....	2198
1201. Proof of notice of servant's drunken habits.....	2200
1202. Drunken passengers.....	2201
1203. Expelling drunken passengers.....	2205
1204. Passenger forfeiting right to carriage by boisterous con- duct .....	2208
1205. Carrier leaving drunken passenger in dangerous place....	2208
1206. Greater care due to a drunken man in a dangerous place..	2213
1207. Assaults by drunken passengers upon other passengers....	2215
1208. Notice of intoxication of passenger.....	2217

## CHAPTER XL.

## LIFE INSURANCE.

1209. No representation made by insured concerning his use of intoxicating liquors.....	2219
1210. Statements in application not made part of policy issued thereon .....	2220
1211. Statements amounting to warranties concerning drinking habits .....	2221
1212. Statements that applicant is "temperate" or of "temperate habits" .....	2222

SECTION.	PAGE.
1213. Death resulting from intemperate habits.....	2228
1214. Promises concerning future habits.....	2229
1215. Statutes limiting legal effect of statements.....	2231
1216. Express clause concerning use of intoxicating liquors.....	2232
1217. Cancellation of policy.....	2232
1218. Various clauses concerning intoxicating liquors.....	2234
1219. Delirium tremens.....	2236
1220. Death or injury while under the influence of intoxicating liquors .....	2237
1221. Connection with liquor traffic.....	2240
1222. Condition against engaging in liquor traffic.....	2240
1223. Waiver by insurer.....	2241
1224. Physician of insurer to determine cause of death.....	2243
1225. Province of jury and court.....	2243
1226. Burden to show intoxication.....	2244
1227. Evidence to show intemperate habits.....	2244

## CHAPTER XLI.

### MISCELLANEOUS.

1228. Jurors in a criminal case using intoxicating liquors.....	2246
1229. Jurors in civil cases using intoxicating liquors.....	2252
1230. Treating jurors.....	2255
1231. Prohibitionist as a juror.....	2256
1232. Jury on trial of a liquor nuisance.....	2257
1233. Drunken counsel at trial.....	2257
1234. Defendant in criminal prosecution drunk.....	2257
1235. Intoxicated witness.....	2258
1236. Presumption a person is sober.....	2260
1237. Pardon .....	2260
1238. Drunken officer.....	2261
1239. Drunken pupil—Suspending from school.....	2262
1240. Drunken seaman.....	2262
1241. Bankruptcy .....	2262
1242. Slander .....	2263
1243. Trade mark.....	2263
1244. C. O. D. interstate shipments—U. S. statute.....	2263
1245. Labeling packages of liquor shipped into another State— U. S. statute.....	2264
1246. Agent of common carrier delivering liquor to person not consignee—U. S. statute.....	2265
Appendix A.....	2267-2275
Appendix B.....	2277, 2278
Index .....	2279



# TABLE OF CASES.

[References are to pages.]

## A

- Aaron v. State (34 Tex. Cr. Rep. 103; 29 S. W. 267), 876, 931, 933.
- Abel v. State (90 Ala. 631; 8 So. 760), 513, 1372.
- Abbot v. Inman (35 Ind. App. 262; 72 N. E. 284), 937.
- Abbott v. Pike (33 Me. 204), 1039.
- Abbott v. Inman (35 Ind. App. 262; 72 N. E. 284), 614.
- Abbott v. Sartori (57 Iowa, 656; 11 N. W. 626), 354, 841.
- Abbott v. State (42 Tex. Cr. App. 8; 57 S. W. 97), 1687.
- Abel v. State (90 Ala. 631; — So. 760), 1112.
- Aberdeen v. Sanderson (8 S. & M. 663), 807.
- Ableman v. Booth (21 How. [U. S.] 506), 1012.
- Abrams, *Ex parte* ([Tex.] 120 S. W. 883), 279, 291, 387, 634.
- Abrams v. Sandholm (119 Iowa, 583; 93 N. W. 563), 989.
- Abrams v. State ([Ala.] 46 So. 464), 1609, 1612.
- Acker v. Acker (22 App. D. C. 353), 2158.
- Acken v. Tinglehoff ([Neb.] 119 N. W. 456), 1845, 1882, 1973.
- Acme Brewing Co. v. Fletcher (109 Ga. 463; 34 S. E. 558), 333, 551.
- Acree v. Commonwealth (13 Bush, 353), 519, 1365, 1366.
- Adair v. Commonwealth ([Ky.] 56 S. W. 530), 554, 1755.
- Adair v. Commonwealth ([Ky.] 89 S. W. 1132; 28 Ky. L. Rep. 659), 1195.
- Adamek *In re* (82 Neb. 448; 118 N. W. 109), 622, 637, 644, 663.
- Adams v. Albany (29 Ga. 56), 394.
- Adams v. Allen (99 Me. 249; 59 Atl. 62), 1047, 1048.
- Adams v. Couillard (102 Mass. 467), 790, 1771, 1795, 1796, 1798, 1799.
- Adams v. Cox (80 Miss. 561; 32 So. 117), 785.
- Adams v. Cronin (29 Colo. 488; 69 Pac. 590), 219.
- Adams v. Gormley (69 Ga. 743), 627.
- Adams v. Hackett (27 N. H. 289; 59 Am. Dec. 376), 492, 495.
- Adams v. Kelley ([Tex. Civ. App.] 44 S. W. 529), 881, 927.
- Adams v. Kelley (17 Tex. Civ. App. 479; 45 S. W. 859), 234, 246, 954.
- Adams v. Hickett (27 N. H. 289; 59 Am. Dec. 376), 183, 186.
- Adams v. Johnson (72 Miss. 896; 17 S. E. 682), 1839.
- Adams v. McGlinchy (66 Me. 474), 1047.
- Adams v. Miller (81 Miss. 613; 33 So. 489), 774, 783.
- Adams v. Ryerson (4 Halst. Eq. [N. J.] 814; 1 Stockt. Eq. [N. J.] 816), 2094, 2104, 2107, 2108.
- Adams v. Ryerson (6 N. J. Eq. 328), 2102.

[References are to pages.]

- Adams v. State ([Ark.] 41 S. W. 423), 1479.
- Adams v. State (25 Ohio St. 584), 1632.
- Adams v. Stephens (88 Ky. 443; 11 S. W. 427), 473.
- Adams Exp. Co. v. Commonwealth (124 Ky. 100; 92 S. W. 932; 29 Ky. L. Rep. 224; 92 S. W. 935; 29 Ky. L. Rep. 230, 231; 92 S. W. 936; 29 Ky. L. Rep. 231), 298, 299.
- Adams Express Co. v. Commonwealth (124 Ky. 160; 92 S. W. 932, 935, 936; 29 Ky. L. Rep. 224, 230, 231), 307, 955.
- Adams Express Co. v. Commonwealth ([Ky.] 96 S. W. 593; 29 Ky. L. Rep. 904), 325, 1280.
- Adams Express Co. v. Commonwealth ([Ky.] 103 S. W. 353; 31 Ky. L. Rep. 811 to 813), 326, 1558, 1689, 1726.
- Adams Express Co. v. Commonwealth ([Ky.] 103 S. W. 721; 31 Ky. L. Rep. 813), 1218.
- Adams Express Co. v. Commonwealth ([Ky.] 112 S. W. 577; 33 Ky. L. Rep. 967), 956, 1529.
- Adams Exp. Co. v. Iowa (196 U. S. 147; 25 Sup. Ct. 185; 49 L. Ed. 424 [reversing 95 N. W. 1129]), 307, 324, 326.
- Adams Exp. Co. v. Commonwealth (206 U. S. 129; 51 L. Ed. 987; 27 Sup. Ct. 606 [reversing 87 S. W. 1111; 27 Ky. L. Rep. 1096]; 206 U. S. 138; 27 Sup. Ct. 608; 51 L. Ed. 992 [reversing (Ky.); 92 S. W. 932; 29 Ky. L. Rep. 224; 5 L. R. A. (N. S.) 630]), 324, 326.
- Adams Express Co. v. Kentucky (206 U. S. 129; 27 Sup. Ct. 606; 51 L. Ed. 897; reversing [Ky.] 96 S. W. 1104; 29 Ky. L. Rep. 947), 1289.
- Adams Exp. Co. v. Commonwealth (206 U. S. 129; 27 Sup. Ct. 606; 51 L. Ed. 897 [Ky.] 103 S. W. 353; 31 Ky. L. Rep. 811, 813; reversing [Ky.] 87 S. W. 1111; 27 Ky. L. Rep. 1096), 1726.
- Adams Exp. Co. v. Kentucky (206 U. S. 129; 27 Sup. Ct. 606), 955.
- Adams Exp. Co. v. Commonwealth (206 U. S. 138; 27 Sup. Ct. 608; 51 L. Ed. 992; reversing [Ky.] 92 S. W. 932; 29 Ky. L. Rep. 224; 5 L. R. A. [N. S.] 630), 1726.
- Adams Express Co. v. Commonwealth (214 U. S. 218; 29 Sup. Ct. 633), 336.
- Addis v. Campbell (4 Beav. 401), 2099.
- Addy v. Blake (19 Q. B. Div. 478; 51 J. P. 599; 56 L. T. 711; 35 W. R. 719), 353.
- Aden v. Cruse (21 Ill. App. 391), 1909.
- Adkins v. State (49 Tex. Cr. App. 524; 95 S. W. 506), 1340.
- Adler v. State (55 Ala. 16), 28, 38, 83, 367, 966, 1233, 1240, 1630, 1755.
- Adler v. Whitbeck (44 Ohio St. 539; 9 N. E. 672), 121, 147, 199, 200, 202, 262, 479, 788, 790.

[References are to pages.]

- Advance, *In re* (59 N. Y. App. Div. 440; 69 N. Y. Supp. 314), 578.
- A. E. Holley & Co. v. Simmons ([Tex. Cr. App.] 85 S. W. 325), 1238.
- Aetna L. Ins. Co. v. Davey (123 U. S. 739; 8 Sup. Ct. 331), 2234, 2235, 2243.
- Aetna Life Ins. Co. v. Deming (123 Ind. 384; 24 N. E. 86, 375), 2235, 2237.
- Aetna Life Ins. Co. v. Hanna (81 Tex. 487; 17 S. W. 35), 2241, 2243.
- Aetna L. Ins. Co. v. Ward (140 U. S. 76; 11 Sup. Ct. 720), 2234, 2243.
- Agee v. State (25 Ala. 67), 1514.
- Ahlers v. Estherville ([Iowa] 104 N. W. 453), 813, 816.
- Aiken v. Blaisdell (41 Vt. 655), 1791, 1797.
- Aiken v. Harbers (6 Rich. L. 96), 774.
- Aiken v. State (14 Tex. App. 142), 850, 854, 883, 1760.
- Ailstock v. Page (77 Va. 386), 628, 636, 400, 671.
- Aimo v. People (122 Ill. App. 398), 1320, 1540.
- Aitkin, *Ex parte* (1 S. R. N. S. W. 214; 18 W. N. Cas. N. S. W. 279), 670, 1170.
- Aken v. Tinglehoff ([Neb.] 119 N. W. 456), 1968.
- Akerman v. Lima (7 Ohio N. P. 92; 8 Ohio S. & C. P. Dec. 430), 473.
- Akerman v. Lima (8 Ohio S. & C. P. Dec. 430), 1478.
- Alabama Lumber Co. v. Cross (152 Ala. 562; 44 So. 563), 2253.
- Albany Brewing Co. v. Barekley (42 N. Y. App. Div. 335; 59 N. Y. Supp. 65), 699, 703.
- Albertson v. Wallace (81 N. C. 479), 794.
- Albia v. O'Hara (64 Iowa, 297; 20 N. W. 444), 1278, 1715.
- Albion v. Boldt (145 Mich. 285; 108 N. W. 703; 13 Detroit Leg. N. 430), 419.
- Albrecht v. People (78 Ill. 510), 1175, 1248, 1252.
- Albrecht v. State (8 Tex. App. 215; 34 Am. Rep. 737), 198, 199, 202, 203, 291, 790.
- Albrecht v. State (62 Miss. 516), 779.
- Albrecht v. Walker (73 Ill. 69), 1847, 1854, 1989, 1990.
- Albright v. Commonwealth (7 Ky. L. Rep. [abstract] 762), 945.
- Allchorn v. Hopkins (69 J. P. 355), 1355.
- Alcock v. Royal, etc., Corp. (13 Q. B. 292; 18 L. J. Q. B. [N. S.] 121; 13 Jur. 445), 2191.
- Alder v. State (55 Ala. 16), 27.
- Alderson v. State ([Tex. Civ. App.] 111 S. W. 412), 1066.
- Alderson v. State ([Tex. Cr. App.] 111 S. W. 738), 1609.
- Aldrich v. Aldrich (49 Mass. [8 Met.] 106), 1058.
- Aldrich v. Harvey (50 Vt. 162), 1894.
- Aldrich v. Parnell (147 Mass. 409; 10 N. E. 170), 1891.
- Aldrich v. Sager (9 Hun, 537), 1844, 1894.
- Alexander v. Atlanta ([Ga.] 64 S. E. 1105), 452.
- Alexander v. Humber (86 Ky. 565; 6 S. W. 453), 2191, 2192.
- Alexander v. O'Donnell (12 Kan. 608), 1780.
- Alexander v. State (77 Ark. 294; 91 S. W. 181), 527, 750, 752, 799, 1161.
- Alexander v. State (48 Ind. 394), 1509.
- Alexander v. State (42 Miss. 316), 400.
- Alexander v. State (29 Tex. 495), 1442, 1554.
- Alexander v. State ([Tex. Cr. App.] 60 S. W. 763), 1171, 1217.

[References are to pages.]

- Alexander v. State (51 Tex. Cr. App. 506; 102 S. W. 1122), 1448, 1557.
- Alexander v. State (53 Tex. Cr. App. 504; 111 S. W. 145), 922.
- Alexander v. State (53 Tex. Cr. App. 553; 110 S. W. 918), 1723.
- Alexander v. State ([Tex.] 120 S. W. 998), 1463.
- Alford v. Hicks ([Ala.] 38 So. 752), 241.
- Alford v. State (37 Tex. Cr. Rep. 386; 35 S. W. 657), 1464, 1474.
- Alger v. Lowell (3 Allen, 406), 2171, 2175, 2177, 2186, 2187, 2191.
- Alger v. Seaver (138 Mass. 331), 391.
- Alger v. Weston (14 Johns. [N. Y.] 231), 694.
- Allen v. Allen (31 Mo. 479), 2167.
- Allen v. Armstrong (16 Ia. 508), 508, 1585.
- Allen v. Carew (14 N. Y. L. R. 569), 682.
- Allen v. Commonwealth (10 Ky. L. Rep. [abstract] 272), 1096, 1117.
- Allen v. Commonwealth (10 Ky. L. Rep. [abstract] 280), 957, 1545.
- Allen v. Drew (44 Vt. 174), 791.
- Allen v. Houck ([Tex. Civ. App.] 92 S. W. 993), 755, 757, 763, 765, 770.
- Allen v. Lamb (57 J. P. 377), 1368.
- Allen v. Staples (6 Gray, 491), 253, 1008, 1021, 1027, 1029, 1046, 1048, 1049.
- Allen v. State (52 Ind. 486), 210.
- Allen v. State (14 Tex. 633), 1158, 1224, 1246.
- Allen v. State (17 Tex. App. 637 [1888]), 2247.
- Allen v. State ([Tex.] 13 S. W. 998), 1535, 1557, 1758, 1759.
- Allen v. State ([Tex. Cr. App.] 59 S. W. 264), 959, 1185, 1683.
- Allen v. State ([Tex. Cr. App.] 98 S. W. 869), 958.
- Allen v. State (5 Wis. 329), 1488, 1500.
- Allen v. Tinglehoff ([Neb.] 119 N. W. 495), 1955.
- Allentown v. Saeger (20 Pa. St. 421), 811.
- Allison v. State (47 Ind. 140), 1631.
- Allman v. State (69 Ind. 387), 1489.
- Allode v. Nylin (139 Ill. App. 527), 408.
- Allor v. Wayne Co. Auditors (43 Mich. 73; 4 N. W. 492), 1015.
- Allport v. Nutt (1 C. B. 975; 14 L. J. C. P. 272), 374.
- Allred v. State (89 Ala. 112; 8 So. 56), 12, 15, 24, 27, 28, 38, 39, 49, 59, 86, 1532, 1753.
- Allyn's Appeal (81 Conn. 534; 71 Atl. 794; 68 Cent. L. Jr. 449), 104, 105, 142, 480, 484, 486.
- Allsman v. Oklahoma City ([Okl.] 95 Pac. 468), 812.
- Altenburg v. Commonwealth (126 Pa. St. 602; 17 Atl. 799), 210, 1121, 1175, 1248, 1252.
- Altoona v. Stehle (21 Pa. Co. Ct. Rep. 395; 8 Pa. Dist. Rep. 25), 413.
- Alvon v. Pawtucket ([R. I.] 16 Atl. 1047), 593.
- Amador County v. Isaacs (11 Pac. 758), 170, 187, 800.
- Amador County v. Kennedy (70 Cal. 458; 11 Pac. 757), 170, 187, 428, 800.
- Ambrose v. State (6 Ind. 351), 216, 271, 448.
- American v. Kall (34 Hun [N. Y.] 126), 1353, 1616.
- American, etc., Bank v. Gueder (50 Ill. 336; 37 N. E. 227), 264.
- American Brewing Co., Appeal of (161 Pa. 378; 29 Atl. 22), 589, 628, 629, 632.

[References are to pages.]

- American Express Co. v. Commonwealth ([Ky.] 97 S. W. 807; 30 Ky. L. Rep. 207), 1288.
- American Exp. Co. v. Commonwealth (206 U. S. 139; 27 Sup. Ct. 609; 51 L. Ed. 993; reversing [Ky.] 97 S. W. 807; 30 Ky. 207), 326, 955, 1229, 1726.
- American Express Co. v. Mullins (212 U. S. 311; 29 Sup. Ct. 381; 53 L. Ed.), 326, 338.
- American Exp. Co. v. Schier (55 Ill. 140), 1727.
- American Exp. Co. v. State (196 U. S. 133; 25 Sup. Ct. 182; 49 L. Ed. 417; reversing 118 Iowa, 447; 92 S. W. 66), 298, 307, 324, 326.
- American Fire Ins. Co. v. First Nat. Bank (73 Miss. 469; 18 So. 931), 1779, 2220, 2226.
- American Fur Co. v. United States (2 Pet. 358), 210, 1030, 1073, 1259.
- Amerker v. Taylor (81 S. C. 163; 62 S. E. 7), 938.
- Amery v. Royal (117 Ind. 299; 20 N. E. 150), 1018.
- Amesbury Insurance Co. (6 Gray [Mass.], 596), 294.
- Amio v. People (122 Ill. App. 398), 1320, 1540.
- Amite City v. Clements (24 La. Ann. 27), 802.
- Ammon v. Chicago (26 Ill. App. 641), 414.
- Andery v. Smith (35 Ind. App. 94; 73 N. E. 840), 606.
- Amperse v. Kalamazoo (59 Mich. 78; 26 N. W. 222), 537, 763, 764, 765.
- Amperse v. Winslow (75 Mich. 234; 42 N. W. 123), 763.
- Anderson, *Ex parte* (51 Tex. Cr. App. 239; 102 S. W. 727), 897, 898, 900.
- Anderson, *In re* (14 Manitoba, 535), 938.
- Anderson v. Brewster (44 Ohio St. 576; 9 N. E. 683), 121, 138, 147, 199, 200, 222, 479, 484, 792, 804.
- Anderson v. Chicago, etc., R. Co. (87 Wis. 195; 58 N. W. 79; 23 L. R. A. 203), 2180, 2184, 2185.
- Anderson v. Commonwealth (9 Bush, 569), 11, 553.
- Anderson v. Commonwealth (13 Bush [Ky.], 485), 110, 228, 232, 234, 240.
- Anderson v. Commonwealth (105 Va. 533; 54 S. E. 305), 757.
- Anderson v. Galesburg (118 Ill. App. 525), 714, 718, 741, 813, 817.
- Anderson v. Kerns, etc., Co. (14 Ind. 199), 789.
- Anderson v. People (63 Ill. 53), 1487, 1554.
- Anderson v. State (82 Ark. 405; 101 S. W. 1152), 951, 1287.
- Anderson v. State (32 Fla. 242; 13 So. 435), 1111, 1379, 1615, 1666.
- Anderson v. State (39 Ind. 553), 1352, 1357, 1362.
- Anderson v. State (22 Ohio St. 305), 1350, 1354.
- Anderson v. State ([Tex. Cr. App.] 37 S. W. 859), 1730.
- Anderson v. State (39 Tex. Cr. App. 34; 44 S. W. 824), 869.
- Anderson v. State (49 Tex. Cr. App. 195; 92 S. W. 39), 863.
- Anderson v. Van Buren Circuit Judge (130 Mich. 695; 90 N. W. 692; 9 Detroit Leg. N. 222), 832, 1467, 1542, 1544.
- Anderson v. Weber (39 Ind. App. 443; 79 N. E. 1055), 612, 668.
- Anderson v. Wellington ([Kan. Sup.] 19 P. 719), 461.
- Andler v. Whitbeck (44 Ohio St. 539), 484.
- Andreas v. Beaumont ([Tex. Civ. App.] 113 S. W. 614), 158, 165, 279, 424, 429, 597.



[References are to pages.]

- Andress v. Weller (2 Green Eq. [N. J.] 604), 2137, 2147, 2149.  
 Andreveno v. Mut., etc., Ass'n (19 Ins. L. Jr. 668), 2233, 2242.  
 Andrews, *Ex parte* (18 Cal. 679), 215.  
 Andrews v. Denton ([1897] 2 Q. B. 37; 66 L. J. Q. B. 520; 76 L. T. 423; 45 W. R. 500; 61 J. P. 326), 711.  
 Andrews v. Fry (104 Mass. 234), 1779.  
 Andrews v. Frye (109 Mass. 234), 1806.  
 Andrews v. Russell (7 Blackf. [Ind.] 474), 260.  
 Androscoggin R. Co. v. Richards (41 Me. 233), 1029, 1058.  
 Angel v. Keith (24 Vt. 371), 1027.  
 Angerhoffer v. State (15 Tex. App. 613), 448, 1307.  
 Anglea v. Commonwealth (10 Gratt. 696), 1767.  
 Angelin v. State ([Miss.] 50 So. 492), 1179, 1206, 1214, 1267.  
 Anheuser-Busch Brewing Co. v. Fullerton (83 Iowa, 760; 50 N. W. 56), 1028.  
 Anheuser-Busch Brewing Co. v. Hammond (93 Iowa, 520; 61 N. W. 1052), 1031, 1033.  
 Anheuser-Busch Brewing Ass'n v. Mason (44 Minn. 318; 46 N. W. 558; 9 L. R. A. 506), 1801.  
 Anna, The (47 Fed. 525), 2195.  
 Annapolis v. State (30 Md. 112), 929.  
 Anniston, *Ex parte* (90 Ala. 516; 7 So. 779), 431, 432.  
 Anonymous ([1695] 3 Salk.\* 25), 104.  
 Anonymous (17 Abb. N. C. 231), 2164.  
 Anthers, *In re* (58 L. J. M. C. 62; 22 Q. B. Div. 345; 60 L. T. 454; 37 W. R. 320; 16 Cox C. C. 588; 53 J. P. 116), 722, 1572.  
 Anthoness v. Anderson (14 Viet. L. R. 127; 9 Austr. L. T. 175), 701.  
 Anthony v. Krey (70 Mich. 629; 38 N. W. 603), 778, 1921, 1941.  
 Anthony v. State (41 Tex. Cr. App. 393; 55 S. W. 61), 1321.  
 Applegate v. Winebrenner (67 Iowa, 235; 25 N. W. 148), 1960, 1968.  
 Appling v. McWilliams (69 Ga. 840), 798, 799.  
 Appling v. State ([Ark.] 114 S. W. 927), 1608, 1659, 1731, 1733.  
 Arberger v. Marrin (102 Mass. 70), 1787.  
 Arbintrade v. State (67 Ind. 267; 33 Am. Rep. 86), 1498, 1500.  
 Arbuckle Bros. v. Blackburn (113 Fed. 616), 1438.  
 Arbuthnot v. State ([Tex. Civ. App.] 120 S. W. 478), 52.  
 Archer v. State (45 Mr. 33), 114, 1198, 1610, 1611, 1614, 1754.  
 Archer v. State (10 Tex. App. 482), 1619.  
 Archibold's Crim. Prac. & Plead. (8th ed.), p. 361, 1509.  
 Arcola v. Williamson (233 Ill. 250; 84 N. E. 264), 260, 433, 463.  
 Ardery v. State (35 Ind. App. 94; 73 N. E. 840), 605, 617.  
 Arey v. Rowan Co. (138 N. C. 500; 51 S. E. 41), 797.  
 Arfield v. Tate (7 Ired. L. 259), 1801.  
 Arie v. Dixon ([Iowa] 123 N. W. 173), 1774.  
 Arie v. State (1 Okla. Cr. 666; 100 Pac. 233), 121, 183.  
 Arizona Prince Copper Co. v. Copper Queen Mining Co. (7 Pac. 718), 2253, 2555.  
 Arkadelphia v. Lumber Co. (56 Ark. 370), 426.  
 Arkell, *In re* (38 Up. Can. 594), 453, 468, 1258.

[References are to pages.]

- Arkenau, Appeal of (73 N. E. 1122; 18 N. Y. 527), 745.
- Armour, *In re* ([1907] 14 App. Ont. L. R. 606), 921.
- Armour v. Meridian ([Miss.] 24 So. 533), 965.
- Armstrong, *Ex parte* (30 N. B. 423), 1218.
- Armstrong v. State (14 Ind. App. 566; 43 N. E. 142), 1147.
- Armstrong v. State ([Tex. Cr. App.] 47 S. W. 981), 958, 1181, 1182, 1186, 1187, 1684, 1690, 1696.
- Armstrong v. State ([Tex. Cr. App.] 47 S. W. 1006), 909, 1182, 1683, 1723.
- Armstrong v. Taylor (11 Wheat. 271; 6 L. Ed. 472), 1777.
- Armstrong v. Toler (11 Wheat. 258; 6 L. Ed. 468), 1800.
- Army and Navy Club v. District of Columbia (8 App. Cas. [D. C.] 544), 75, 1325, 1333.
- Arnett v. Wright (18 Okla. 337; 89 Pac. 1116), 694, 703.
- Arnold, *In re* 30 Pa. Super. Ct. 93), 718, 745, 899.
- Arnold v. Barkalow (72 Iowa, 183; 34 N. W. 807), 1846, 1912, 1917, 1943, 2011.
- Arnold v. Hickman (Munf. [Va.] 15), 2095.
- Arnold v. Radford ([1901] 17 T. L. R. 301), 1817.
- Arnold v. State (38 Tex. Cr. App. 1; 40 S. W. 734), 1607, 1636.
- Arnold v. State (46 Tex. Cr. App. 110; 79 S. W. 547), 1209.
- Arnold v. State (47 Tex. Cr. App. 556; 85 S. W. 18), 1623.
- Arrington v. Commonwealth (87 Va. 96; 12 S. E. 224; 10 L. R. A. 242), 1121, 1314, 1322, 1478, 1483, 1554, 1557, 1720, 1721.
- Arroyo v. State ([Tex. Cr. App.] 69 S. W. 503), 229, 230, 398.
- Arthur v. Flanders (76 Mass. [10 Gray] 107), 1020.
- Arszman, *In re* (40 Ind. App. 218; 218; 81 N. E. 680), 594, 663.
- Ash v. People (11 Mich. 347), 200, 788.
- Ashembauch v. Carry ([Pa.] 73 Atl. 436), 183, 481, 701.
- Asher v. Texas (128 U. S. 129; 9 Sup. Ct. 1), 157.
- Asherst v. State (79 Ala. 276), 131, 247, 938.
- Askew v. State ([Ala.] 46 So. 751), 1258.
- Askew v. State (4 Ga. App. 446; 61 S. E. 737), 1241, 1706.
- Askwith, *In re* (3 Can. Cr. Cas. 78), 1322, 1579.
- Ashley v. State (92 Ind. 559), 1508.
- Ashley v. State (46 Tex. Cr. App. 471; 80 S. W. 1015), 1210.
- Ashton v. Ellsworth (48 Ill. 299), 419.
- Ashurst v. State (79 Ala. 276), 596.
- Aston v. State ([Tex. Civ. App.] 49 S. W. 385), 80, 1682.
- Astoria v. Wells (68 Kan. 787; 75 Pac. 1026), 470.
- Aszman v. State (123 Ind. 347; 24 N. E. 123; 8 L. R. A. 33), 2040, 2044, 2045, 2061, 2066, 2067, 2072, 2073, 2084.
- Atchinson v. Bartholow (4 Kan. 124), 394.
- Atchison, etc., R. Co. v. Hardy (94 Fed. 294; 37 C. C. A. 359), 2185.
- Atchison R. Co. v. Weber (33 Kan. 554; 6 Pac. 877; 52 Am. Rep. 543), 2202, 2203, 2212, 2215.
- Athens v. Atlanta ([Ga. App.] 64 S. E. 71), 452.
- Atkins v. Randolph (31 Vt. 226), 476.
- Atkins v. State (60 Ala. 45), 1461, 1632, 1646.
- Atkins v. State ([Tenn.] 105 S. W. 353; 13 L. R. A. [N. S.] 1031), 2038, 2068, 2069, 2070.

[References are to pages.]

- Atkins v. Town of Randolph (31 Vt. 226), 172.
- Atkinson v. People (46 Tex. Cr. App. 229; 79 S. W. 31), 1232.
- Atkinson v. Sellers (5 C. B. [N. S.] 442; 28 L. J. M. C. 12; 23 J. P. 71), 1149.
- Atkinson v. State (33 Ind. App. 8; 70 N. E. 560), 1147, 1539, 1540.
- Attorney General v. Bailey (1 Welsh H. & G. 281), 23, 29, 53.
- Attorney General v. Ball (66 J. P. 553), 762.
- Attorney General v. Huebner (91 Mich. 436; 51 N. W. 1072), 763.
- Attorney General v. Justices (5 Ired. 315), 626, 628, 629, 686.
- Attorney General v. Manitoba License Holders' Ass'n ([1902] App. Cas. 73), 263.
- Attorney General v. Van Buren Circuit Court (143 Mich. 366; 106 N. W. 1113; 12 Detroit Leg. N. 1016), 853, 868, 869, 870, 877, 883.
- Atwell v. Lucas (3 N. S. W. L. R. 193), 1154.
- Auburn v. Mayer (58 Neb. 161; 78 N. W. 462), 752.
- Auburn Excise Commissioners v. Merchant (34 Hun, 19; affirmed, 103 N. Y. 143; 8 N. E. 484), 1178, 1598.
- Auerbach, *In re* (31 N. Y. Misc. Rep. 46; 64 N. Y. Supp. 603), 729, 750, 751.
- Augerhoff v. State (15 Tex. App. 613), 395.
- Auglanier v. Governor (1 Tex. 653), 802.
- August Busch & Co. v. Webb (122 Fed. 655), 110, 120, 230, 233, 249, 281, 295.
- Aulanier v. Governor (1 Tex. 653), 788.
- Aultfather v. State (4 Ohio St. 467), 1241, 1461, 1551.
- Aurora v. Hillman (90 Ill. 61), 1735, 2171, 2191, 2193, 2195.
- Austin v. Atlantic City (48 N. J. L. 118; 3 Atl. 65), 586, 676.
- Austin v. Davis (7 Ont. Rep. 478), 1352, 1354, 1362, 1907.
- Austin v. Murray (33 Mass. [16 Pick.] 121), 436.
- Austin v. State (22 Ind. App. 221; 53 N. E. 481), 1175.
- Austin v. State (10 Mo. 591), 110, 151, 311, 521, 627, 1459.
- Austin v. Tennessee (179 U. S. 343; 45 L. Ed. 224; 21 Sup. Ct. 132), 310, 1337, 1432, 1434.
- Austin v. Viraqua (67 Wis. 314; 30 N. W. 515), 812.
- Avardo v. Dance (26 J. P. 437), 375.
- Ayres v. State ([Tex. Cr. App.] 26 S. W. 396), 2074.
- Ayrey v. Hill (2 Add. Eccl. Rep. 206), 2133, 2136, 2148, 2150.
- Azbill v. Azbill (14 Ky. L. Rep. 105), 2160.

**B**

- Babb v. Taylor (2 Pa. Super. Ct. 38; 30 W. N. C. 440), 534.
- Bach v. Smith (2 Wash. Ty. 145; 3 Pac. 831), 1780.
- Bachellor v. State (10 Tex. 260), 369.
- Baches v. Dant (55 Ind. 181), 1870.
- Backhaus v. People (87 Ill. App. 173), 799, 1184.
- Backman v. Charlestown (42 N. H. 125), 384.
- Backman v. Mussey (31 Vt. 547), 1787.
- Backman v. Phillipsburg (68 N. J. L. 552; 53 Atl. 620), 576, 586, 587, 676.
- Backman v. Wright (27 Vt. 187), 1790, 1798.

[References are to pages.]

- Backus v. People (87 Ill. App. 173), 419.
- Bacon v. Hunt (72 Vt. 98; 47 Atl. 394), 1787, 1788.
- Bacon v. Jacobs (63 Hun, 51; 17 N. Y. Supp. 323), 1864, 1877.
- Bacon v. New Eng. Order of Prot. (123 Fed. 152), 2226, 2227.
- Backus v. County Supervisors (99 Mich. 221; 58 N. W. 62), 877.
- Badgett v. State (157 Ala. 20; 48 So. 54), 492, 559.
- Baecher v. State (19 Ind. App. 100; 49 N. E. 42), 296, 1849, 1869.
- Baehner v. State (25 Ind. App. 597; 58 N. E. 741), 1187, 1579.
- Baer v. Commonwealth (10 Bush, 8), 1238, 1458, 1764.
- Baer v. Commonwealth (13 Ky. Law Rep. [abstract] 396), 1305, 1568.
- Baeumel v. State (26 Fla. 71; 7 So. 371), 829.
- Bagby v. Commonwealth (4 Ky. L. Rep. [abstract] 537), 826, 1096, 1117.
- Bagby v. State (82 Ga. 786; 9 S. E. 721), 1280, 1285.
- Bage v. State (50 Ark. 20; 6 S. W. 15), 137.
- Bageard v. Consolidated Tr. Co. (64 N. J. L. 316; 45 Atl. 620; 49 L. R. A. 424; 81 Am. St. 498), 2204, 2173, 2174.
- Bagley v. Mason (69 Vt. 179; 37 Atl. 287), 1736, 2049.
- Bagley v. Peddie (5 Sandf. [N. Y.] 192), 1808.
- Bagley v. State (103 Ga. 388; 29 S. E. 123), 249.
- Bailey, *In re* (64 Kan. 887; 68 Pac. 53), 416, 564, 637, 639.
- Bailey v. Briggs (143 Mich. 303; 105 N. W. 863; 12 Det. Leg. N. 982), 1994.
- Bailey v. Commonwealth ([Ky.] 64 S. W. 995; 23 Ky. L. Rep. 1223), 945, 957.
- Bailey v. Commonwealth ([Ky.] 92 S. W. 545; 29 Ky. L. Rep. 105), 1369.
- Bailey v. Opelika (146 Ala. 171; 48 So. 968), 417.
- Bailey v. Raleigh (130 N. C. 269; 41 S. E. 281), 817.
- Bailey v. State (26 Ind. 422), 2040, 2051, 2054.
- Bailey v. State (67 Miss. 333; 7 So. 348), 1608.
- Bailey v. State (30 Neb. 855; 47 N. W. 208), 448.
- Bailey v. State ([Tex. Cr. App.] 66 S. W. 780), 973, 1708.
- Bailey Liquor Co. v. Austin (82 Fed. 785), 381, 483.
- Bain v. Bain (79 Neb. 711; 113 N. W. 141), 2158.
- Bain v. State (61 Ala. 75), 837, 1240, 1241, 1461.
- Baird, *Ex parte* (34 N. B. 213), 1070, 1359.
- Baird v. Howard (51 Ohio St. 57; 36 N. E. 732; 22 L. R. A. 846), 2124.
- Baird v. St. Louis R. Co. (41 Fed. Rep. 492), 156.
- Baird v. State (52 Ark. 326; 12 S. W. 566), 513, 1372.
- Baker, *In re* (29 How. R. 485), 2023.
- Baker v. Beckwith (29 Ohio St. 314), 1848.
- Baker v. Boucicault (1 Daly, 23), 1283.
- Baker v. Branan (6 Hill [N. Y.] 47), 280.
- Baker v. Bucklin (43 N. Y. App. Div. 336; 60 N. Y. Supp. 294; affirming 22 N. Y. Supp. 560; 50 N. Y. Supp. 739), 739, 811, 817.
- Baker v. Cincinnati (11 Ohio St. 534), 811, 815.

[References are to pages.]

- Baker v. Commonwealth ([Ky.] 64 S. W. 657; 23 Ky. L. Rep. 898), 1380, 1381.
- Baker v. Griffith ([N. C.] 66 S. E. 565), 440, 648.
- Baker v. Jacobs (64 Vt. 197; 23 Atl. 588), 2256.
- Baker v. Panola Co. (30 Tex. 86), 426, 794.
- Baker v. Paris (10 Up. Can. 21), 472.
- Baker v. Pope (2 Hun, 556), 183, 184, 223, 1840, 1842.
- Baker v. Portland (58 Me. 199; 4 Am. Rep. 274), 2171.
- Baker v. Portland (5 Sawyer, 566), 189.
- Baker v. State (117 Ga. 428; 43 S. E. 744), 1112.
- Baker v. State (34 Ind. 104), 1714.
- Baker v. State (2 Ind. App. 517; 28 N. E. 735), 1621.
- Baker v. State (8 Ohio St. 391), 1527.
- Baker v. State ([Tex. Cr. App.] 47 S. W. 980), 963.
- Baker v. Summers (201 Ill. 52; 66 N. E. 302), 1844, 1877, 1954, 2003, 2004.
- Baker v. Ziegler (56 Hun, 405), 2126.
- Baldwin v. Chicago (68 Ill. 418), 456, 1122.
- Baldwin v. Coburn (39 Vt. 441), 477.
- Baldwin v. Dover, J. J. ([1892] 2 Q. B. 421; 56 J. P. 423; 61 L. J. M. C. 215), 710.
- Baldwin v. Smith (82 Ill. 162), 474, 494, 751.
- Baldwin County v. Milledgeville (42 Ga. 325), 404.
- Ball v. Commonwealth ([Ky.] 91 S. W. 1123; 28 Ky. L. Rep. 1344), 1343, 1381.
- Ball v. Commonwealth ([Ky.] 99 S. W. 326; 30 Ky. L. Rep. 600), 948, 959, 1741, 1762.
- Ball v. Kane (1 Pennewill [Del.] 90; 39 Atl. 778), 2135, 2138, 2147.
- Ball v. State (50 Ind. 595), 821.
- Ballam v. Wiltshire (44 J. P. 72), 1276.
- Ballentine v. State (48 Ark. 45; 2 S. W. 340), 722.
- Ballew v. State (84 Ga. 138; 10 S. E. 623), 578, 585.
- Ballew v. State (26 Tex. App. 483; 9 S. W. 765), 1575, 1576.
- Ballhausen, *In re* (19 Vict. L. R. 66; 14 Austr. L. R. 185), 701.
- Balling v. Board ([N. J. L.] 74 Atl. 277), 740.
- Ballinger v. Griffith (23 Ohio St. 619), 2013.
- Ballinger v. Wilson (76 Minn. 262; 79 N. W. 109), 1788.
- Balogh v. Lyman (6 N. Y. App. Div. 271; 39 N. Y. Supp. 780), 807.
- Ballowe v. Commonwealth ([Ky.] 44 S. W. 646; 19 Ky. L. Rep. 1867), 1720, 1737.
- Baltimore v. Chumet (23 Md. 449), 182.
- Baltimore v. Keeley Institute (81 Md. 106; 31 Atl. 437; 27 L. R. A. 646), 2016, 2022.
- Baltimore v. Lefferman (4 Gill [Md.] 425), 811.
- Baltimore v. State (15 Md. 376), 106.
- Baltimore, etc., R. Co. v. Boteler (38 Md. 568), 2171, 2191, 2192.
- Baltimore, etc., R. Co. v. Chambers (81 Md. 371; 32 Atl. 201), 2185.
- Baltimore, etc., R. Co. v. Hamilton (16 Fed. Rep. 181), 1027.
- Baltimore, etc., R. Co. v. Henthorne (73 Fed. 634; 43 U. S. App. 113; 19 C. C. A. 623), 2192, 2194, 2198, 2200.



[References are to pages.]

- Bamke, *Ex parte* (1 S. C. N. S. W. 177), 1359.
- Banchor v. Mansel (47 Me. 58), 1790, 1797, 1801.
- Banchor v. Warren (33 N. H. 183), 1114, 1161, 1164, 1280.
- Baneroft v. Dumas (21 Vt. 456), 91, 97, 228, 233, 240.
- Bandalow v. People (90 Ill. 218), 1096.
- Bank v. Dudley (2 Pet. [U. S.] 526), 294.
- Bank v. State (12 Ga. 475), 924.
- Banks, *Ex parte* ([Tex. Cr. App.] 103 S. W. 1156), 864.
- Banks v. State (136 Ala. 106; 34 So. 350), 1380.
- Banks v. Sargent (104 Ky. 843; 48 S. W. 149), 922.
- Bannister v. Jackson (45 N. J. Eq. 702; 17 Atl. 692; affirmed 46 N. J. Eq. 593; 21 Atl. 753), 2136, 2137, 2142.
- Bannon v. Adams (76 Ill. 331), 1846.
- Banty v. Barnes (40 Ohio St. 43), 1912.
- Barber v. Barber ([Conn.] 14 L. Rep. 375), 67, 2154, 2155, 2156.
- Barbee v. Reese (60 Miss. 906), 2048.
- Barber v. Brennan ([Iowa] 119 N. W. 142), 1002, 1003.
- Barber v. Griffith ([N. C.] 66 S. E. 565), 162.
- Barber v. Savage (1 Sweeney, 288), 2191, 2193.
- Barber v. State (39 Ohio St. 660), 2067.
- Barber v. Sullivan (78 Ill. App. 298), 1133.
- Barbier v. Connelly (113 U. S. 27; 5 S. C. 357), 109, 116, 239.
- Barclay, *In re* (11 Up. Can. 470), 415.
- Barclay, *In re* (12 Up. Can. 86), 453, 462, 644, 849, 1225, 1249, 1258.
- Barckell v. State ([Tex. Civ. App.] 106 S. W. 190), 982.
- Bardwell v. State (77 Ark. 161; 91 S. W. 555), 902.
- Barger v. State (50 Ark. 20; 6 S. W. 15), 1578.
- Barham v. State ([Tex. Cr. App.] 53 S. W. 109), 1684.
- Barker, *Ex parte* (30 N. B. 406), 1218.
- Barker v. Pearce (30 Pa. St. 173), 1906.
- Barker v. State (117 Ga. 428; 43 S. E. 744), 1114, 1557.
- Barker v. State (118 Ga. 35; 44 S. E. 874), 1475.
- Barker v. State ([Tex. Cr. App.] 47 S. W. 980), 909, 958, 968.
- Barkley v. Cannon (4 Rich. L. [S. C.] 136), 2103.
- Barlow v. State (127 Ga. 58; 56 S. E. 131), 1620.
- Barlow v. State (5 Ga. App. 21; 62 S. E. 574), 1700.
- Barnaby v. Wood (50 Ind. 405), 1350, 1351, 1871, 1907, 1908, 1925.
- Barnard v. Graham (120 Ind. 135; 22 N. E. 112), 572.
- Barnard v. Houghton's Estate (34 Vt. 264), 355, 1792.
- Barnard v. State ([La.] 48 So. 438), 515.
- Barnegat, etc., Ass'n v. Busby (44 N. J. L. 627), 638.
- Barnes v. Commonwealth (2 Dana, 388), 510, 511.
- Barnes v. District of Columbia (91 U. S. 510), 393.
- Barnes v. People (113 Mich. 213; 71 N. W. 504), 1375, 1378.
- Barnes v. State (49 Ala. 342), 509, 691, 1267.
- Barnes v. State (19 Conn. 398), 1253, 1255, 1620, 1632, 1764.
- Barnes v. State (20 Conn. 232), 1446, 1632.
- Barnes v. State (20 Conn. 254), 1607, 1614.

[References are to pages.]

- Barnes v. State ([Tex.] 44 S. W. 491), 12, 1692, 1697, 1704, 1730, 1733.
- Barnes v. State (40 Tex. Cr. App. 473; 72 S. W. 177), 1666.
- Barnes v. State ([Tex. Cr. App.] 88 S. W. 805), 1167, 1168, 1372, 1621.
- Barnes v. Wagoner (169 Ind. 511; 82 N. E. 1037), 668.
- Barnes v. Wilson Co. (135 N. E. 27; 47 S. E. 737), 648.
- Barnesville v. Means ([Ga.] 57 S. E. 422), 933, 1935.
- Barnesville v. Murphey (113 Ga. 779; 39 S. E. 413), 475.
- Barnhardt v. State (171 Ind. 428; 86 N. E. 481), 1100, 1532, 1545.
- Barnett v. Pemiscott Co. Ct. (111 Mo. App. 693; 86 S. W. 575), 714, 733, 747, 748.
- Barnett v. State (36 Me. 198), 1530.
- Barrett, *In re* (28 Up. Can. 559), 1643.
- Barrett v. Buxton (2 Aiken, 167; 16 Am. Dec. 691), 2094, 2097.
- Barrett v. Delano ([Me.] 14 Atl. 288), 122.
- Barrett v. Rickard ([Neb.] 124 N. W. 153), 387, 413.
- Barrier v. State ([Tex. Cr. App.] 103 S. W. 1196), 1473.
- Barron v. Arnold (16 R. I. 22; 11 Atl. 298), 1031, 1772, 1773, 1776.
- Barrose v. State (1 Clarke [Iowa] 374), 1711.
- Barry v. Bretlin (2 Moore, P. C. 482), 2146.
- Barry v. Butin (2 Moore, P. C. 482), 2146.
- Barry v. Little ([N. H.] 68 Atl. 40), 748, 749.
- Bartel v. Hobson (107 Iowa, 644; 78 N. W. 699), 341, 343, 850, 1270.
- Barter v. Commonwealth (3 P. & W. [Pa.] 253), 270.
- Bartemeyer v. Iowa (18 Wall. [U. S.] 129; 21 L. Ed. 929), 91, 109, 119, 124, 148, 315, 427.
- Barter v. Commonwealth (3 Pa. 260), 470.
- Barth v. State (18 Conn. 432), 1493, 1541.
- Bartholomew v. People (104 Ill. 605; 44 Am. Rep. 97), 2047, 2078.
- Barto v. Himrod (4 Sel. [N. Y.] 483), 231.
- Barton v. Gadsden (79 Ala. 495), 467.
- Barton v. Mahasker Co. (90 Iowa, 749; 57 N. W. 611), 1002.
- Barton v. State (43 Fla. 477; 31 So. 361), 924, 1682.
- Barton v. State (99 Ind. 89), 832, 1305, 1306.
- Bartman v. State ([Tex. Cr. App.] 43 S. W. 984), 1231.
- Barver v. Brenner ([Iowa] 119 N. W. 142), 842.
- Bascot v. State ([Miss.] 48 So. 228), 965.
- Bashinski v. State (5 Ga. App. 3; 62 S. E. 577), 1092, 1093.
- Bass v. Nashville, Meigs ([Tenn.] 421; 83 Am. Dec. 154), 182.
- Bass v. State (1 Ga. App. 728, 790; 57 S. E. 1054), 959.
- Bassett v. Goodchild (3 Wils. 121), 623, 657.
- Bassett v. Howwith (224), 1058.
- Batchelder v. Batchelder (14 N. H. 380), 2153, 2154, 2160.
- Bateman v. State ([Tex. Cr. App.] 44 S. W. 290), 1474.
- Bates, *Ex parte* (37 Tex. Cr. Rep. 548; 40 S. W. 269), 259.
- Bates v. Davis (76 Ill. 222), 1994, 2094, 2096, 2103, 2116.
- Bates v. State (81 Ark. 336; 99 S. W. 388), 950.
- Bath v. White (3 C. P. Div. 175; 42 J. P. 375; 26 W. R. 617), 1295.

[References are to pages.]

- Batley v. Cullen (6 N. Z. L. R. 755), 1215.
- Baton Rouge v. Butler (118 La. 73; 42 So. 650), 167, 400, 578.
- Batt v. Cullen (16 N. Y. L. R. 17), 1316.
- Batters v. Dunning (49 Conn. 479), 400, 635, 648.
- Battle v. State (51 Ark. 97; 10 S. W. 12), 844.
- Batty v. State (114 Ga. 79; 39 S. E. 918), 957.
- Bauer v. Board ([Mich.] 122 N. W. 121), 891.
- Bauman v. Commonwealth (14 Ky. L. Rep. [abstract] 174), 514.
- Baxter, *In re* (12 Up. Can. 139), 648.
- Baxter v. Ellis (57 Me. 178), 1807.
- Baxter v. Leche (62 J. P. 630; 79 L. T. 138; 14 T. L. R. 352), 619, 679.
- Baxter v. State (49 Ore. 353; 88 Pac. 677; 89 Pac. 369), 235, 934, 935.
- Bayless, *In re* (15 Ont. 13), 644.
- Bayles v. Newton (50 N. J. L. 549; 14 Atl. 604), 163.
- Bayless v. State ([Tenn.] 113 S. W. 1039), 1733.
- Beach v. Stanstead (8 Quebec S. C. 178), 627.
- Beall v. State (48 Tex. Cr. App. 105; 86 S. W. 334), 1167, 1207.
- Bean v. Barton Co. (33 Mo. App. 635), 650, 662, 885, 887.
- Bean v. Bean (11 Lanc. Bar. 138), 2153, 2158.
- Bean v. Green (33 Ohio St. 444), 1960.
- Beane v. State (72 Ark. 368; 40 S. W. 573), 1130, 1132.
- Beard v. Indemnity Ins. Co. ([W. Va.] 64 S. E. 119), 239, 2245.
- Beard v. State ([Tex.] 115 S. W. 592), 950, 951.
- Beardsley v. State (49 Ind. 240), 1307.
- Bearley v. Morley ([1899] 2 Q. B. 121; 63 J. P. 582; 68 L. J. Q. B. 722; 47 W. R. 474; 15 T. L. R. 392), 349.
- Beasley v. Beckley (28 W. Va. 81), 278.
- Beasley v. State (50 Ala. 149; 20 Am. Rep. 292), 2041, 2046, 2051, 2054.
- Beatty v. Roberts (125 Iowa 619; 101 N. W. 462), 1002, 1004.
- Beaty, *Ex parte* (21 Tex. App. 426; 1 S. W. 451), 875.
- Beaty v. State (53 Tex. Cr. App. 432; 110 S. W. 449), 80, 87, 449, 973, 1682.
- Beauchamp v. State (6 Blackf. [Ind.] 299), 95.
- Beaumont v. State (26 Fla. 71; 7 So. 371), 1524, 1525, 1763.
- Beauvoir Club v. State (148 Ala. 64; 40 So. 1040), 251, 285, 1133, 1333, 1338.
- Beavers v. Godwin ([Tex. Civ. App.] 90 S. W. 930), 254, 1032, 1046.
- Bechtle v. Lewis (123 Mo. App. 673; 100 S. W. 1107), 780.
- Beck v. State (76 Ga. 452), 2041, 2045, 2054.
- Beck v. State (69 Miss. 217; 13 So. 835), 1181.
- Beck v. Vaughn (134 Iowa 331; 111 N. W. 994), 982, 983, 999, 1005.
- Becker v. Betten (39 Iowa 668), 1803.
- Becker v. Lafayette County Ct. [Mo.] 119 S. W. 985), 884.
- Becker v. State (32 Ind. 480), 1166.
- Becker v. State (8 Ohio St. 391), 1511.
- Becker v. State ([Tex. Cr. App.] 50 S. W. 949), 1380, 1603.
- Beckerle v. Brandon (133 Ill. App. 114; 229 Ill. 180; 82 N. E. 283), 1928, 1991.
- Beckham v. Howard (83 Ga. 89; 9 So. 784), 658, 667, 1159, 1696.

[References are to pages.]

- Beddek v. Bowdle (26 N. Z. 884), 1134.
- Bedell, *Ex parte* (20 Mo. App. 125), 1764.
- Bedore v. Newton (54 N. H. 117), 223, 224, 1840, 1841.
- Beebe v. State (6 Ind. 501; 63 Am. Dec. 391), 104, 175.
- Beebee v. Wilkins ([N. H.] 29 Atl. 693), 976.
- Beekham v. State (54 Tex. Cr. App. 28; 111 S. W. 1017), 1167.
- Beem v. Chestnut (120 Ind. 390; 22 N. E. 315; 1849, 1864, 1938).
- Beer's Case (5 Gratt. 674), 1519.
- Beer Co. v. Massachusetts (97 U. S. 25), 91, 94, 95, 97, 99, 109, 120, 124, 129, 179, 181, 184, 211, 315, 427, 488, 489, 490, 743.
- Beers v. Beers (4 Conn. 535), 270, 1748.
- Beers v. Walhizer (43 Hun 254), 1864, 1878, 1880, 1881.
- Behler v. Achley ([Ind.] 88 N. E. 877), 604, 607.
- Behler v. State (112 Ind. 140; 13 N. E. 272), 1242, 1627, 1628.
- Behrens v. State (42 Tex. Cr. App. 629; 62 S. W. 568), 1568.
- Beigen, *In re* (115 Fed. 339), 335.
- Beine, *In re* (42 Fed. 545), 1433, 1434.
- Beine, *In re* (42 Fed. 545), 112, 154, 307, 308, 313, 327, 337.
- Beiser v. State (79 Ga. 326; 4 S. E. 257), 75, 410, 1300.
- Belasco v. Hannant, 3 B. & S. 13; 26 J. P. 823; 31 L. J. M. C. 225; 6 L. T. 577; 10 W. R. 867), 367, 726.
- Belcher v. Belcher (10 Yerg. 121), 2093, 2094, 2099, 2108, 2134, 2143.
- Belding v. Johnson (86 Ga. 177; 12 S. E. 304; 11 L. R. A. 53), 1878.
- Bell, *In re* ([1907] 13 App. Ont. L. R. 80), 894.
- Bell, *Ex parte* (24 Tex. App. 428; 6 S. W. 197), 110, 164, 221, 755.
- Bell v. Cassem (158 Ill. 45; 41 N. E. 1089; 29 L. R. A. 571, affirming 56 Ill. App. 260), 2012.
- Bell v. Glaseker (82 Iowa 736; 47 N. W. 1042), 987, 993.
- Bell v. Hamm (127 Iowa 343; 101 N. W. 475), 342.
- Bell v. Lott ([1905] 9 Ont. L. R. 114), 1047.
- Bell v. State (140 Ala. 57; 37 So. 281), 2038, 2045.
- Bell v. State (91 Ga. 227; 18 S. E. 288), 8, 85, 104, 162, 931.
- Bell v. State (28 Tex. App. 96; 12 S. W. 410), 164, 194, 224, 1842.
- Bell v. State ([Tex. Cr. App.] 78 S. W. 933), 1612.
- Bell v. Thompson ([Iowa] 106 N. W. 949), 1103.
- Bell v. Walters (14 W. N. [N. S. W.] 190), 1128, 1124, 1131, 1134.
- Bell v. Zelmer (75 Mich. 66; 42 N. W. 606), 1848, 1869.
- Bellamy v. Pow (60 J. P. 712; 12 T. L. R. 527), 354.
- Belle Center v. Welsh (11 Ohio Dec. 41; 24 Wkly. L. Bull. 176), 1095.
- Bellison v. Apland (115 Iowa 599; 89 N. W. 22), 1969, 1980.
- Belt v. Paul ([Ark.] 91 S. W. 301), 718, 723, 746.
- Belton v. Busby ([1899] 2 Q. B. 380; 68 L. J. Q. B. 859; 63 J. P. 709; 47 W. R. 636; 81 L. T. 196; 15 T. L. R. 458), 379.
- Belton v. London County Council ([1893] 68 L. T. 411; 54 J. P. 185; 62 L. J. Q. B. 222; 41 W. R. 315; 9 T. L. 232), 1834.

## [References are to pages.]

- Benalleck v. People (31 Mich. 200), 1442, 1456.
- Bence v. State ([Tex. Cr. App.] 35 S. W. 383), 907.
- Bender v. Bueher (8 Ohio Cir. Ct. Rep. 344), 2255.
- Benge v. State (52 Tex. Cr. App. 361; 107 S. W. 832), 1465, 1473.
- Bengler v. Lilly (26 Ohio St. 48), 1920.
- Benhoff v. Weaver (6 O. C. D. 361), 2012.
- Benjamin, *Ex parte* (65 Cal. 310; 40 Pac. 23), 802.
- Bennett, *In re* (Clark v. White [1899] 1 Ch. 316; 68 L. J. Ch. 104; 47 W. R. 406), 1831.
- Bennett v. Commonwealth (11 Ky. L. Rep. [abstract] 370), 888, 910, 950, 1682.
- Bennett v. Commissioners (125 N. C. 468; 34 S. E. 632), 1476.
- Bennett v. Levi (19 N. Y. Supp. 226), 1924, 1926, 1987, 1993.
- Bennett v. Otto (68 Neb. 652; 94 N. W. 807), 586, 666.
- Bennett v. People (16 Ill. 160), 1189, 1652.
- Bennett v. People (30 Ill. 389), 16, 17, 18, 81, 400, 402, 443, 522.
- Bennett v. Pulaski ([Tenn. Ch. App.] 52 S. W. 913; 47 L. R. A. 278), 214, 432, 461, 469, 1129.
- Bennett v. State (87 Miss. 803; 40 So. 554), 1201.
- Bennett v. State (Mart. & Yerg. 133), 2040, 2053.
- Bennett v. State (40 Tex. Cr. App. 445; 50 S. W. 947), 1556, 1611.
- Bennett v. State (49 Tex. Cr. App. 294; 92 S. W. 415), 1323.
- Bennett v. Talbois (1 Ld. Raym. 149), 1455.
- Benning v. State (123 Ga. 546; 51 S. E. 632), 249.
- Benninger, *Ex parte* (64 Cal. 291; 30 Pac. 846), 170, 187, 444.
- Benson v. McFadden (50 Ind. 431), 1242.
- Benson v. Mayor (10 Barb. 223), 98.
- Benson v. Moore (15 Wend. 260), 72, 508.
- Benson v. State ([Ky.] 44 S. W. 168), 1720.
- Benson v. State (39 Tex. Cr. App. 56; 44 S. W. 167, 1091), 958, 1690.
- Benson v. State ([Tex. Cr. App.] 44 S. W. 163), 1693, 1715.
- Benson v. State (51 Tex. Cr. App. 367; 101 S. W. 224), 1691.
- Benson v. State ([Tex. Cr. App.] 109 S. W. 168), 1473.
- Benson v. United States (44 Fed. 178), 1260.
- Benton v. Skylter ([Neb.] 122 N. W. 61), 2095, 2108, 2116, 2117.
- Benton v. State (99 Ind. 89), 836.
- Berchwald v. People (21 Ill. App. 213), 1280.
- Berg, *In re* (139 Pa. St. 354; 21 Atl. 77), 664.
- Berger, *In re* (115 Fed. 339), 323.
- Berger v. DeLeach (121 S. W. 591), 631, 667.
- Berger v. State (50 Ark. 20; 6 S. W. 15), 1285.
- Berger v. State ([Ark.] 11 S. W. 765), 49, 50.
- Berger v. Williams (4 McLean, 377; Fed. Cas. No. 1341), 2008.
- Bergeron v. Fleury (7 Rev. Leg. 183), 1781.
- Bergman v. Cleveland (39 Ohio St. 651), 189, 218.
- Bergmeyer v. Commonwealth (3 Ky. L. Rep. [abstract] 823), 946.
- Bergmeyer v. Commonwealth (3 Ky. L. Rep. 823), 1764.



[References are to pages.]

- Bergmeyer v. Greenup Co. ([Ky.] 44 S. W. 82), 400.
- Berkemeir v. State ([Ind.], 88 N. E. 634), 44, 1849, 1850, 1937, 1938, 1941, 1951, 1962.
- Berkley v. Cannon (Rich. L. [S. C.] 136), 2094, 2099, 2136.
- Bernard v. Feild (46 Me. 526), 1800.
- Bernhardt v. State (82 Wis. 23; 51 S. W. 1009), 2085.
- Berning v. State (51 Ark. 550; 11 S. W. 882), 513, 1372, 1644.
- Berry v. Baltimore, etc., R. Co. (41 Md. 446), 294.
- Berry v. Cramer (58 N. J. L. 278; 33 Atl. 201), 229, 795, 797.
- Berry v. DeMaris ([N. J.] 70 Atl. 337), 125, 127.
- Berry v. State (67 Ind. 222), 1252, 1500, 1564.
- Berryman v. Berryman (59 Mich. 605; 26 N. W. 789), 68, 2155, 2157, 2162.
- Bert v. People (113 Ill. 645), 1622.
- Bertha, The (111 Fed. 550), 2262.
- Bertholf v. O'Reilly (74 N. Y. 509), 223, 312, 1303, 1840, 1841, 1859, 1863, 1864.
- Bertrand, *In re* (40 N. Y. Misc. Rep. 536; 82 N. Y. Supp. 940), 867, 879, 903, 908, 971.
- Bertzel v. Court of Common Pleas ([N. J. L.] 48 Atl. 1013), 736.
- Bertzell v. District of Columbia (21 App. D. C. 49), 543.
- Bessemeir v. Edge ([Ala.] 50 So. 270), 254.
- Best v. Best (11 Ky. L. Rep. 215), 2134.
- Betting v. Hobbitt (142 Ill. 72; 30 N. E. 1048; affirming 42 Ill. App. 174), 1994.
- Betts v. Armstead (20 Q. B. Div. 771; 52 J. P. 471; 51 L. J. M. C. 109; 58 L. T. 811; 38 W. R. 720), 1383.
- Betts v. Divine (3 Conn. 107), 1014.
- Beverage, *Ex parte* (26 Tex. App. 35), 913.
- Beverley's Case (4 Coke, 125a), 2039, 2095.
- Beverly Brewing Co. v. Oliver (69 Vt. 323; 37 Atl. 1110), 1789.
- Bew v. Harston (3 Q. B. Div. 454; 42 J. P. 808; 47 L. J. M. C. 121; 26 W. R. 915), 374.
- Bew v. State (71 Miss. 1; 13 So. 868), 861.
- Bowen v. Clark (1 Biss. 128; Fed. Cas No. 1721), 2109.
- Beyers v. Willowmore Licensing Board (17 Juta, 254), 1264.
- Bhstedt v. Terefel ([Iowa] 106 N. W. 513), 991.
- Bickerstaff, *In re* (70 Cal. 35; 11 Pac. 393), 189, 200, 471, 566.
- Bickford v. New York State Life Ins. Co. (Bliss on Ins. [2d ed.] 366), 2224.
- Biddy v. State (52 Tex. Cr. App. 412; 107 S. W. 814), 1732, 1733.
- Biddy v. State ([Tex. Cr. App.] 108 S. W. 689), 914, 1580, 1584, 1602, 1731.
- Biederman, *In re* (3 Pennewill [Del.] 284; 51 Atl. 602), 552.
- Biese v. State (79 Ga. 326; 4 S. E. 257), 1192.
- Bieser v. State (79 Ga. 326; 4 S. E. 257), 73, 76.
- Bigelow v. Creruelloch, etc., Co. (37 Can. S. C. 55; affirming 37 N. S. 482), 1281, 1284, 1792.
- Biggins, *In re* (19 N. Z. L. R. 630), 1116, 1669.
- Biggs v. Cunningham ([1909] Vict. L. R. 344; 29 Austr. L. T. 14), 1311.
- Biggs v. Lamley ([1907] Vict. L. R. 300), 1131.
- Biggs v. McCarthy (56 Ind. 352), 1906.

[References are to pages.]

- Bight, *In re* (12 Can. Prac. 433), 410, 420.
- Bilbro v. State (7 Humph. 534), 1459, 1488, 1489.
- Billinghurst v. Vickers (1 Philim Eccl. Rep. 193), 2140.
- Billings v. State (41 Tex. Cr. App. 253; 53 S. W. 854), 1651.
- Billingsley v. State (96 Ala. 114; 11 So. 408), 1196.
- Bills v. State ([Tex. Cr. App.] 64 S. W. 1047), 1204, 1543.
- Bills v. State ([Tex. Cr. App.] 86 S. W. 1012), 1380.
- Bilups v. State (107 Ga. 766; 33 S. E. 659), 1182.
- Bing v. Bank of Kingston (5 Ga. App. 578; 65 S. E. 652), 2094, 2095, 2108, 2112.
- Bingham Co. v. Fidelity, etc., Co. (Idaho, 13; 88 Pac. 829, 560, 767, 793, 799, 802).
- Benoth, *Ex parte* (1 S. C. [N. S. W.] 122), 1371.
- Bird, *Ex parte* (19 Cal. 130), 215.
- Bird v. State (104 Ind. 384; 3 N. E. 827), 1242.
- Bird v. United States (187 U. S. 118, 124 [23 Sup. Ct. 42]), 1421.
- Birdsong v. Birdsong (2 Head. 280), 2094, 2098, 2099, 2102, 2106, 2107, 2115.
- Birkman v. Farenthold ([Tex. Civ. App.] 114 S. W. 428), 1850, 1852, 1853, 1955, 1956, 1961, 1962, 1969.
- Birley v. McDonald (48 C. [N. Y.] 427), 1279.
- Birmingham v. People ([Colo.] 90 Pac. 1121), 1128, 1134.
- Birmingham Breweries, Limited v. Jameson ([1898] 67 L. J. Ch. 403; 78 L. T. 512; 14 T. L. R. 396), 1817.
- Birr v. People (24 Ill. App. 389), 1254.
- Bishop v. Honey (34 Tex. 245), 1801.
- Bishop v. Tripp (15 R. I. 466; 8 Atl. 692), 792.
- Bissell v. Starzinger (112 Iowa 266; 73 N. W. 1065), 1939.
- Bittix v. State (48 Tex. Cr. App. 232; 87 S. W. 348), 1214.
- Bivens v. State ([Tex. Cr. App.] 43 S. W. 1007), 1237.
- Bixler v. Gilleland (4 Pa. 156), 2119.
- Bizer v. Bizer (110 Iowa 248; 81 N. W. 465), 65.
- Black's Estate (8 Pa. Ct. Rep. 266), 2120.
- Black v. Ellis (3 Hill L. [S. C.] 68), 2137, 2149.
- Black v. McGilvery (38 Me. 287), 1021.
- Black v. State (66 Ala. 493), 1500.
- Black v. State (112 Ga. 29; 37 S. E. 108), 1217, 1371, 1379, 1615.
- Black Diamond Distilling Co., *In re* (33 Pa. Super. Ct. 649), 664.
- Blackburn v. Commonwealth (15 Ky. L. Rep. [abstract] 239), 945.
- Blackeny v. Green (9 Ohio Dec. 570), 2008.
- Blackmar v. Nickerson (188 Mass. 399; 74 N. E. 932), 1022.
- Blackwell v. Commonwealth ([Ky.] 54 S. W. 843; 21 Ky. L. Rep. 240), 909, 1467, 1680, 1683.
- Blackwell v. State (36 Ark. 178), 135, 136, 247, 594, 862, 1278, 1570.
- Blackwell v. State (42 Ark. 275), 1285.
- Blackwell v. State (45 Ark. 90), 1113.
- Blahut v. State (54 Ark. 538; 16 S. W. 582), 1233.
- Blain v. Bailey (25 Ind. 165), 467.
- Blair, *Ex parte* (12 Ch. Div. 522, 533), 539.

[References are to pages.]

- Blair v. Kilpatrick (40 Ind. 312), 663.
- Blair v. Rutenfranz (40 Ind. 312), 190, 662, 663.
- Blair v. Kilpatrick (40 Ind. 312), 189, 190, 662, 671.
- Blair v. State (81 Ga. 628; 7 S. E. 855), 1224, 1233.
- Blair v. Vierling (33 Ind. 269), 662.
- Blake v. State (118 Ga. 333; 45 S. E. 249), 945.
- Blaine, *Ex parte* (11 Can. Cr. Cas. 193), 685.
- Blakeley v. State (73 Ark. 218; 83 S. W. 948), 845.
- Blakely v. State (57 Miss. 680), 1497, 1498.
- Blaney v. Blaney (126 Mass. 205), 67, 2153, 2154, 2155, 2157.
- Blankenship v. State (93 Ga. 814; 21 S. E. 130), 22, 1217, 1711.
- Blasdel v. Hewit (3 Caines 157), 1497, 1553.
- Blasingame v. State (47 Tex. Cr. App. 582; 85 S. W. 275), 949, 953, 1213, 1596, 1609, 1696.
- Blatz v. Rohrback (116 N. Y. 450; 22 N. E. 1049; 6 L. R. A. 669), 42, 43, 47, 48, 82, 83, 1753, 1873.
- Blaylock v. State (108 Tenn. 185; 65 N. W. 398), 1129, 1131, 1363.
- Bleich v. People (227 Ill. 80; 81 N. E. 36), 2038, 2069, 2085.
- Blencome & Co. v. Hatherton (71 J. P. 210; 96 L. T. 817), 679.
- Blessing v. Galveston (42 Tex. 641), 394.
- Blessley v. John (Times, May 1, 1899), 1822.
- Blevins v. State ([Tex. Cr. App.] 25 S. W. 688), 1515.
- Bligh v. James (6 Allen 570), 1800.
- Blimm v. Commonwealth (7 Bush 320), 2041, 2061, 2062, 2081.
- Bliss v. Beck (80 Neb. 290; 114 N. W. 162), 2258.
- Block v. Jacksonville (36 Ill. 301), 451, 489, 523, 525.
- Block v. State (66 Ala. 414), 1571.
- Blodgett v. State (97 Ga. 351; 23 S. E. 830), 1223.
- Blodgett v. State (37 Tex. Cr. App. 70; 38 S. W. 783), 1203.
- Bloom v. Richards (2 Ohio 387), 215, 216.
- Bloomer v. Glendy (70 Iowa, 757; 30 N. W. 486), 990, 991.
- Bloomfield v. State (10 Mo. 556), 1457, 1502, 1509.
- Bloomfield v. Trumble (54 Ia. 399), 216, 2026.
- Bloomhoff v. State (8 Blackf. 205), 1107, 1109, 1716.
- Bloomingdale, *In re* (72 N. Y. St. 350; 38 N. Y. Supp. 162), 636.
- Bloomington v. Strehl (47 Ill. 72), 1645.
- Blordel v. Zimmerman (41 Neb. 695; 60 N. W. 6), 1904.
- Blough v. State (121 Ind. 355; 18 N. E. 682), 1488.
- Blum v. Ansley ([1900] 64 J. P. 184), 1827.
- Blumenthal, *In re* (125 Pa. St. 412; 18 Atl. 395; 23 Wkly. N. C. 493), 552, 694, 695, 700.
- Blunchi v. Commonwealth ([Ky.] 64 S. W. 971; 23 Ky. L. Rep. 1185), 1571.
- Bluthenthal v. Headland (132 Ala. 249; 31 So. 87), 1780.
- Bluthenthal v. McWhorter (131 Ala. 642; 31 So. 559), 1785, 1789, 1798, 1806.
- Board, Appeal of (64 Conn. 526; 30 Atl. 775), 662, 669.
- Board v. Barrie (34 N. Y. 657), 743.

[References are to pages.]

- Board v. Buchanan (36 Tex. Civ. App. 411; 82 S. W. 194), 863.
- Board v. Churchill (21 Fla. 578), 662.
- Board v. Forman (102 Ky. 496; 43 S. W. 682; 19 Ky. L. Rep. 1553), 831.
- Board v. Krueger (88 Ind. 231), 672.
- Board v. Lease (22 Ind. 261), 662.
- Board v. Mayor (31 Colo. 173; 74 Pac. 458), 478, 718, 720, 733.
- Board v. Merchant (103 N. Y. 143; 8 N. E. 484), 264, 1585.
- Board v. Renfro ([Ky.] 58 S. W. 795; 22 Ky. L. Rep. 806; 51 L. R. A. 897), 191.
- Board v. Sackrider (35 N. Y. 154), 1743.
- Board v. Scott (125 Ky. 545; 101 S. W. 944; 30 Ky. L. Rep. 894), 91, 849, 942.
- Board v. South Carolina Ry. Co. (57 Fed. 485), 1017.
- Board v. Taylor (21 N. Y. 173, 177), 4, 15, 46, 1592.
- Board v. Watson (5 Bush [Ky.] 660), 406.
- Boatright v. State (77 Ga. 717), 1227, 1233, 1357.
- Bobier v. Clay (27 Up. Can. 438), 2239.
- Bode v. State (7 Gill, 326), 91, 307, 316, 1457, 1511.
- Bodge v. Hughes (53 N. H. 614), 1350, 1855, 1882, 1893, 1907.
- Bodgett v. State ([Ala.] 48 So. 54), 945.
- Boericke & Runyan Co. v. U. S. (126 Fed. 1018), 18.
- Bogan, *Ex parte* (8 N. S. W. L. R. 409), 548.
- Bogan v. State (84 Ala. 449; 4 So. 255), 1469, 1518, 1523.
- Bogel v. State (42 Tex. Cr. App. 389; 55 S. W. 830), 1378, 1380.
- Bogg v. Jerome (7 Mich. 145), 1775.
- Boggess v. Boggess (4 Dana, 308), 2166.
- Bohler v. Schneider (49 Ga. 195), 198, 201, 796, 797.
- Bohstedt v. Shanks (136 Iowa, 686; 116 N. W. 812), 979.
- Bohstedt v. Tempel ([Iowa] 106 N. W. 513), 1084, 1085.
- Boisblanc v. Louisiana Eq. L. Ins. Co. (34 La. Ann. 1167), 2244.
- Bolder v. Schneider (49 Ga. 195), 787.
- Boldt v. State (72 Wis. 7; 38 N. W. 177), 1445, 1446, 1614, 1650, 1653, 1739.
- Bolduc v. Randall (107 Mass. 121), 498, 499, 501, 503.
- Boles v. McCarty (6 Blackf. 427), 780.
- Bollen v. State (26 Texas App. 483; 9 S. W. 765), 369.
- Bollinger v. Wilson (76 Minn. 262; 79 N. W. 109), 1780, 1787, 1803.
- Bolt v. State (60 Ark. 600; 31 S. W. 460), 930.
- Bolton v. Becker (82 Neb. 772; 119 N. W. 14), 599.
- Bolton v. Hegner (82 Neb. 772; 118 N. W. 1096), 598, 600.
- Bolton v. McKay ([Iowa] 102 N. W. 1131), 199, 223, 790.
- Boltze v. State (24 Ala. 89), 1245.
- Bolun v. People (73 Ill. 488), 1763, 1764.
- Bonaker v. State (42 Fla. 348; 29 So. 321), 933.
- Bond v. Evans (21 Q. B. Div. 249; 52 J. P. 613; 57 L. J. M. C. 105; 59 L. T. 411; 36 W. R. 767), 375, 376, 1152.
- Bond v. Plumb ([1894] 1 Q. B. 169; 58 J. P. 168), 377.
- Bond v. State (13 Sm. & M. 265), 1246.
- Bonds v. State (130 Ala. 106; 30 So. 413), 1744.
- Bonds v. State (130 Ala. 117; 30 So. 427), 1379.

[References are to pages.]

- Boner v. Meyer (11 York Leg. Rec. [Pa.] 58), 2117, 2121.
- Bonesteel v. Downs (73 Iowa, 685; 35 N. W. 924), 1767.
- Boniface v. Scott (3 S. & R. 351), 75.
- Bonner v. State (2 Ga. App. 711; 58 S. E. 1123), 1172.
- Bonner v. Wellborn (7 Ga. 296), 72.
- Bonner v. State (2 Ga. App. 711; 58 N. E. 1123), 1701.
- Bonser v. State (Smith [Ind.] 408), 1570.
- Boodle v. Birmingham (J. J. 45 J. P. P. 636), 701, 709, 711.
- Booher v. State (156 Ind. 435; 60 N. E. 156; 54 L. R. A. 391), 2039, 2076, 2083.
- Book v. Commonwealth (107 Ky. 605; 55 S. W. 7; 21 Ky. L. Rep. 1342), 929.
- Boomershine v. Uline (159 Ind. 503; 65 N. E. 513), 94, 144, 189, 209, 855, 604, 611.
- Boon, *In re* (24 Up. Can. 361), 907.
- Boon v. State (69 Ala. 226), 1491, 1517.
- Boone v. State (10 Tex. App. 418; 38 S. W. 641), 833.
- Boone v. State (12 Tex. App. 184), 929, 933, 1740.
- Boos v. State (11 Ind. App. 257; 39 N. E. 197), 767, 771, 1844, 1849, 1870, 1907, 1924.
- Boothby v. Plaisted (51 N. H. 436), 1288, 1787.
- Borch v. State ([Ala.] 39 So. 580), 1311.
- Borches v. State (33 Tex. Cr. Rep. 96; 25 S. W. 423), 1569, 1737.
- Borek v. State ([Okla.] 30 So. 580), 289, 714, 1188, 1579.
- Borden v. Montana Club (10 Mont. 330; 25 Pac. 1042; 11 L. R. A. 593; 47 Am. St. 35), 1330.
- Bordwell v. State (77 Ark. 161; 91 S. W. 555), 672, 859, 910, 947.
- Bormann, Appeal of (81 Conn. 458; 71 Atl. 502), 662, 667.
- Born v. Hopper (110 N. Y. App. Div. 218; 96 N. Y. Supp. 671; 48 N. Y. Misc. Rep. 177; 96 N. Y. Supp. 671), 751.
- Borne v. Mayor, etc., of Liverpool ([1863] 32 L. J. Q. B. 15), 1834.
- Bosley v. Davies (1 Q. B. Div. 84; 45 L. J. M. C. 27; 33 L. T. 528; 24 W. R. 140; 40 J. P. 550), 376.
- Boswell v. State (70 Miss. 395; 12 So. 446), 932, 2039, 2045, 2051, 2067.
- Botkins v. State (36 Ind. App. 179; 75 N. E. 298), 356, 1147, 1540.
- Bothwell, *In re* (44 Mo. App. 215), 910.
- Bottle v. State (51 Ark. 97; 10 S. W. 12), 835.
- Bottoms v. State ([Tex. Cr. App.] 73 S. W. 16, 20, 963), 958, 1621.
- Botts v. State (26 Miss. 108), 1714.
- Boucher v. Capital Brewing Co. ([1905] 9 Ont. Rep. 266), 1779, 1812.
- Boulter v. Kent, J. J. ([1897] App. Cas. 569; 61 J. P. 532; 66 L. J. Q. B. 787; 77 L. T. 288; 46 W. R. 114; 13 T. L. R. 538), 669, 679, 681.
- Bound v. South Carolina Ry. Co. (57 Fed. 485), 1021, 1046.
- Bourjohn's Application (2 Pa. Co. Ct. Rep. 33), 598, 599.
- Bourland v. Hildreth (26 Cal. 162), 227.
- Bourman v. Com. (14 Ky. Law Rep. 174), 1615.
- Boutwell v. Foster (24 Vt. 485), 1780.
- Bowden v. People (12 Hun, 85), 2059.



[References are to pages.]

- Bowden v. Voorhis (135 Mich. 648; 95 N. W. 406; 10 Del. Leg. N. 908), 1918, 1985, 2003.
- Bowen v. Clark (1 Biss. 128; Fed. Cas. No. 1721), 2093, 2104, 2106.
- Bowen v. Hale (4 Clarke [Iowa] 430), 990, 991, 1771.
- Bowen v. Lease (5 Hill [N. Y.] 221), 467.
- Bowen v. State (28 Tex. App. 103; 12 S. W. 413), 1486.
- Bower v. State ([Ark.] 57 S. W. 800), 1201.
- Bowerman v. Commonwealth (14 Ky. L. Rep. [abstract] 174), 1182.
- Bowie v. Bowie (3 Md. Ch. 51), 2164, 2165.
- Bowie v. Gilmour (24 Ont. App. 254), 1792.
- Bowles v. State (13 Ind. 427), 1443.
- Bowling Green v. McMullen ([Ky.] 122 S. W. 823), 11.
- Bowman, *In re* (167 Pa. 644; 31 Atl. 932), 616, 617, 664.
- Bowman v. Chicago & N. W. Ry. Co. (125 U. S. 465; 8 Sup. Ct. 689, 1062; 31 L. Ed. 700), 154, 304, 313, 315, 318, 323, 335, 1427, 1433.
- Bowman v. State (16 Tex. App. 513), 1575.
- Bowman v. State ([Tex. Cr. App.] 35 S. W. 382), 1615.
- Bowman v. State (14 Tex. Cr. App. 38; 40 S. W. 796; 41 S. W. 635), 890.
- Bowman v. State (38 Tex. Cr. App. 14; 40 S. W. 796; 41 S. W. 635), 211, 245, 251, 872, 935, 1680, 1681, 1683.
- Bows v. Fenwick (L. R. 9; C. P. 339; 43 L. J. M. C. 107; 30 L. T. 524; 22 W. R. 804; 33 J. P. 440), 380.
- Bowyer v. Percy Supply Club ([1893] 2 Q. B. 154; 5 R. 472; 69 L. T. 447; 42 W. R. 29; 17 Cox, C. C. 669; 57 J. P. 470), 1342, 1345.
- Boyd v. Alabama (94 U. S. 645), 94, 95, 97, 129, 489.
- Boyd v. Bryant (35 Ark. 69; 37 Am. Rep. 6), 134, 136, 232, 234, 240, 247, 248.
- Boyd v. Bryant (35 Kan. 69), 228.
- Boyd v. State (12 Lea, 687), 1300.
- Boyd v. State (49 Tex. Cr. App. 399; 92 S. W. 845), 1212.
- Boyd v. State (49 Tex. Cr. App. 197; 92 S. W. 845), 1202.
- Boyd v. State (80 Tenn. [12 Lea] 687), 247.
- Boyd v. Watt (27 Ohio St. 259), 1882, 1912, 1917.
- Boyden v. Haberstumpf (129 Mich. 138; 88 N. W. 386), 1985.
- Boyer v. Barr (8 Neb. 68), 1991.
- Boylan, *In re* (15 Ont. 13), 420.
- Boyle, *In re* (190 Pa. St. 577; 42 Atl. 1025; 45 L. R. A. 399), 139.
- Boyle v. Commonwealth (14 Gratt. 674), 1497, 1557.
- Boyle v. Phoenix Mut. L. Ins. Co. (Ramsey's App. Cas. [Low. Can.]), 379), 2229.
- Boyle v. Smith ([1906] 1 K. B. 432; 70 J. P. 115; 75 L. J. K. B. 282; 94 L. I. 30; 54 W. R. 519; 22 T. L. R. 200), 513, 1352, 1355.
- Braconier v. Packard (136 Mass. 50), 648.
- Bradford v. Boley (167 Penn. St. 506; 31 Atl. 751), 1858, 1880, 1881.
- Bradford v. Dawson ([1897] 1 Q. B. 307; 61 J. P. 134; 66 L. J. Q. B. 191; 76 L. T. 54; 45 W. R. 347; 18 Cox C. C. 473), 377.

[References are to pages.]

- Bradford v. Jellico (1 Tenn. Ch. App. 700), 461, 1316.  
 Bradford v. State (5 Ga. App. 494; 63 S. E. 530), 1583.  
 Bradford v. Stevens (10 Gray, 379), 306, 307, 313, 314.  
 Bradgett v. State ([Ala.] 48 So. 54), 1696.  
 Bradley v. Second Ave. R. Co. (8 Daly, 289), 2177, 2195.  
 Bradley v. State (121 Ga. 201; 40 S. E. 981), 829, 969.  
 Bradley v. State (31 Ind. 492), 2040, 2051.  
 Bradley v. State ([Tex. Cr. App.] 75 S. W. 32), 1377, 1396.  
 Bradley v. Thurston (7 Hawaii, 523), 627.  
 Bradshaw v. State (76 Ark. 562; 89 S. W. 1051), 970.  
 Bradshaw v. Omaha (1 Neb. 16), 106, 394.  
 Bradley, *In re* (22 N. Y. Misc. Rep. 301; 49 N. Y. Supp. 1109), 697, 743.  
 Brady, *Ex parte* (70 Ark. 376; 68 S. W. 34), 2261.  
 Brady, *In re* (106 N. Y. Supp. 961), 103, 594.  
 Bragg v. State (126 Ga. 442; 55 S. E. 232), 1651.  
 Braisted v. People (38 Colo. 49; 88 Pac. 150, 151), 842, 1477.  
 Brame v. State ([Ala.] 38 So. 1031), 1470.  
 Bramlette v. State (21 Tex. App. 611; 2 S. W. 765), 2075.  
 Branch, *In re* (164 Pa. 427; 30 Atl. 296; 35 W. N. C. 310), 664, 763.  
 Branch v. Sceats (20 W. N. [N. S. W.] 41), 1265.  
 Brand v. Schenectady, etc., R. Co. (8 Barb. 368), 2177, 2185, 2195.  
 Brandlinger, *In re* (11 Montg. Co. L. Rep. 93), 639.  
 Brandon v. Brandon (14 Kan. 342), 2163.  
 Brandon v. Old (3 C. & P. 440), 2101.  
 Brandt v. State (17 Ind. App. 311; 46 N. E. 682), 1849, 1908, 1910, 1921, 1941, 1964.  
 Brannan v. Adams (76 Ill. 331), 1844.  
 Brannen v. Kokomo, etc., Co. (115 Ind. 115; 17 N. E. 202), 2187.  
 Brannon v. Silvernail (81 Ill. 424), 1943, 1989, 1990.  
 Brant v. Fowler (7 Cow. 562), 2254.  
 Brantigan v. White (73 Ill. 561), 1847, 1908, 1892, 1994.  
 Brantley v. State (91 Ala. 47; 8 So. 816), 1494, 1586, 1699.  
 Brantley v. State (42 Tex. Cr. App. 293; 59 S. W. 892), 852.  
 Branton v. Branton (23 Ark. 580), 1906.  
 Brashears v. Commonwealth ([Ky.] 57 S. W. 475), 1380.  
 Brass v. State (45 Fla. 1; 34 So. 307), 4, 286, 1495.  
 Braswell v. Commonwealth (5 Bush, 544), 72, 1542.  
 Braun, *Ex parte* (141 Cal. 204; 74 Pac. 780), 789.  
 Braunstein v. People ([Colo.] 105 Pac. 857), 413, 434.  
 Bray v. Commerce ([Ga.] 63 S. E. 596), 1172, 1181.  
 Breck v. Adams (69 Mass. [3 Gray] 569), 1031.  
 Breconier v. Packard (136 Mass. 50), 572.  
 Brecourt v. State (5 Ind. 499), 1102.  
 Breeding v. Jordan (115 Iowa, 566; 88 N. W. 1090), 1923, 1924.  
 Breck v. Adams (3 Gray, 569), 1777.  
 Breeland v. State ([Tex. Cr. App.] 50 S. W. 722), 1634.  
 Breen, *In re* (2 Pa. Dist. Rep. 652), 695, 701.

[Preferences are to pages.]

- Bremen v. Michigan, etc., R. Co.  
(93 Mich. 156; 53 N. W. 358), 2191.
- Bremmer v. Thompson (15 N. S. W. L. R. 345), 1298.
- Brennan, *Ex parte* (50 N. B. 91), 938.
- Brennan v. People (37 Colo. 256; 86 Pac. 79), 2038, 2060, 2062, 2068, 2070, 2084.
- Brennan v. Roberts (125 Iowa. 615; 101 N. W. 460), 1000, 1001, 1003, 1004, 1318.
- Brenner v. State ([Ala.] 38 So. 1031), 243.
- Brentley v. State (91 Ala. 47; 8 So. 816), 87.
- Breslin, *In re* (45 Hun, 210), 689, 1309.
- Breubaker v. State (89 Ind. 577), 734.
- Brevaldo v. State (21 Fla. 789), 1655.
- Brewer v. Commonwealth (14 Ky. L. Rep. [abstract] 270), 936.
- Brewer v. Nutt (118 Ga. 257; 45 S. E. 269), 802.
- Brewer v. Shepherd (37 J. P. 102), 1137.
- Brewer v. Stagpoole (13 N. Z. L. R. 134), 1313.
- Brewer v. State (75 Tenn. [7 Lea] 682), 135, 247, 1279.
- Brewer, etc., Co. v. Boddie (181 Ill. 622; 55 N. E. 49), 69, 70.
- Brewing Co. *In re* (14 Pa. Super. Ct. 188), 640, 1270.
- Brewing Co. v. Mass. (97 U. S. 25), 398.
- Brewster, *In re* (39 N. Y. Misc. Rep. 609; 80 N. Y. Supp. 666), 544.
- Brewster, *In re* (85 N. Y. App. Div. 235; 83 N. Y. Supp. 235; 13 N. Y. Ann. Cas. 250, reversing 80 N. Y. Supp. 666), 730.
- Breyer v. State (102 Tenn. 110; 50 S. W. 769), 454.
- Brezger, *In re* (34 Pa. Sup. Ct. 469), 622, 625.
- Brice v. State ([Ga.] 34 S. E. 202), 1088.
- Brickner v. New York, etc., R. Co. (2 Lans, 506; affirmed 49 N. Y. 672), 2199, 2200.
- Bridewell v. Ward (72 Ark. 187; 79 S. W. 762), 947.
- Bridge, *In re* (36 N. Y. App. Div. 533; 25 N. Y. Misc. Rep. 213; 55 N. Y. Supp. 54; 56 N. Y. Supp. 1105), 576, 580, 582.
- Bridge, *In re* (56 N. Y. Supp. 1105; 36 N. Y. App. Div. 533; 55 N. Y. Supp. 54; affirming 25 N. Y. Misc. Rep. 213), 565, 742, 743, 745.
- Bridge v. Ford (4 Mass. 641), 1018.
- Bridges v. State (37 Ark. 224), 1452.
- Bridgeford v. Lexington (7 B. Mon. 47), 1441, 1765.
- Bridgeford v. State (7 B. Mon. 47), 1556.
- Bridgen v. Heighes (1 Q. B. Div. 330; 40 J. P. 661; 45 L. J. M. C. 58; 34 L. T. 242; 24 W. R. 272), 1142, 1145.
- Bridgeport v. Railroad Company (15 Conn. 475), 904.
- Briffitt v. State (58 Wis. 39; 16 N. W. 39; 46 Am. St. 621), 41, 42, 83, 84, 1592, 1764.
- Brigan v. Horlock ([Tex. Civ. App.] 97 S. W. 1060), 900.
- Briggs v. Campbell (25 Vt. 704), 1780.
- Briggs v. McKinley (131 Mich. 154; 91 N. W. 156; 9 Detroit Leg. N. 273), 764.
- Briggs v. Noonan (27 Vict. L. R. 580; 23 Austr. L. T. 138; 7 Austr. L. R. 274), 371.
- Briggs v. Rafferty (14 Gray, 525), 1606, 1641, 1792.
- Bright, *Ex parte* (1 Utah, 145), 2034.

[References are to pages.]

- Bright, *In re* (12 C. P. [Ont.] 433), 452, 468, 472.
- Bright v. McCullough (27 Ind. 223), 789, 793.
- Bright v. Patton (5 Mackey, 534; 8 Cent. Rep. 711), 2033.
- Brighton v. Miles (153 Ala. 673; 44 So. 160), 1603, 1698.
- Brighton v. Miles (151 Ala. 479; 44 So. 394), 1607, 1699.
- Brigham v. State ([Tex. Cr. App.] 39 S. W. 572), 1210.
- Brignac v. Pacific, etc., Ins. Co. (112 La. 574; 36 So. 595; 66 L. R. A. 322), 2222.
- Brignon v. State (37 Tex. Cr. App. 71; 38 S. W. 786), 1186.
- Brimhall v. Van Campen (8 Minn. 13), 215.
- Brinkley v. State (108 Tenn. 475; 67 S. W. 796), 404.
- Brinkman v. State (57 Ind. 76), 1560, 1562.
- Brinkworth v. Shembeck (77 Neb. 71; 108 N. W. 150), 621.
- Brinson v. State (89 Ala. 105; 8 So. 527), 247, 843, 1278.
- Bristol v. Wilsmore (2 Dowl. & R. 755), 2125.
- Bristust v. Parsons (54 Ala. 393; 25 Am. Rep. 688), 660.
- Britnor, *In re* (46 L. J. Bk. 85; 25 W. R. 560), 702, 1832.
- Brittain v. Bethany (31 Miss. 331), 355.
- Britton v. Guy ([S. D.] 97 N. W. 1045), 986.
- Broadhead, *Ex parte* (23 N. S. W. 46), 1301.
- Broadwater v. Doane (10 Mo. 277), 2116, 2128.
- Brock v. Commonwealth (6 Leigh. 634), 1498.
- Brock v. State (65 Ga. 437), 503, 504, 505, 506, 649, 1159.
- Brockway v. Jewell (52 Ohio St. 187; 39 N. E. 470), 2109, 2117, 2120.
- Brockway v. Maloney (102 Mass. 308), 1787.
- Brockway v. Mutual, etc., Ins. Co. (9 Fed. 249), 2223.
- Brockway v. Patterson (72 Mich. 122; 40 N. W. 192; 1 L. R. A. 708), 1864, 1868, 1876, 1897, 1950, 1971, 1972, 2006.
- Brockway v. Petted (79 Mich. 620; 45 N. W. 61; 7 L. R. A. 740), 757, 763, 774.
- Brockway v. State (36 Ark. 629), 73, 719.
- Brodline, *In re* (93 Fed. 643), 2263.
- Brodie, *In re* (38 Up. Can. Rep. 580), 347, 453, 462, 468, 644, 1110, 1225.
- Bronson v. Dunn (124 Ind. 252; 24 N. E. 749), 598, 639.
- Bronson v. Oberlin (41 Ohio St. 476; 52 Am. Rep. 90), 243, 244, 291, 394, 395, 397, 433, 436.
- Brooke v. Morrilton (86 Ark. 364; 111 S. W. 471), 2025.
- Brooke v. State (86 Ark. 364; 111 S. W. 471), 2032.
- Brookes v. Drysdale ([1877] 3 C. P. D. 52; 37 L. T. 467; 26 W. R. 331), 1820, 1832.
- Brookhaven Lumber & Mfg. Co. v. Illinois Cent. R. Co. (68 Miss. 432; 10 So. 66), 2253, 2256.
- Brooking v. Crawford (24 N. Y. 738), 1154.
- Brooklyn v. Toynebee (31 Barb. [N. Y.] 282), 216, 271.
- Brookman v. State (50 Tex. Cr. App. 277; 96 S. W. 928), 948.
- Brooks v. Cook (44 Mich. 617; 7 N. W. 216), 1858, 1893.
- Brooks v. Ellis ([Tex. Civ. App.] 98 S. W. 936), 771, 889.
- Brooks v. Hyde (37 Cal. 366), 227.

[References are to pages.]

- Brooks v. Mason ([1902] 2 K. B. 743; 72 L. J. K. B. 19; 67 J. P. 47; 51 W. R. 224; 88 L. T. 24; 19 T. L. R. 4), 1243.
- Brooks v. State (105 Ala. 133; 16 So. 698), 1285.
- Brooks v. State (65 Miss. 445; 4 So. 343), 827, 1752.
- Broomfield v. State (10 Mo. 556), 521, 558.
- Brophy, *In re* (26 C. P. [Can.] 290), 889.
- Brosee v. State (5 Ind. 75), 1223.
- Brosnahan, *In re* (18 Fed. Rep. 62), 109.
- Brother v. State (2 Cold [Tenn.] 201), 929.
- Brow v. State (103 Ind. 127; 2 N. E. 321), 1250, 1252, 1253, 1566, 1630, 1631.
- Brower v. Fass (60 Neb. 590; 83 N. W. 832), 1785, 1790.
- Brown, *In re* (18 Pa. Super. Ct. 409), 625.
- Brown *Ex parte* (30 Tex. Cr. App. 295; 42 S. W. 554), 473.
- Brown, Appeal of, (2 Pa. Super. Ct. 63), 664.
- Brown, *In re* (18 Pa. Super. Ct. 409), 664.
- Brown, *In re* (38 N. Y. Misc. Rep. 157; 77 N. Y. Supp. 261), 911.
- Brown, *Ex parte* ([Tex. Cr. App.] 42 S. W. 554), 127.
- Brown, *Ex parte* ([Tex. Cr. App.] 61 S. W. 396), 217.
- Brown, *Ex parte* (35 Tex. Cr. Rep. 443; 34 S. W. 131), 174, 933.
- Brown v. Aberdeen (4 Dak. 402; 31 N. W. 735), 806.
- Brown v. Alderman (74 Atl. 230), 1744.
- Brown v. Bowden (19 N. J. 98), 1251, 1631, 1633.
- Brown v. Brown (38 Ark. 324), 65, 68, 2154, 2156, 2159, 2166.
- Brown v. Brown (L. R. 1 Prob. & Div. 46), 2166.
- Brown v. Butler (66 Ill. App. 86), 1962, 1974, 1992, 1993.
- Brown v. Burns (67 Me. 535), 1782.
- Brown v. Chicago (110 Ill. 186), 200.
- Brown v. Chicago, etc., R. Co. (51 Iowa 238; 1 N. W. 487), 2212, 2215.
- Brown v. Commonwealth (98 Ky. 652; 34 S. W. 12), 121.
- Brown v. Commonwealth (114 Pa. 335; 6 Atl. 152), 774.
- Brown v. Commonwealth (32 Leg. Int. [Pa.] 320), 2058.
- Brown v. Dudley (33 N. H. 514), 1058.
- Brown v. Duncan (10 B. & C. 93, 95, 98), 1794.
- Brown v. Fitz (13 N. H. 283), 1162.
- Brown v. Foot (56 J. P. 581; 61 L. J. M. C. 110; 66 L. T. 649; 17 Cox C. C. 509), 1383.
- Brown v. Hilton (23 Pick. 319), 1191.
- Brown v. Houston (114 U. S. 622; 5 Sup. Ct. 1091), 315, 331.
- Brown v. Lawrence (40 Nova Scotia 370), 1033.
- Brown v. Louisville, etc., R. Co. (103 Ky. 211; 44 C. W. 648), 2204.
- Brown v. Lutz (36 Neb. 527; 54 N. W. 860), 343, 364, 568.
- Brown v. Maryland (12 Wheat. 419; 6 L. Ed. 678), 302, 313, 315, 331, 790, 1425.
- Brown v. Mathews (51 N. J. L. 253; 17 Atl. 154), 617.



[References are to pages.]

- Brown v. Moore (33 Nov. Sco. 381; 32 S. C. [Nov. Sco.] 93), 263, 1365, 1779, 1792.  
 Brown v. Patch ([1899] 1 Q. B. 892; 68 L. J. Q. B. 588; 63 J. P. 421; 47 W. R. 623; 80 L. T. 716), 380.  
 Brown v. Perkins (12 Gray 89), 974, 986, 1771.  
 Brown v. Porter (37 Ind. 206), 662.  
 Brown v. Probate Court (28 R. I. 370; 67 Atl. 527), 2018.  
 Brown v. Social Circle (105 Ga. 834; 32 S. E. 141), 127, 452.  
 Brown v. State (31 Ala. 353), 1293, 1296.  
 Brown v. State (142 Ala. 287; 38 So. 268), 2038, 2069.  
 Brown v. State (73 Ga. 38), 198.  
 Brown v. State (79 Ga. 473), 443.  
 Brown v. State (82 Ga. 224; 7 S. E. 915), 124, 125, 182, 184, 185, 488, 490, 495, 714.  
 Brown v. State (104 Ga. 525; 30 S. E. 837), 1571.  
 Brown v. State (4 Ga. App. 73; 60 S. E. 805), 80, 1161, 1598, 1700.  
 Brown v. State (24 Ind. 113), 1240, 1628.  
 Brown v. State (48 Ind. 38), 1625.  
 Brown v. State (103 Ind. 133; 2 N. E. 296), 1499, 1500.  
 Brown v. State (137 Ind. 240; 36 N. E. 1108; 45 Am. St. 180), 2249, 2250.  
 Brown v. State (9 Neb. 189; 2 N. W. 214), 549, 822.  
 Brown v. State (16 Neb. 658; 21 N. W. 454), 1566.  
 Brown v. State (49 N. J. L. 61; 7 Atl. 340), 369.  
 Brown v. State (2 Head 180), 1246, 1457, 1759.  
 Brown v. State ([Tenn.] 114 S. W. 198), 484.  
 Brown v. State (27 Tex. 335), 498, 501, 526.  
 Brown v. State ([Tex. Cr. App.] 39 S. W. 578), 1210, 1471.  
 Brown v. State (45 Tex. Cr. App. 139; 75 S. W. 33), 2247.  
 Brown v. State ([Tex. Cr. App.] 76 S. W. 475), 1209.  
 Brown v. State (47 Tex. Cr. App. 326; 83 S. W. 378), 1158.  
 Brown v. State (4 Tex. App. 275), 2039, 2063, 2067.  
 Brown v. Van Wert (4 Ohio Cir. Ct. Rep. 407), 1477.  
 Brown v. Wieland (116 Iowa 711; 89 N. W. 17), 1787, 1803.  
 Brown-Forman Co. v. Commonwealth ([Ky.] 101 S. W. 321; 30 Ky. L. Rep. 793), 151, 198, 290.  
 Brownell, *In re* (11 Pa. Co. Ct. Rep. 404), 622.  
 Brownlow v. State (112 Ga. 405; 37 S. E. 733), 1311, 1321.  
 Brownville v. Cook (4 Neb. 101), 216, 271.  
 Brua v. State (8 Mo. 496), 509.  
 Bruce v. Schuyler (4 Gilm. [Ill.] 221), 467.  
 Bruce v. State ([Tex. Cr. App.] 35 S. W. 383), 878, 908, 911, 1287.  
 Bruce v. State (36 Tex. Cr. App. 53; 39 S. W. 683), 958, 167.  
 Bruce v. State (39 Tex. Cr. App. 26; 44 S. W. 852), 1181.  
 Bruce v. State ([Tex. Cr. App.] 53 S. W. 867), 1181.  
 Bruce v. State ([Tex. Cr. App.] 92 S. W. 1092), 1691.  
 Bruen v. Ogden (11 N. J. L. 370; 20 Am. Dec. 593), 1027.  
 Brugier v. State (1 Dak. 5; 46 N. W. 502), 1494, 1755.  
 Bruison v. State (89 Ala. 105; 8 So. 527), 1279.  
 Brumley v. State (11 Tex. App. 114), 23, 293, 295.  
 Brunker v. Tp. of Mariposa (22 Ont. Rep. 120), 434.

[References are to pages.]

- Brunson v. Dunn (124 Ind. 252; 24 N. E. 749), 599.  
 Brunswick v. Villeau (50 Iowa 120), 1801.  
 Bruttor v. State (4 Ind. 601), 1510, 1521.  
 Bryan v. Bates (15 Ill. 87), 2034.  
 Bdyan v. De Moss (34 Ind. App. 473; 73 N. E. 156), 557, 604, 608.  
 Bryan v. Jones (34 Ind. App. 703; 73 N. E. 1135), 557, 601, 604, 608.  
 Bryant v. Hancock ([1899] A. C. 442; 68 L. J. Q. B. 889; 64 J. P. 84; 81 L. T. 96; 15 T. L. 490), 1823.  
 Bryant v. Robbins (70 Wis. 258), 97.  
 Bryant v. State (46 Ala. 302), 1111, 1666.  
 Bryant v. State (82 Ala. 51; 2 So. 670), 1230, 1379, 1615.  
 Bryant v. State (65 Miss. 435; 4 So. 343), 1680.  
 Bryant v. State (89 Tenn. 581; 15 S. W. 353), 1281, 1285, 1286.  
 Bryant v. Tidgwell (133 Mass. 86), 1882, 1912, 1919, 1955.  
 Bryden v. Northrup (58 Ill. App. 233), 73.  
 Bryson v. Haley (68 N. H. 337; 38 Atl. 1006), 1784.  
 Buck's Estate, *In re* (185 Pa. St. 57; 39 Atl. 821; 64 Am. St. 816), 480.  
 Buck v. Albee (27 Vt. 184), 1784.  
 Buck v. Colbath (3 Wall. [U. S.] 334), 1012.  
 Buck v. Ellenbolt (84 Iowa 394; 51 N. W. 22; 15 L. R. A. 187), 988.  
 Buck v. Maddock (167 Ill. 219; 47 N. E. 208; affirming 67 Ill. App. 460), 1971, 1981, 1983, 1991, 2007.  
 Buck v. State (61 N. J. L. 525; 39 Atl. 919), 1478, 1482.  
 Buckham v. Grape (65 Iowa 535; 17 N. W. 755), 1927, 2013.  
 Buckhannon v. Commonwealth (86 Ky. 110; 5 S. W. 358; 9 Ky. L. Rep. 411), 2041, 2056, 2061, 2065, 2067.  
 Buckle v. Fredericks ([1890] 44 Ch. D. 244; 62 L. T. 884; 55 J. P. 165; 38 W. R. 742), 1821.  
 Buckler v. Turbeville (17 Tex. Civ. App. 120; 43 S. W. 810), 925.  
 Buckley v. Buckley (9 Nev. 373), 1027.  
 Buckman v. Commonwealth (11 Ky. L. Rep. [abstract] 526), 951.  
 Buckmaster v. McElroy (20 Neb. 557; 31 N. W. 76), 1890.  
 Buckner v. State (56 Ind. 207), 1168, 1649.  
 Buckworth v. Crawford (24 Ill. App. 603), 1912.  
 Buddington, *In re* (29 Mich. 472), 1738, 1766.  
 Buell v. State (72 Ind. 523), 1248, 1256, 1491.  
 Buesching v. St. Louis, etc., Co. (6 Mo. App. 85), 2178.  
 Buford v. Commonwealth (14 B. Mon. 24), 369, 1575.  
 Bugbee v. Union R. Co. ([R. I.] 59 Atl. 165), 2180.  
 Buhlman v. Humphrey (86 Iowa 597; 53 N. W. 318), 998, 1001.  
 Bull v. Licensing Justices (12 Austr. L. T. 82), 644.  
 Bullard, *In re* (113 N. Y. App. Div. 159; 98 N. Y. Supp. 1011), 578, 588.  
 Bunch v. State ([Ark.] 114 S. W. 239), 77.  
 Bunker v. Maripose (22 Ont. Rep. 120), 1193.  
 Bunyan v. Loftus (90 Iowa 122; 57 N. W. 685), 1993.  
 Burch v. Ocilla (5 Ga. App. 65; 62 S. E. 666), 682.

[References are to pages.]

- Burch v. May, etc. (42 Ga. 598), 787.
- Burch v. Republic of Texas (1 Tex. 608), 1554.
- Burch v. Savannah (42 Ga. 576), 163, 426, 483, 520, 553, 788, 791.
- Burch v. United States (7 Ind. T. 294; 104 S. W. 619), 1260.
- Burekholter v. McConnellsville (20 Ohio St. 308), 395.
- Burdet v. Hopewood (1 P. Wms. 486), 1906.
- Burfiend v. Hamilton (20 Mont. 343; 51 Pac. 161), 805.
- Burgamy v. State (114 Ga. 852; 40 S. E. 991), 1759.
- Burge, *Ex parte* (32 Tex. Cr. R. 459; 24 S. W. 289), 911, 1684.
- Burk v. Platt (172 Fed. 777), 337.
- Burke v. Chicago, etc., R. Co. 108 Ill. App. 565), 2174.
- Burke v. Collins (18 S. D. 190; 99 N. W. 1112), 195, 626, 650.
- Burke v. State (52 Ind. 522), 1442, 1488, 1522, 1552, 1553.
- Burkarth v. Stephens (117 Mo. App. 425; 94 S. W. 720), 676.
- Burkett v. Loed ([Ind.] 88 N. E. 346), 1811.
- Burkhalter v. McConnellsville (20 Ohio St. 309), 397, 433.
- Burkhard v. State (18 Tex. App. 599), 2090.
- Burkman v. Jamieson (25 Wash. 606; 66 Pac. 48), 2009.
- Burks v. State ([Tex. Civ. App.] 103 S. W. 950), 924.
- Burnby, *Ex parte* ([1901] 2 K. B. 458; 70 L. J. K. B. 739; 85 L. T. 168), 368, 725.
- Burner v. Commonwealth (13 Gratt. 778), 1182, 1544.
- Burnett, *Ex parte* (30 Ala. 461), 436, 444, 447.
- Burnett v. Berry ([1896] 1 Q. B. 641; 60 J. P. 375; 65 L. J. M. C. 118; 44 W. R. 512; 74 L. T. 494; 12 T. L. R. 362), 380.
- Burnett v. State (92 Ga. 474; 17 S. E. 858), 1235.
- Burnett v. State (72 Miss. 994; 18 So. 432), 1729, 1732.
- Burnett v. State (42 Tex. Cr. App. 600; 62 S. W. 1063), 512, 514, 1375, 1620.
- Burlington v. Bumgardner (42 Ia. 102), 412, 435.
- Burlington v. Insurance Co. (31 Iowa 102), 200.
- Burlington v. Kellar (18 Ia. 59), 404, 413.
- Burlington v. Putnam (31 Ia. 102), 411, 483.
- Burnham v. Burnham (119 Wis. 509; 97 N. W. 176), 2094.
- Burns, Appeal of (76 Conn. 395; 56 Atl. 611), 535, 565, 737, 748, 1297.
- Burns, *In re* ([Ind.] 87 N. E. 1028), 561, 601.
- Burns, *In re* (14 Pa. Co. Ct. Rep. 174; 3 Pa. Dist. Rep. 429), 696.
- Burns v. Burns (13 Fla. 369), 65, 67, 2154, 2155, 2156, 2159.
- Burns v. Elba (32 Wis. 605), 2190.
- Burnside, *Ex parte* (86 Ky. 423; 6 S. W. 276), 91, 111, 125, 126, 149, 182, 243, 281, 291.
- Burnside v. Lincoln Co. (86 Ky. 423; 7 S. W. 276; 9 Ky. L. Rep. 635), 450, 490.
- Burr, *In re* (3 Lack. Leg. N. 162), 2017.
- Burrage, *Ex parte* (26 Tex. App. 35; 9 S. W. 72), 908, 911.
- Burrell, *In re* (N. Y. Misc. Rep. 261; 100 N. Y. Supp. 470), 902, 911.

[References are to pages.]

- Burrell v. State (25 Neb. 581; 41 N. W. 399), 1712, 1713, 1764.
- Burrell v. State ([Tex. Cr. App.] 65 S. W. 914), 908, 1216.
- Burrit v. Silliman (16 Barb. 198), 2150.
- Burroughs v. Richman (13 N. J. Law. [1 J. S. Green] 233; 23 Am. Dec. 717), 2094, 2095.
- Burrow's Case (1 Lewin C. C. 75), 2039, 2054.
- Bursinger v. Bank of Watertown, (67 Wis. 75; 30 N. W. 290; 58 Am. Rep. 848), 2098, 2116, 2125, 2131.
- Burt v. Burt (168 Mass. 204; 46 N. E. 622), 63, 67, 68, 1735, 1736, 2154, 2158.
- Burton v. State (46 Tex. Cr. App. 493; 81 S. W. 742), 2084.
- Bush v. Breing (113 Pa. St. 310; 6 Atl. 86; 57 Am. Rep. 469), 2093, 2098, 2099, 2131.
- Bush v. Commonwealth ([Ky.] 47 S. W. 585), 1703.
- Bush v. Indianapolis (120 Ind. 476; 22 N. E. 422), 144.
- Bush v. Lisle (89 Ky. 393; 12 S. W. 762), 2135, 2138, 2141.
- Bush v. Murray (66 Me. 472), 1910.
- Bush v. Republic of Texas (1 Tex. 455), 1541.
- Bush v. Seabury (18 Johns. 418), 448.
- Bushell v. Hammond ([1904] 2 K. B. 563; 68 J. P. 370; 73 L. J. K. B. 1005; 91 L. T. 1; 52 W. R. 453; 20 T. L. R. 413), 641.
- Butcher's Union v. Crescent City Co. (111 U. S. 746; 5 Sup. Ct. 652), 98.
- Butler v. Augusta (100 Ga. 370; 28 S. E. 164), 1372, 1374, 1376.
- Butler v. Fiscal Court (126 Ky. 146; 103 S. W. 251; 31 Ky. L. Rep. 597), 943.
- Butler v. Mercer (14 Ind. 479); 1989.
- Butler v. Meritt (113 Ga. 238; 38 S. E. 751), 175.
- Butler v. Mulvihill (1 Bligh. 137), 2099, 2103.
- Butler v. Northumberland (50 N. H. 33), 384, 1792.
- Butler v. State (25 Fla. 347; 6 So. 67), 86, 928, 934, 1453, 1496, 1680.
- Butler v. State (89 Ga. 821; 15 S. E. 763), 134, 1278, 1453, 1479.
- Butler v. State ([Miss.] 39 So. 1005), 2038.
- Butler v. Thompson (92 U. S. 412; 23 L. Ed. 684), 1162.
- Butman, *In re* (8 Greenl. [Me.] 113), 1755.
- Button v. Hudson River R. Co. (18 N. Y. 248), 2185.
- Button v. State ([Tex. Cr. App.] 100 S. W. 148), 1217.
- Buttons v. Justice (16 Viet. L. R. 604; 12 Austr. L. T. 83), 351.
- Butzman v. Whitbeck (42 Ohio St. 223), 120, 121, 147.
- Buttrick v. Lowell (1 Allen 172), 1026, 1047.
- Byars v. Mt. Vernon (78 Ill. 11), 1477.
- Byford, *In re* (69 J. P. 152), 620.
- Bynes v. Stilwell (103 N. Y. 453), 1906.
- Bynum's Case (101 N. C. 412; 8 S. E. 136), 925.
- Byrd, *Ex parte* ([Tex.] 105 S. W. 496), 127, 251, 254.
- Byrd v. State (76 Ark. 286; 88 S. W. 974), 2038.
- Byrd v. State (51 Tex. Cr. App. 539; 103 S. W. 863), 1680.
- Byrd v. State (51 Tex. Cr. App. 539; 103 S. W. 863), 940, 1218.
- Byrd v. State (53 Tex. Cr. App. 507; 111 S. W. 149), 888, 915, 1597.

[References are to pages

- Byram v. Polk County (76 Iowa 75; 40 N. W. 102), 1068, 1075.
- Byrum v. Peterson (34 Neb. 237; 51 N. W. 829), 671.
- C**
- C—— v. C—— (28 Eng. L. & Eq. 603), 2166.
- Cabel v. Houston (29 Tex. 335), 457.
- Cabellero v. Henty ([1874] L. R. 9 Ch. 447), 1831.
- Cable v. State (8 Blackf. 531), 1096, 1106, 1109.
- Cable v. State ([Miss.] 38 So. 98), 1207.
- Caesar v. State (50 Fla. 1; 39 So. 470), 286, 1495, 1557.
- Cagle v. State (87 Ala. 38; 6 So. 300), 514, 1158, 1219, 1223, 1226, 1349.
- Cahen v. Jarrett (42 Md. 571), 787.
- Cahill v. Campbell (105 Mass. 40), 70.
- Cahill v. Millett ([1907] Viet. L. R. 605; 29 Austr. L. T. 16), 1311.
- Cahill v. State (36 Ind. App. 507; 76 N. E. 142), 1498, 1573.
- Cahn v. Reid (18 Mo. App. 115), 2127.
- Cain, *Ex parte* (20 Okla. 125; 93 Pac. 974), 111, 121, 122.
- Cain v. Allen (168 Ind. 8; 79 N. E. 201, 896), 206, 209, 286, 606, 611, 612, 614, 618.
- Cairns v. Peterson (2 Viet. L. R. 143), 1269.
- Cairo v. Feuchter Bros. (59 Ill. App. 112; affirmed 159 Ill. 155; 42 N. E. 308), 190.
- Cakins v. State (14 Ohio St. 222), 929.
- Calder v. Bull (3 Dall. [U. S.] 386), 261, 267.
- Calder v. Kurby (5 Gray 597), 124, 182, 184, 185, 488, 489, 490, 495, 714.
- Calder v. Sheppard (61 Ind. 219), 531, 599.
- Calderwood v. Jos. Schlitz Brewing Co. ([Minn.] 121 N. W. 221), 820.
- Caldwell v. Barrett (73 Ga. 604), 232, 235.
- Caldwell v. Fullerton (7 Casey [Pa.] 475; 72 Am. Dec. 760), 479.
- Caldwell v. Grider (88 Ala. 421; 7 So. 203), 939.
- Caldwell v. Grimes (7 Ky. L. Rep. [abstract] 601), 537, 802, 966.
- Caldwell v. State (55 Ala. 133), 276.
- Caldwell v. State (43 Fla. 545; 30 So. 814), 82.
- Caldwell v. State ([Ga.] 29 S. E. 263), 249.
- Caldwell v. State (18 Ind. App. 48; 46 N. E. 697), 837, 838.
- Caldwell v. State (87 Miss. 420; 39 S. 896), 1761.
- Calhoun v. Spencer (177 Mass. 473; 59 N. E. 78), 1867.
- Callahan v. State (2 Ind. App. 418; 28 N. E. 717), 80, 1491, 1492, 1561.
- Callander v. Allen (6 N. Z. L. R. 436), 536.
- Callaway v. Mims (5 Ga. App. 9; 62 S. E. 654), 1085, 1092, 1108.
- Calloway v. Laydon (47 Iowa 456), 1854.
- Calloway v. Milledgeville (48 Ga. 309), 814.
- Calloway v. Witherspoon (5 Ired. Eq. 128), 2099, 2103, 2130.
- Cambridge Springs Co., *In re* (20 Pa. Co. Ct. Rep. 564), 537.
- Camden v. Allen (2 Dutch [N. J. L.] 398), 276.
- Cameron, *Ex parte* (23 N. S. W. 24; 6 S. R. 132), 365.



[References are to pages.]

- Cameron v. Fellows (109 Iowa 534; 80 N. W. 567), 944, 1104, 1270.
- Cameron v. Guinder (89 Iowa 298; 56 N. W. 502), 1005.
- Cameron v. Kepinos (89 Iowa 561; 56 N. W. 677), 1000.
- Cameron v. Tucker (104 Iowa 211; 73 N. W. 601), 999.
- Cameron-Barkley Co. v. Thornton, etc., Co. (138 N. C. 365; 50 S. E. 695), 2093, 2116.
- Camp, Appeal of (80 Conn. 272; 68 Atl. 444), 643.
- Camp v. Camp (18 Tex. 528), 2165, 2166, 2168.
- Camp v. State (27 Ala. 53), 400, 1456, 1474.
- Campbell, *Ex parte* (74 Cal. 20; 15 Pac. 318; 5 Am. St. 518), 109, 149.
- Campbell, *In re* (71 Ind. 512), 355.
- Campbell, *In re* (8 Pa. Super. Ct. 524), 745.
- Campbell v. Amer. Popular Life Ins. Co. (1 MacArthur 471), 2243.
- Campbell v. Fidelity & C. Co. (109 Ky. 661; 60 S. W. 492), 1736.
- Campbell v. Harmon (96 Me. 87; 51 A. 801), 1983, 1984.
- Campbell v. Jackman Bros. ([Iowa] 118 N. W. 755), 104, 142, 152, 163, 480, 486.
- Campbell v. Jones (2 Tex. Civ. App. 263; 21 S. W. 723), 66, 1254, 1779, 1807.
- ampbell v. Ketcham (1 Bibb, 406), 2103.
- Campbell v. Manderscheid (74 Ia. 708; 39 N. W. 92), 226, 311, 1004.
- Campbell v. Moran (71 Neb. 615; 99 N. W. 498), 587.
- Campbell v. New Eng. Mut. L. Ins. Co. (98 Mass. 389), 2220.
- Campbell v. Schlesinger (48 Hun 428; 1 N. Y. Supp. 220), 1961.
- Campbell v. Schofield (29 Leg. Int. 325), 980.
- Campbell v. State (79 Ala. 271), 1374, 1379, 1578.
- Campbell v. State (171 Ind. 702; 87 N. E. 212), 1011, 1066, 1068.
- Campbell v. State (62 N. J. 402; 41 Atl. 717), 1547, 1552.
- Campbell v. State (37 Tex. Cr. App. 572; 40 S. W. 282), 1225, 1379, 1694.
- Campbell v. State (55 Tex. Cr. App. 277; 116 S. W. 581), 1630.
- Campbell v. Strangways (3 S. P. Div. 105), 501.
- Campbell v. Thomasville ([Ga.] 64 S. E. 815), 74, 151, 162, 168, 270, 358, 388, 425, 430, 432, 440, 441, 442, 465, 551, 560, 579, 629.
- Campbell v. Union Bank (6 How. [Miss.] 625), 294.
- Campbell v. Wing (5 Tex. Civ. App. 431; 24 S. W. 360), 2199.
- Candill, *In re* ([Ky.] 66 S. W. 723; 23 Ky. L. Rep. 2139), 534.
- Canfield v. Leadville (7 Colo. App. 453; 43 Pac. 910), 825.
- Cann, *Ex parte* (1 S. R. N. S. W. 262; 18 W. N. N. S. W. 186), 670.
- Cannon v. Merry (116 Ga. 291; 42 S. E. 274), 978.
- Cannon City v. Manning (43 Colo. 144; 95 Pac. 537), 1332.
- Canova v. Williams (41 Fla. 509; 27 So. 30), 419, 447.
- Cantini v. Tillman (54 Fed. 969), 110, 139, 149, 152, 174, 321.
- Cantrell v. Sainer (59 Iowa 26; 12 N. W. 753), 244, 291, 436, 474.
- Cantwell v. State (47 Tex. Cr. App. 511; 85 S. W. 19), 1372.

[References are to pages.]

- Cantwell v. State (47 Tex. Cr. App. 521; 85 S. W. 18), 865, 870, 958, 1184, 1207, 1682.
- Canvass, *In re* ([Iowa] 95 N. W. 194), 875.
- Cape Girardeau v. Riley (72 Mo. 220), 409.
- Capritz v. State (1 Md. 569), 1502, 1508.
- Capron v. State (11 Ind. App. 95; 38 N. E. 491), 1628.
- Carbondale v. Wade (106 Ill. App. 654), 734.
- Cardillo v. People (26 Colo. 355; 58 Pac. 678), 69, 70, 259.
- Carelon v. Rugg (149 Mass. 550; 22 N. E. 55; 55 L. R. A. 193; 14 Am. St. 446), 604, 982.
- Carey v. State (70 Ohio St. 121; 70 N. E. 955), 864, 883, 1765.
- Cargo of Aurora v. United States 7 Cranch [U. S.] 382), 252.
- Carico v. Wilmore (51 Fed. 196), 2035.
- Carrico v. Commonwealth (5 Ky. L. Rep. [abstract] 605), 512.
- Carl v. State (87 Ala. 17; 6 So. 118; 4 L. R. A. 380), 21, 52, 86, 87, 137, 822, 969, 1185, 1699, 1701.
- Carleton v. Regg (149 Mass. 550; 22 N. E. 55), 258.
- Carleton v. State (43 Neb. 373; 61 N. W. 699), 2251.
- Carleton v. Woods (28 N. H. 290), 1782.
- Carlin v. Heller (34 Iowa 256), 1804.
- Carlisle v. State (42 Ala. 523), 929.
- Carlisle v. State (91 Ala. 1; 8 So. 386), 131, 137, 247, 593, 1278.
- Carlisle v. Town of Sheldon (38 Vt. 440), 2256.
- Carlson, *In re* (127 Pa. St. 330; 18 Atl. 8; 24 W. N. C. 184), 747, 1237.
- Carlton v. Kreigher ([Tex.] 115 S. W. 619), 1235, 1904.
- Carolina Mfg. Co. v. Anthracite Beer Co. (25 Pa. Super. Ct. 94), 1788.
- Carmody v. People (17 Ill. 158), 1505.
- Carmon v. State (18 Ind. 450), 12, 32, 1496, 1561.
- Carnes v. State (18 Tex. App. 375), 1680.
- Carnes v. State (23 Tex. App. 449; 5 S. W. 133), 1588, 1680.
- Carnes v. State (51 Tex. Cr. App. 437; 103 S. W. 934), 958, 1465, 1473, 1611, 1689.
- Carnes v. State (53 Tex. Cr. App. 490; 110 S. W. 750), 1623, 1624.
- Carnes v. State (53 Tex. Cr. App. 509; 111 S. W. 402), 1211.
- Carnes v. State ([Tex. Cr. App.] 103 S. W. 934), 916.
- Carnes v. State ([Tex. Cr. App.] 10 S. W. 928), 913, 1682, 1684.
- Carney v. United States (7 Ind. Ty. 247; 104 S. W. 606), 2038, 2091.
- Carpeau v. Loiseau (12 Rev. Leg. 1309), 352.
- Carpenter, *In re* (71 Vt. 91; 41 Atl. 1042), 2036.
- Carpenter v. Commonwealth (92 Ky. 452; 18 S. W. 9; 13 Ky. L. Rep. 658), 2056, 2074.
- Carpenter v. Commonwealth (92 Ky. 452; 18 S. W. 9), 2041, 2056.
- Carpenter v. Innes (16 Col. 165; 26 Pac. 140), 1027.
- Carpenter v. Rogers (61 Mich. 384; 28 N. W. 156), 2094, 2108, 2116, 2123.
- Carr, *In re* (3 Sawy. 316; Fed. Cas. No. 2432), 1263.
- Carr v. Augusta (124 Ga. 11; 52 S. E. 300), 472, 715, 718, 734, 740, 748, 749, 750.

[References are to pages.]

- Carr v. Boone (108 Ind. 241; 9 N. E. 110), 610, 860.  
 Carr v. Fowler (74 Ind. 590), 397, 313.  
 Carr v. State (5 Tex. App. 153), 198, 1532.  
 Carrier v. Bernstein (104 Iowa 572; 73 N. W. 1076), 1711, 1882, 1885, 1939.  
 Carrier v. Bernstein ([Iowa] 76 N. W. 1076), 1845.  
 Carrier v. Bernstein (78 N. W. 1076), 1848.  
 Carrigan v. Carrigan (15 Gr. Eq. [N. J.] 341), 2152.  
 Carrigan v. Lycoming F. Ins. Co. (53 Vt. 418; 48 Am. Rep. 687), 1778.  
 Carrington v. Commonwealth (78 Ky. 83), 837.  
 Carroll v. State (63 Md. 551; 3 Atl. 29), 1358.  
 Carroll v. State (80 Miss. 349; 31 So. 742), 1608.  
 Carroll v. Wright (131 Ga. 728; 63 S. E. 260), 140, 276, 499, 526.  
 Carroll Co. v. Lee (127 Iowa 230; 103 N. W. 101), 802, 806.  
 Carry v. State (28 Tex. Cr. App. 477; 13 S. W. 773), 1160.  
 Carter v. Bartel (110 Iowa 211; 81 N. W. 462), 997, 1004, 1270.  
 Carter v. Clark (28 Conn. 512), 1800, 1802.  
 Carter v. Fischer (127 Ala. 52; 28 So. 376), 1805.  
 Carter v. Ford, etc., Co. (85 Ind. 180), 2250, 2253.  
 Carter v. Fred Miller Brewing Co. (111 Iowa 457; 82 N. W. 930), 1270.  
 Carter v. Nicol (116 Iowa 519; 90 N. W. 352), 770, 774, 778, 1269.  
 Carter v. State (87 Ala. 113; 6 So. 356), 2042, 2049.  
 Carter v. State (81 Ark. 37; 98 S. W. 704), 953.  
 Carter v. State (68 Ga. 826), 1505.  
 Carter v. State (12 Tex. 500; 62 Am. Dec. 539), 2040, 2047, 2051, 2052.  
 Carter v. State ([Tex. Cr. App.] 40 S. W. 267), 1379.  
 Carter v. State ([Tex. Civ. App.] 92 S. W. 1093), 336, 953, 1280.  
 Carter v. Steyer (93 Iowa, 533; 61 N. W. 956), 983, 994.  
 Carter v. Williams ([1870] L. R. 9 Eq. 678; 39 L. J. Ch. 560; 23 L. T. 183; 18 W. R. 593), 1813.  
 Carthage v. Block ([Mo. App.] 123 C. W. 482), 442.  
 Carthage v. Buckner (4 Ill. App. 317), 462, 845.  
 Carthage v. Carlton (99 Ill. App. 338), 434, 826, 844.  
 Carthage v. Duvall (202 Ill. 234; 66 N. E. 1099), 1280.  
 Carthage v. Munsell (203 Ill. 474; 67 N. E. 831; affirming 105 Ill. App. 119), 969, 1280, 1281.  
 Cartright v. McElden ([Ky.] 116 S. W. 297), 372.  
 Cartwright v. State (8 Lea 376), 2060, 2067, 2069, 2072.  
 Carson v. Devault (12 L. N. [Can.] 20), 1235.  
 Carson v. State (69 Ala. 235), 85, 86, 822, 842, 928.  
 Carstairs v. Cochran (95 Md. 488; 52 Atl. 601), 199, 200.  
 Carstairs v. O'Donnell (154 Mass. 357; 28 N. E. 271), 300, 308, 310, 313, 327, 1799.  
 Carswell, *In re* (15 Manitoba 620), 857, 896.  
 Carswell v. State ([Ga. App.] 66 S. E. 488), 4, 1708.  
 Carwile v. State ([Tex. Cr. App.] 72 S. W. 376), 1235, 1629.  
 Casat v. State (40 Ark. 511), 2041, 2054, 2070.

[References are to pages.]

- Casey v. Painter (50 Ohio St. 527; 38 N. E. 24), 1850, 1852.
- Casey v. State (6 Mo. 640), 1590.
- Casey v. State ([Tex. Cr. App.] 59 S. W. 884), 1473, 1681, 1684.
- Casey v. State ([Tex. Cr. App.] 67 S. W. 415), 1375.
- Caskey v. State ([Tex. Cr. App.] 108 S. W. 665), 1717.
- Cason v. State (37 Fla. 332; 20 S. 547), 934.
- Cassady v. Magher (85 Ind. 228), 2190.
- Cassedy v. Stockridge (21 Vt. 391), 2172, 2186.
- Cassel v. Scott (17 Ind. 514), 755.
- Cassens v. State (48 Tex. Cr. App. 186; 88 S. W. 229), 1694.
- Cassiday v. Macon ([Ga.] 64 S. E. 941), 91, 103, 162, 182.
- Castellano v. Marks (37 Tex. Civ. App. 273; 83 S. W. 729), 683, 761.
- Castle v. Bell (145 Ind. 8; 44 N. E. 2), 196, 599, 606, 854.
- Castle v. Fogerty (19 Ill. App. 619 [Bradw.] 442), 1925.
- Castleman v. State ([Tex. Cr. App.] 44 S. W. 494), 1693.
- Castner v. Sliker (33 N. J. L. 95), 1736.
- Caswell v. Hundred House [J. J.] 54 J. P. 87), 350.
- Caswell v. State (2 Humph. 402), 25, 26, 28, 967.
- Cates v. South (23 J. P. 739; 1 L. T. 365), 1136.
- Cathcart v. Hardy (2 M. & S. 534), 824, 1643, 1644.
- Catherwood v. Collins (12 Wright [Pa.] 480), 1384.
- Caton v. State [Tex. Cr. App.] 95 S. W. 540), 1202, 1286.
- Catoir v. Waterson (38 Ohio St. 319), 815.
- Catt v. Tourle ([1869] L. R. 4 Ch. 654; 38 L. J. Ch. 665; 21 L. T. 188; 17 W. R. 662; 32 J. P. 659), 1815.
- Caulkins v. Fry (35 Conn. 170), 2093, 2094, 2110, 2111.
- Cavanaugh v. Iowa Beer Co. (136 Iowa 276; 113 N. W. 856), 1812.
- Cavaness v. State (43 Ark. 331), 2041, 2051, 2054.
- Cavender v. Waddingham (2 Mo. App. 551), 2094, 2098, 2116.
- Cavender v. Waddingham (5 Mo. App. 457), 64, 2093, 2094, 2099.
- Cawthorne v. Campbell (1 Austr. 212), 1027.
- Cayionette v. Girard (28 L. C. J. 177; 1 Mon. Sup. Ct. 182), 1257, 1853, 1942.
- Cayuga County v. Freeoff (17 How. Prac. 442), 24, 46, 966.
- Cazet v. Field (9 Gray 329), 1807.
- C. B. George & Bro. v. Winchester (118 Ky. 429; 80 S. W. 1158; 26 Ky. L. Rep. 170), 630, 649, 935.
- C. D. Smith Drug Co. v. First Nat. Bank (60 Kan. 184; 55 Pac. 851), 1774.
- Cearfoss v. State (42 Md. 403), 1175, 1304, 1306, 1321.
- Center Co. Licenses (9 Pa. Co. Ct. Rep. 376), 628, 632.
- Centerville v. Gayken (20 S. D. 82; 104 N. W. 910), 446, 626.
- Central Ry. Co. v. Mackey (103 Ill. App. 15), 2206.
- Central, etc., Co. v. Phinazee (93 Ga. 488; 21 S. E. 66), 2177, 2201, 2202, 2203.
- Chaba v. Burnett (34 Ala. 400), 812.
- Chaddick v. Haley (81 Tex. 617; 17 S. W. 233), 2152.
- Chailles v. Bones (22 Austr. L. T. 97; 6 Austr. L. R. 209), 536.

\* [References are to pages.]

- Chalmers v. Funk** (76 Va. 717), 885, 906.  
**Chamberlain v. Tecumseh** (43 Neb. 221; 61 N. W. 632), 814.  
**Chambers, *In re*** (18 Pa. Super. Ct. 413), 625, 664.  
**Chambers v. Greencastle** (138 Ind. 339; 35 N. E. 14), 395.  
**Chambers v. Northwestern, etc., Ins. Co.** (64 Minn. 495; 67 N. W. 367; 58 Am. St. Rep. 549), 2222.  
**Chambers v. Smith** (12 M. & W. 2), 569.  
**Chamlee v. Davis** (115 Ga. 266; 41 S. E. 691), 175, 288, 382, 906, 910, 921.  
**Champer v. Greencastle** (138 Ind. 339), 408, 468.  
**Champion v. Board** (5 Dak. 416; 41 N. W. 379), 867, 878.  
**Champion v. State** (5 Dak. 416; 41 N. W. 739), 868.  
**Chandler v. Ruebelt** (83 Ind. 139), 599, 621, 662.  
**Chandler's Wiltshire Brewery Co., *In re*** ([1903] 1 K. B. 569; 72 L. J. K. B. 250; 67 J. P. 119; 51 W. R. 573; 88 L. T. 271; 19 T. L. R. 268), 1834.  
**Channey v. State** (146 Ala. 136; 41 So. 172), 288.  
**Chapleau v. Chapleau** (1 Leg. News. 473), 2152.  
**Chapman, *In re*** ([N. Y.] 119 N. Y. Supp. 352), 720.  
**Chapman v. Erie R. Co.** (55 N. Y. 579), 352, 2190, 2191, 2202.  
**Chapman v. State** (100 Ga. 311; 27 S. E. 789), 25, 969, 1711.  
**Chapman v. State** (37 Tex. Cr. App. 137; 39 S. W. 113), 868, 912, 916.  
**Chappel v. State** ([Ala.] 47 So. 329), 1454.  
**Charge to Grand Jury, *In re*** (10 N. J. Law J. 116), 1108, 1109, 1110.  
**Charles v. Bones** (22 Austr. L. T. 97; 6 Austr. L. R. 209), 1134.  
**Charles v. Grierson** (29 Austr. L. T. 222), 1147.  
**Charles v. State** (13 Tex. App. 658), 2061.  
**Charleston v. Ahrens** (4 Strob. L. [S. C.] 241), 111, 139.  
**Charleston v. Benjamin** (2 Strob. [S. C.] 508), 216.  
**Charleston v. Corleis** (2 Bailey [S. C.] 186), 499, 501.  
**Charleston v. Feckman** (3 Rich. L. 385), 498.  
**Charleston v. Payne** (2 Nott. & McC. 475), 2034.  
**Charleston v. Schmidt** (11 Rich. L. 343), 499, 501.  
**Charleston v. State** (4 Strobh. 241), 307.  
**Charlton v. Donnell** (100 Mass. 229), 1800.  
**Charrington & Co., Limited, v. Camp.** ([1902] 1 Ch. 386; 71 L. J. Ch. 196; 86 L. T. 15; 18 T. L. R. 152), 1829.  
**Chase v. Keniston** (76 Me. 209), 1944, 1974.  
**Chase v. Van Buren Circuit Judge** (148 Mich. 149; 111 N. W. 750; 14 Detroit L. N. 73), 840, 841.  
**Chason v. City of Milwaukee** (30 Wis. 316), 408.  
**Chastain v. Calhoun** (29 Ga. 333), 522.  
**Chatham v. State** (92 Ala. 47; 9 So. 607), 2042, 2079.  
**Cheadle v. State** (4 Ohio St. 477), 1384, 1590.  
**Chemlir v. Sawyer** (42 Neb. 362; 60 N. W. 547), 1859, 1999, 2001.  
**Cheney, *In re*** (35 Misc. Rep. 598; 72 N. Y. Supp. 134), 582, 583, 592.  
**Cheney v. Duke** (10 Gill & J. 11), 1801.



[References are to pages.]

- Chenowith, *In re* (56 Neb. 688; 77 N. W. 63), 1739.
- Chenowith v. State (50 Tex. Cr. App. 238; 96 S. W. 19), 914, 915, 916, 1176.
- Cheny v. Shelbyville (18 Ind. 84), 418.
- Cherry v. Commonwealth (78 Va. 375), 715, 737, 743, 744.
- Cherry v. Shelbyville (19 Ind. 84), 795.
- Chesapeake Club v. State (63 Md. 446), 1325, 1339.
- Chesapeake, etc., R. Co. v. Saulsberry (112 Ky. 915; 66 N. W. 1051; 23 Ky. L. Rep. 2341; 56 L. R. A. 580), 2206, 2208, 2213, 2214.
- Chew v. State (43 Ark. 361), 822, 834.
- Chicago v. Collins (175 Ill. 445; 51 N. E. 907; 49 L. R. A. 408; 67 Am. Rep. 224), 479.
- Chicago v. Enright (27 Ill. App. 559), 793, 802.
- Chicago v. Malken (119 Ill. App. 542; affirmed 217 Ill. 471; 75 N. W. 548), 691.
- Chicago v. Netcher (183 Ill. 104; 55 N. E. 307), 454, 469, 1337.
- Chicago v. O'Hara (124 Ill. App. 290), 578, 649, 800.
- Chicago v. Slack (121 Ill. App. 131), 409, 415.
- Chicago v. Stratton (162 Ill. 494; 45 N. E. 116), 204.
- Chicago City R. Co. v. Lewis (5 Ill. App. 242), 2174, 2177.
- Chicago City Ry. Co. v. Wall (93 Ill. App. 441), 1736.
- Chicago, etc., R. Co. v. Bell (70 Ill. 102), 2172, 2180, 2185.
- Chicago, etc., Co. v. Chicago (88 Ill. 221; 30 Am. Rep. 545), 167.
- Chicago, etc., R. Co. v. Doyle (18 Kan. 58), 2200.
- Chicago, etc., R. Co. v. Drake (33 Ill. App. 114), 2176.
- Chicago, etc., R. Co. v. Jones (149 Ill. 361; 37 N. E. 247), 264, 1585.
- Chicago, etc., R. Co. v. Randolph (199 Ill. 126; 65 N. E. 142), 1736, 2208.
- Chicago, etc., R. Co. v. Sullivan (63 Ill. 293), 2192, 2194, 2198, 2199, 2201.
- Child v. Hudson's Bay Co. (2 P. Williams, 207), 438.
- Childers v. Shepherd ([Ala.] 39 So. 235), 174, 233.
- Chilvers v. People (11 Mich. 43), 479, 788.
- Chinn v. Russell (2 Blackf. [Ind.] 172), 1027.
- Chipman v. People (24 Colo. 520; 52 Pac. 677), 1609, 1697.
- Chisholm v. Strickland (9 N. S. W. L. R. 391), 1325, 1343.
- Chittenden Co. v. Mitchell (23 Vt. 131), 1743.
- Chivers v. People (11 Mich. 43), 479, 788.
- Choate v. State (47 Tex. Cr. App. 297; 83 S. W. 377), 1380.
- Choice v. State (31 Ga. 424), 1735, 2041, 2058, 2086.
- Choran v. State (49 Tex. Cr. App. 301; 92 S. W. 422), 1202.
- Chrisman v. State (54 Ark. 283), 2041.
- Christ Diehl Brewing Co. v. Spencer (29 Ohio Cir. Ct. Rep. 512), 541.
- Christ Deal Brewing Co. v. Beck (30 Ohio Cr. Ct. Rep. 226), 544.
- Christian v. State (40 Ala. 376), 1290.
- Christian v. State ([Tex. Cr. App.] 39 S. W. 682), 1698.
- Christian Moer. Brewing Co. v. Hill (166 Fed. 1140), 259, 293.
- Christie v. Britnell (21 Viet. L. R. 71; 17 Austr. L. T. 59; 1 Austr. L. R. 59), 1571.

[References are to pages.]

- Christensen, *In re* (43 Fed. 243), 206.
- Christensen, *Ex parte* (85 Cal. 208; 24 Pac. 747), 191, 195, 206, 208.
- Christensen v. Kellogg, etc., Co. (110 Ill. App. 61), 974.
- Chung Sing v. United States (36 Pac. 205), 1629.
- Church v. Higham (44 Iowa, 482), 1242, 1251, 1252, 1255.
- Church v. Northern Pac. R. Co. (31 Fed. 529), 2197.
- Church v. Territory ([N. M.] 91 Pac. 720), 358.
- Church v. Weeks (38 Mo. App. 566), 887.
- Churchill v. Alpena Ct. Judge (56 Mich. 536; 23 N. W. 211), 2255.
- Churchill v. Detroit (153 Mich. 93; 116 N. W. 558), 424.
- Churchill v. Herriek (32 Wis. 357), 808.
- Chute v. Van Camp ([Wis.] 117 N. W. 1012), 441.
- Chuya, *In re* (20 Pa. Super. Ct. 410), 626, 628, 629, 635, 664.
- Cincinnati v. Rice (15 Ohio, 225), 216.
- Cincinnati, etc., R. Co. v. Commissioners, etc. (1 Ohio St. 77), 240, 1014.
- Cincinnati, etc., R. Co. v. Commonwealth (126 Ky. 563; 104 S. W. 394; 31 Ky. L. Rep. 954), 955, 1289.
- Cincinnati, etc., R. Co. v. Cooper (120 Ind. 469; 22 N. E. 340; 6 L. R. A. 241), 2191, 2193, 2202, 2209, 2210.
- Cincinnati, etc., R. Co. v. Marrs (119 Ky. 469; 85 S. W. 188; 70 L. R. A. 291), 2183, 2213, 2217.
- Cipperley, *In re* (50 N. Y. Misc. Rep. 266; 100 N. Y. Supp. 473), 852.
- City Council v. Ahrens (4 Strobb. 241), 189.
- City Council v. Hollenback (3 Strobb. 355), 529.
- City Council v. Talek (3 Rich. L. [S. C.] 299), 1124, 1309, 1669.
- City Council v. Van Roven (2 McCord [S. C.] 465), 1370.
- City Tattersall's Club, *In re* (29 Vict. L. R. 257; 25 Austr. L. T. 85; 9 Austr. L. R. 165), 1345.
- Citizens, etc., v. Board (49 La. Ann. 641; 21 So. 742), 939.
- Clancy, *In re* (58 N. Y. Misc. Rep. 258; 109 N. Y. Supp. 644), 881.
- Clapton v. Commonwealth ([Va.] 63 S. E. 1022), 1650, 1652.
- Clare v. State (5 Clarke [Iowa] 509), 1501.
- Clark, *Ex parte* (69 Ark. 435; 64 S. W. 223), 635.
- Clark, *Ex parte* ([Tex.] 120 S. W. 892), 279, 291, 387, 419, 635.
- Clark v. Adams (80 Miss. 219; 31 So. 746), 1098, 1761.
- Clark v. Carter (40 Ind. 190), 355.
- Clark v. Coldwell (6 Watts, 139), 2119, 2120.
- Clark v. Daniel (77 Ark. 122; 91 S. W. 9), 859.
- Clark v. Ellis (2 Blackf. [Ind.] 248), 294.
- Clark v. Pratt ([Miss.] 11 So. 631), 669.
- Clark v. Railroad Company (4 Allen [Mass.] 231), 1070.
- Clark v. Riddle (101 Iowa, 270; 70 N. W. 207), 932, 978, 1005.
- Clark v. Rogers (81 Ky. 43), 233.
- Clark v. Sheehan (22 N. Z. 767), 1153.
- Clark v. Skinner (20 John. [N. Y.] 465; 11 Am. Dec. 302), 1027.
- Clark v. State ([Ga.] 63 S. E. 606), 1602.

[References are to pages.]

- Clark v. State (34 Ind. 311), 1442, 1483, 1484, 1566.
- Clark v. State (24 Neb. 263; 38 N. W. 752), 616.
- Clark v. State (32 Neb. 246; 49 N. W. 367), 2056.
- Clark v. State (8 Humph. 671), 2040.
- Clark v. State (40 Tex. Cr. App. 127; 49 S. W. 85), 1612, 1613, 1691, 1732, 1733.
- Clark v. State ([Tex. Cr. App.] 107 S. W. 1198), 1465, 1473.
- Clark v. State (53 Tex. Civ. App. 529; 111 S. W. 659), 86, 2032.
- Clark v. Tower (65 Atl. 3; 104 Md. 175), 120, 286, 864.
- Clark v. Tuckett (2 Vent. 182), 294.
- Clark v. Wilmington, etc., R. Co. (109 N. C. 430); 14 S. E. 43; 14 L. R. A. 749), 2183, 2197.
- Clarke v. Blake (2 Ves. Jr. 673), 1906.
- Clarke v. Philadelphia, etc., Co. 92 Minn. 418; 100 N. W. 231), 1736, 2186.
- Clarke v. Rochester (5 Abb. Prac. 107), 233.
- Clarke Co. v. Herrington (113 Ga. 234; 38 S. E. 852), 476.
- Class, Appeal of (6 Pa. Super. Co. 130), 697, 705.
- Claus v. Hardy (31 Neb. 35; 47 N. W. 418), 661.
- Claussen v. Luverne (103 Minn. 491; 115 N. W. 643), 752, 788.
- Clay, *In re* (1 B. C. pt. II, 300), 491.
- Claydon v. Green ([1868] L. R. 3 C. P. 511; 37 L. J. C. P. 226; 18 L. T. 607; 16 W. R. 1126), 1830.
- Clayton, *Ex parte* (63 J. P. 688), 567, 570.
- Clearof, *In re* ([1907] 14 App. Ont. L. R. 392), 921.
- Clears v. Stanley (34 Ill. App. 338), 1909, 1973.
- Clegg v. Hands ([1890] 44 Ch. D. 503; 55 J. P. 180), 1816.
- Cleghorn v. New York, etc., Co. (56 N. Y. 44), 2172, 2192, 2194, 2198.
- Clement, *In re* (29 N. Y. Misc. Rep. 29; 60 N. Y. Supp. 328), 852.
- Clements, *In re* (52 N. Y. Misc. Rep. 325; 102 N. Y. Supp. 178; affirmed 118 N. Y. App. Div. 515; 103 N. Y. Supp. 157), 580, 730.
- Clement, *In re* 54 N. Y. Misc. Rep. 362; 105 N. Y. Supp. 1054), 103.
- Clement, *In re* (55 N. Y. Misc. Rep. 615; 105 N. Y. Supp. 1085), 706, 733, 736, 741.
- Clement, *In re* (57 N. Y. Misc. Rep. 47; 107 N. Y. Supp. 205), 731, 752.
- Clement, *In re* (58 N. Y. Misc. Rep. 257; 110 N. Y. Supp. 893), 723.
- Clement, *In re* (58 N. Y. Misc. Rep. 638; 111 N. Y. Supp. 1073), 584.
- Clement, *In re* (59 N. Y. Misc. Rep. 367; 112 N. Y. Supp. 126), 718, 742, 746, 751.
- Clement, *In re* (62 N. Y. Misc. Rep. 512; 116 N. Y. Supp. 1070), 742, 746, 751.
- Clement, *In re* (116 N. Y. App. Div. 148; 101 N. Y. Supp. 683; affirmed 118 N. Y. App. Div. 575; 103 N. Y. Supp. 157), 729, 739, 745.
- Clement, *In re* (118 N. Y. App. Div. 575; 103 N. Y. Supp. 157; affirming 103 N. Y. Supp. 447), 584, 732.
- Clement, *In re* (119 N. Y. App. Div. 622; 104 N. Y. Supp. 25; 53 N. Y. Misc. Rep. 358; 104 N. Y. Supp. 905), 730.

[References are to pages.]

- Clement, *In re* (125 N. Y. App. Div. 676; 110 N. Y. Supp. 57, 59), 534, 546, 732.
- Clement, *In re* (187 N. Y. 274; 79 N. E. 1003), 745, 932.
- Clement, *In re* (190 N. Y. 523; 83 N. E. 1123; affirming 119 N. Y. App. Div. 622; 104 N. Y. Supp. 25), 370, 719.
- Clement v. Beers (110 N. Y. Supp. 99), 1312.
- Clement v. Empire State Surety Co. (110 N. Y. S. 418), 1924.
- Clement v. Federal Union Surety Co. (122 N. Y. App. Div. 18; 106 N. Y. Supp. 1061), 769.
- Clement v. Harden (62 N. Y. Misc. Rep. 31; 114 N. Y. Supp. 751), 1016, 1075.
- Clement v. Martin (117 N. Y. App. Div. 5; 102 N. Y. Supp. 37), 1188, 1268, 1312.
- Clement v. Mattison (3 Rich. L. [S. C.] 93), 2109, 2114.
- Clement v. Moore ([N. Y. App. Div.] 119 N. Y. Supp. 883), 751.
- Clement v. Rafbech (62 N. Y. Misc. Rep. 27; 115 N. Y. Supp. 162), 1074.
- Clement v. Smith (60 N. Y. Misc. Rep. 395; 112 N. Y. Supp. 955), 757.
- Clement v. Viscosi (63 N. Y. App. Div. 514; 118 N. Y. Supp. 613), 698, 750, 818.
- Clemmens v. Commonwealth (6 Rand. 681), 540.
- Cleveland v. Rogers (6 Wend. [N. Y.] 438), 1018.
- Cleveland v. State (86 Ala. 1; 5 So. 426), 2062, 2063, 2068.
- Cleveland v. State (4 Ga. App. 62; 60 S. E. 801), 2024, 2035.
- Cleveland v. Tripp (13 R. I. 50), 792.
- Cleveland v. State ([Tex. Cr. App.] 66 S. W. 550), 1235, 1237, 1627.
- Cleveland, etc., R. Co. v. Harrington (131 Ind. 426; 30 N. E. 37), 98.
- Clevenger v. Rushville (90 Ind. 258), 403.
- Clifford v. O'Donnell (24 N. S. W. 8), 1129, 1134.
- Clifford v. Smith (24 N. S. W. 192), 1255.
- Clifford v. State (29 Wis. 327), 12, 15, 23, 26, 29.
- Clifton v. Davis (1 Pars. Eq. Cas. 31), 2094, 2097, 2103, 2130.
- Clifton Cook Brewery v. Ryan (19 N. Y. 595), 1819.
- Cline v. State (43 Ohio St. 332; 1 N. E. 22), 2040, 2048, 2067, 2073.
- Cline v. Cline (10 Ore. 474), 2164.
- Clinton v. Gruesendorf (79 Iowa, 117; 45 N. W. 407), 69, 70, 1315.
- Clinton v. Laming (61 Mich. 355; 28 N. W. 125), 1899, 1900, 1978.
- Clinton v. Phillips (58 Ill. 102), 840.
- Clinton v. State (58 Ill. 102), 211, 220.
- Clinton v. State (33 Ohio St. 27), 1655.
- Clintonville v. Keating (4 Denio [N. Y.] 341), 401, 410, 414, 470.
- Clipperly, *In re* (50 N. Y. Misc. Rep. 266; 100 N. Y. Supp. 473), 880, 881, 882, 922.
- Clisham, *In re* (105 Cal. 674; 39 Pac. 37), 1532, 1533.
- Clohessy v. Roedelheim (99 Pa. St. 56), 1806.
- Clopton v. Commonwealth ([Va.] 63 S. E. 1022), 264, 1653, 1654.
- Clore & Berry, *In re* (2 B. C. 131), 627, 631.
- Clore v. State (26 Tex. App. 624; 10 S. W. 242), 2039, 2088, 2090.

[References are to pages.]

- Close v. Burkholder (18 Pa. St. 48), 1782.
- Close v. O'Brien (135 Iowa, 305; 112 N. W. 800), 589.
- Cluck v. State (40 Ind. 263), 2040.
- Cloud v. State (36 Ark. 151), 513, 1357, 1358, 1372.
- Clutch v. Clutch (1 N. J. Eq. 474), 2167.
- Clyde, *In re* (82 Neb. 537; 118 N. W. 90), 761.
- Coates v. New York (7 Cow. [N. Y.] 585, 604, 606), 129.
- Coats v. State (48 Tex. Cr. App. 553; 89 S. W. 838), 1280.
- Cobb v. Billings (23 Me. 470), 1191, 1780.
- Cobb v. Cobb ([1900] P. 294; 64 L. J. P. 125; 83 L. T. 716), 2169.
- Cobb v. People (84 Ill. 511), 784.
- Cobb v. Tarr (16 Gray, 597), 1775.
- Cobleigh v. McBride (45 Iowa, 116), 1223, 1661, 2011.
- Coburn v. Gill ([Tex. Civ. App.] 60 S. W. 974), 772, 785.
- Cochell v. Reynolds (156 Ind. 14; 58 N. E. 1029), 855.
- Cockerell v. Commonwealth (115 Ky. 296; 24 Ky. L. Rep. 449; 72 S. W. 760), 1493, 1494.
- Cochill v. Reynolds (156 Ind. 14; 58 N. E. 1029), 606.
- Cochrane v. Clough (38 Me. 25), 1782.
- Cochran's Will, *In re* (1 T. B. Mon. 263; 15 Am. Dec. 116), 2156, 2150.
- Cochran v. State (26 Tex. 678), 1290, 1491, 1505, 1554, 1590.
- Cocker v. McMullen (64 J. P. 245; 81 L. T. 784), 690, 1271, 1285.
- Cockerell v. Commonwealth (115 Ky. 296; 73 S. W. 760; 24 Ky. L. Rep. 2149), 1698, 1699.
- Cockrill v. Cockrill (79 Fed. 143), 2019, 2117.
- Cockrill v. Cockrill (92 Fed. 811; 34 C. C. A. 254), 2019, 2117.
- Cocks v. Lady Henry Somerset ([1895] 11 T. L. R. 567), 1830.
- Coe, *In re* (24 Up. Can. 439), 914.
- Coe v. Errol (116 U. S. 517; 42 L. Ed. 1088; 6 Sup. Ct. 475), 325.
- Coe v. State ([Okla.] 104 Pac. 1074), 38, 83.
- Cofer v. Commonwealth ([Ky.] 87 S. W. 264; 27 Ky. L. Rep. 934), 415, 543.
- Coffee v. Ruffin (4 Cold. 487), 2126.
- Coffeen v. Huber (78 Ill. App. 455), 1280.
- Coffer v. Elizabethtown ([Ky.] 99 S. W. 608; 36 Ky. L. Rep. 706), 186.
- Cofield v. Britton ([Tex. Civ. App.] 109 S. W. 493), 245, 865, 921, 938.
- Coffin, *In re* (41 N. Y. Misc. 131; 83 N. Y. Supp. 941), 2017.
- Cogdell v. Wilmington, etc., R. Co. 130 N. C. 313; 41 S. E. 541), 2189.
- Coggeshall v. Groves (16 R. I. 18; 11 Atl. 296), 123, 491, 1194.
- Coggeshall v. Pallett (15 R. I. 168; 1 Atl. 413), 762, 778.
- Coggins v. Griffith (5 Ga. App. 1; 62 S. E. 659), 441, 1089, 1090.
- Coghill v. State (37 Ind. 111), 467.
- Cogill v. Queenstown (21 Juta, 262), 604.
- Cohaba v. Burnett (34 Ala. 400), 811.
- Cohely v. State (4 Iowa, 477), 1484.
- Cohen, *In re* (5 Pa. Super. Ct. 224), 666.
- Cohen v. Jarrett (42 Md. 571), 101, 138, 195, 574.



[References are to pages.]

- Cohen v. King Knob Club (55 W. Va. 108; 46 S. E. 799), 977, 990.
- Cohen v. Rice ([Tex. Civ. App.] 101 S. W. 1052), 167, 424.
- Cohen v. State ([Ga.] 65 S. E. 1096), 1530.
- Cohen v. State (53 Tex. Cr. App. 422; 110 S. W. 66), 364.
- Cohens v. State ([Tex.] 116 S. W. 571), 937.
- Cohn, *In re* ([Neb.] 121 N. W. 107), 574.
- Cohn v. Melcher (29 Fed. 433), 152.
- Cohn v. State (120 Tenn. 61; 109 S. W. 1149), 254, 1602.
- Cohoes v. Moran (25 How. Pr. 385), 448, 449.
- Coker v. State (91 Ala. 92; 8 So. 874), 1166, 1223, 1224, 1754.
- Colchester v. Godwin (Carter, 121), 294.
- Colbath v. State (4 Tex. App. 76), 2039, 2067.
- Colburn v. Spencer (177 Mass. 743; 59 N. E. 78), 1974.
- Colby v. Fitzgerald ([Iowa] 94 N. W. 491), 1661.
- Colby v. State ([Iowa] 94 N. W. 491), 1731.
- Coldwell v. Guider (88 Ala. 421; 7 So. 203), 941.
- Cole, Appeal of (79 Conn. 679; 66 Atl. 508), 750.
- Cole v. Cole (5 Sneed [Tenn.] 57; 70 Am. Dec. 275), 2114.
- Cole v. Commonwealth (101 Ky. 151; 39 S. W. 1029; 19 Ky. L. Rep. 324), 934.
- Cole v. Commonwealth ([Ky.] 98 S. W. 1002; 30 Ky. L. Rep. 385), 923.
- Cole v. Coulton (24 J. P. 596; 2 E. & E. 695; 29 L. J. M. C. 125; 2 L. T. 216; 8 W. R. 412), 367, 726, 2026.
- Cole v. McClendler (109 La. 183; 34 S. E. 384), 865.
- Cole v. Robbins (Bull. N. P. 172a), 2092, 2098, 2106.
- Cole v. State (120 Ga. 485; 48 S. E. 156), 1602, 1650.
- Cole v. State (9 Tex. 42), 369, 370.
- Colee v. State (75 Ind. 511), 2040.
- Coleman v. People (78 Ill. App. 210), 1912, 1923, 1974, 1980.
- Coleman v. State (145 Ala. 13; 40 So. 715), 1479.
- Coleman v. State (150 Ala. 64; 43 So. 715), 1443, 1484, 1505.
- Coleman v. State (3 Ga. App. 298; 59 S. E. 829), 2032.
- Coleman v. State (53 Tex. Cr. App. 578; 111 S. W. 1011), 916, 1168, 1181, 1339, 1343, 1692, 1694, 1696, 1729.
- Coleman v. State (54 Tex. Cr. App. 396; 112 S. W. 1072), 913, 1599, 1703.
- Colglazier v. McClary ([Neb.] 98 N. W. 670), 586, 618.
- Colglazier v. Salem (61 Ind. 445), 811.
- Collarn, *In re* (134 Pa. St. 551; 19 Atl. 775), 635, 648.
- Collender v. Densmore (55 N. Y. 206), 1727.
- Collian, *In re* (82 N. Y. App. Div. 445; 81 N. Y. Supp. 567), 186.
- Collier v. Early (54 Ind. 559), 1870, 1871.
- Collins v. Barrier (64 Miss. 21; 8 So. 164), 577, 603, 669.
- Collins v. Hills (77 Iowa, 181; 41 N. W. 571; 3 L. R. A. 110), 309, 310.
- Collins v. Noyes (66 N. H. 619; 27 Atl. 225), 1021.
- Collins v. State (152 Ala. 90; 44 So. 571), 1607, 1645.
- Collins v. State (114 Ga. 70; 39 S. E. 916), 946.
- Collins v. State (38 Ind. App. 625; 78 N. E. 851), 1573.
- Collins v. State (34 Tex. Cr. App. 95; 29 S. W. 274), 1351, 1361.

[References are to pages.]

- Collins v. State (47 Tex. Cr. App. 497; 84 S. W. 585), 1695.
- Collins v. State (115 Wis. 596; 92 N. W. 266), 2078, 2079.
- Colon v. Lisk (153 N. Y. 188; 47 N. E. 302), 743.
- Colter v. Cooper (15 N. Z. L. R. 186), 1727.
- Columbus City v. Cutcomp (61 Iowa, 672), 488, 490.
- Columbus v. Schaerr (5 Ohio S. & C. P. 100), 211, 295, 442.
- Columbus City v. Cutcomp (61 Iowa, 672; 17 N. W. 47), 168, 183, 184, 185.
- Columbus, etc., R. Co. v. Wood (86 Ala. 164), 2182, 2184, 2185, 2190.
- Colusa County v. Seube ([Cal.] 53 Pac. 1128; affirming [Cal.] 53 Pac. 654), 412, 447.
- Colvin v. Finch (75 Ark. 154; 87 S. W. 443), 859.
- Colwell v. State (112 Ga. 75; 37 S. E. 129), 965, 969, 971.
- Combe v. Carthew ([N. J. L.] 43 Atl. 1057), 2121.
- Combs v. Commonwealth ([Ky.] 104 S. W. 270; 31 Ky. L. Rep. 822), 959, 1158, 1465, 1467, 1470.
- Combs v. State (81 Ga. 780; 8 S. E. 318), 1465, 1469.
- Commagere v. Brown (27 La. Ann. 314), 1811.
- Commissioners v. Backus (29 How. Prac. 33), 783, 1188.
- Commissioners v. Beall (98 Tex. 104; 81 S. W. 526), 863.
- Commissioners v. Cartman ([1896] 1 Q. B. 655; 60 J. P. 357; 65 L. J. M. C. 113; 74 L. T. 726; 44 W. R. 631; 12 T. L. R. 334), 361, 1253, 1352, 1355.
- Commissioners v. Daugherty (55 Barb. 332), 513, 1372.
- Commissioners v. Dennis (1 Cheves, 229), 508.
- Commissioner v. Donovan ([1903] 1 K. B. 895; 67 J. P. 147; 72 L. J. K. B. 545; 52 W. R. 14; 88 L. T. 555; 19 T. L. R. 392), 744.**
- Commissioners v. Freeoff (17 How. Pr. 442), 48, 82.
- Commissioner v. Gas Co. (2 Grant [Pa.], 291), 408.
- Commissioners v. Patterson (8 Jones [N. C.] Law, 182), 443.
- Commissioner v. Roberts ([1904] 1 K. B. 369; 68 J. P. 39; 73 L. J. K. B. 231; 52 W. R. 560; 20 T. L. R. 105), 1140.
- Commissioners v. Taylor (21 N. Y. 173), 14, 48, 82, 85.
- Commissioners v. Trimble (150 Mass. 89; 22 N. E. 239), 62.
- Commonwealth v. Aaron (114 Mass. 255), 1097, 1674.
- Commonwealth v. Acton (165 Mass. 11; 42 N. E. 329), 1596.
- Commonwealth v. Adair (6 Ky. L. Rep. [abstract] 306), 1681.
- Commonwealth v. Adair (121 Ky. 689; 89 S. W. 1130; 28 Ky. L. Rep. 657), 950.
- Commonwealth v. Adams (1 Gray, 481), 1483, 1485.
- Commonwealth v. Adams (6 Gray, 359), 1744.
- Commonwealth v. Ahrens (150 Mass. 393; 23 N. E. 53), 1166.
- Commonwealth v. Alexander (1 Va. Cas. 156; 4 Hen. & M. 522), 2031.
- Commonwealth v. Alger (7 Cush. 53), 92, 97, 1009.
- Commonwealth v. Allen (15 B. Mon. 1), 1516, 1517.
- Commonwealth v. Alpa (24 Super. Ct. 454), 1342, 1344.
- Commonwealth v. Anderson (10 Ky. L. Rep. 307), 946, 957, 1463, 1682, 1729.
- Commonwealth v. Andrews (143 Mass. 23; 8 N. E. 643), 1672.

[References are to pages.]

- Commonwealth v. Anthes (12 Gray, 29), 8, 85, 1592.
- Commonwealth v. Armstrong (7 Gray, 494), 1650, 1655.
- Commonwealth v. Arnold (4 Pick. 251), 369, 1575.
- Commonwealth v. Asbury (104 Ky. 320; 47 S. W. 217; 20 Ky. L. Rep. 574), 541, 1269.
- Commonwealth v. Atkins (136 Mass. 160), 1081, 1089, 1116, 1669.
- Commonwealth v. Auberton (133 Mass. 404), 213, 214, 344, 347.
- Commonwealth v. Ault (10 Pa. Super. Ct. 651), 2079.
- Commonwealth v. Austin (97 Mass. 595), 1647, 1719, 1730.
- Commonwealth v. Baird (4 S. & K. 141), 1505.
- Commonwealth v. Baker (10 Cush. 405), 1516, 1518.
- Commonwealth v. Baker (2 Gray, 78), 1534.
- Commonwealth v. Baker (152 Mass. 337; 25 N. E. 718), 1103.
- Commonwealth v. Baker (11 Phila. 631; 33 Leg. Int. 367), 2040, 2051, 2060, 2068.
- Commonwealth v. Barbour (121 Ky. 689; 89 S. W. 479; 28 Ky. L. Rep. 433), 957.
- Commonwealth v. Barker (14 Gray, 412), 1113, 1115, 1666, 1668.
- Commonwealth v. Barley (97 Mass. 597), 1614.
- Commonwealth v. Barlow (97 Mass. 597), 1595.
- Commonwealth v. Barnes (138 Mass. 511), 546, 1126, 1238, 1265.
- Commonwealth v. Barnes (140 Mass. 447), 213, 344.
- Commonwealth v. Barry (115 Mass. 146), 1090, 1368.
- Commonwealth v. Bartholomew ([Ky.] 33 S. W. 840), 1499.
- Commonwealth v. Bartley (138 Mass. 181), 1543.
- Commonwealth v. Bathrick (6 Cush. 247), 22, 965.
- Commonwealth v. Baumler (20 Pa. Super. Ct. 273), 1237.
- Commonwealth v. Baward (6 Gray, 488), 1479.
- Commonwealth v. Bearce (150 Mass. 389; 23 N. E. 99), 572, 739, 740, 1452.
- Commonwealth v. Beck (187 Mass. 15; 72 N. E. 357), 956.
- Commonwealth v. Beckum (153 Mass. 386; 26 N. E. 1003), 1746.
- Commonwealth v. Beldham (15 Pa. Super. Ct. 33), 972.
- Commonwealth v. Bell (14 Bush, 433), 1461, 1564.
- Commonwealth v. Below (115 Mass. 139), 1643.
- Commonwealth v. Bengel (13 Ky. L. Rep. 591), 1502.
- Commonwealth v. Bennett (108 Mass. 27), 228, 232, 235, 240, 1035, 1099, 1741.
- Commonwealth v. Bennett (108 Mass. 30; 11 Am. Rep. 304), 1491, 1514.
- Commonwealth v. Bently (97 Mass. 551), 87, 1702, 1709.
- Commonwealth v. Berghman (129 Pa. 644; 18 Atl. 570; 25 Wkly. N. C. 151), 522.
- Commonwealth v. Berry (109 Mass. 366), 1658, 1659.
- Commonwealth v. Bickum (153 Mass. 386; 26 N. E. 1003), 1595, 1614.
- Commonwealth v. Bishman (138 Pa. 639; 12 Atl. 12), 1752.
- Commonwealth v. Blackburn ([Ky.] 122 S. W. 818), 648.
- Commonwealth v. Blackington (24 Pick. 352), 111, 139, 503, 504, 1159.
- Commonwealth v. Blanchard (105 Mass. 173), 1460.

[References are to pages.]

- Commonwealth v. Blair (5 Pa. Dist. Rep. 488), 647.
- Commonwealth v. Blood (4 Gray, 31), 1623, 1626, 1647, 1656.
- Commonwealth v. Blos (116 Mass. 56), 8, 11, 44, 46, 85, 962, 973, 1704.
- Commonwealth v. Bogie (1 S. W. 532; 8 Ky. L. Rep. 350), 931.
- Commonwealth v. Bogie (7 Ky. L. Rep. [abstract] 601), 946.
- Commonwealth v. Bolkom (3 Pick. 251), 369, 1575, 1640.
- Commonwealth v. Boon (2 Gray, 74), 2031.
- Commonwealth v. Boyd ([Ky.] 32 S. W. 132), 1467, 1468.
- Commonwealth v. Boyden (14 Gray, 101), 1656, 1667, 1715, 1672.
- Commonwealth v. Boyden (183 Mass. 1; 66 N. E. 202), 1195.
- Commonwealth v. Boyle (14 Gray, 3), 1513.
- Commonwealth v. Boyle (145 Mass. 373; 14 N. E. 155), 1670.
- Commonwealth v. Bottoms ([Ky.] 50 S. W. 684; 20 Ky. L. Rep. 1929), 939.
- Commonwealth v. Bottoms ([Ky.] 57 S. W. 493; 20 Ky. L. Rep. 1829; reversing 57 S. W. 495), 940.
- Commonwealth v. Bottoms ([Ky.] 22 Ky. L. Rep. 410; 57 S. W. 493), 234.
- Commonwealth v. Boutwell (162 Mass. 230; 38 N. E. 441), 1082.
- Commonwealth v. Boyton (2 Allen, 160), 1112, 1115.
- Commonwealth v. Bradley (3 Gray, 456), 1115.
- Commonwealth v. Brady (147 Mass. 683; 18 N. E. 568), 1375, 1675, 1676.
- Commonwealth v. Brelsford (161 Mass. 61; 36 N. E. 677), 709, 1698.
- Commonwealth v. Brem (5 Pa. Super. Ct. 104), 1342, 1343.
- Commonwealth v. Brenaman (8 B. Mon. 374), 511, 694.
- Commonwealth v. Brennan (103 Mass. 70), 95, 129, 182, 184, 186, 488, 489, 714, 1374.
- Commonwealth v. Briggs (11 Met. 573), 1655.
- Commonwealth v. Briant (142 Mass. 463; 8 N. E. 338; 56 Am. Rep. 707), 1591, 1615, 1629.
- Commonwealth v. Broker (151 Mass. 355; 23 N. E. 1137), 1445, 1449, 1452.
- Commonwealth v. Brooks (150 Mass. 59; 22 N. E. 436), 1615.
- Commonwealth v. Brothers (158 Mass. 200; 33 N. E. 386), 259, 345, 1536, 1595.
- Commonwealth v. Brown (10 Ky. L. Rep. [abstract] 407), 884, 936.
- Commonwealth v. Brown (2 Gray, 358), 1623.
- Commonwealth v. Brown (12 Gray, 135), 1765.
- Commonwealth v. Brown (12 Met. 522), 1500.
- Commonwealth v. Brown (124 Mass. 318), 1729, 1732.
- Commonwealth v. Brown (136 Mass. 171), 1672.
- Commonwealth v. Brown (154 Mass. 55; 27 N. E. 776; 13 L. R. A. 195), 1374.
- Commonwealth v. Brusie (145 Mass. 117; 13 N. E. 378), 988, 1513.
- Commonwealth v. Bryan (9 Dana [Ky.] 310), 694, 1783.
- Commonwealth v. Bryan (148 Mass. 455; 19 N. E. 555), 1671.

[References are to pages.]

- Commonwealth v. Bryden (9 Met. 137), 1487.
- Commonwealth v. Buck (12 Met. 524), 1637.
- Commonwealth v. Budser (14 Gray, 83), 85.
- Commonwealth v. Bulkley (147 Mass. 581; 18 N. E. 571), 1671.
- Commonwealth v. Burding (12 Cush. 506), 1510, 1521.
- Commonwealth v. Burk (11 Gray, 437), 1369.
- Commonwealth v. Burk (15 Gray, 404), 1651.
- Commonwealth v. Burke (14 Gray, 81), 1626.
- Commonwealth v. Burke (15 Gray, 408), 23.
- Commonwealth v. Burke (114 Mass. 261), 1094, 1099, 1102.
- Commonwealth v. Burke (121 Mass. 39), 1516.
- Commonwealth v. Burke (114 Mass. 261), 1375.
- Commonwealth v. Burns (8 Gray, 482), 1171.
- Commonwealth v. Burns (9 Gray, 287), 1711.
- Commonwealth v. Burns (167 Mass. 374; 45 N. E. 755), 1101.
- Commonwealth v. Burns (38 Pa. Super. Ct. 514), 10, 14, 1697.
- Commonwealth v. Bushman (138 Pa. St. 639; 21 Atl. 12), 337.
- Commonwealth v. Byers ([Ky.] 109 S. W. 895; 33 Ky. L. Rep. 252), 825, 826, 834.
- Commonwealth v. Byrnes (126 Mass. 248), 1516, 1530, 1531.
- Commonwealth v. Byrne (20 Gratt. 165), 200, 201, 788, 801, 802.
- Commonwealth v. Cagne (153 Mass. 205; 26 N. E. 449; 10 L. R. A. 442), 300.
- Commonwealth v. Calhome (154 Mass. 115; 27 N. E. 881), 321, 328.
- Commonwealth v. Callahan (108 Mass. 421), 1582.
- Commonwealth v. Callone (154 Mass. 115; 27 N. E. 881), 514.
- Commonwealth v. Campbell ([Ky.] 107 S. W. 797; 32 Ky. L. Rep. 1131), 749.
- Commonwealth v. Campbell (116 Mass. 32), 1587, 1601.
- Commonwealth v. Cameron (141 Mass. 83; 63 N. E. 547), 1640.
- Commonwealth v. Canny (158 Mass. 210; 33 N. E. 340), 1088, 1089, 1660, 1754.
- Commonwealth v. Carey (151 Pa. St. 368; 25 Atl. 140), 1175.
- Commonwealth v. Carney (108 Mass. 417), 1670.
- Commonwealth v. Carney (152 Mass. 566; 26 N. E. 94), 1655.
- Commonwealth v. Carney (153 Mass. 444; 27 N. E. 9), 1739.
- Commonwealth v. Carolina (2 Allen, 169), 1099.
- Commonwealth v. Carpenter (100 Mass. 204), 1643.
- Commonwealth v. Carr (11 Gray, 463), 1738.
- Commonwealth v. Carroll (15 Gray, 809, 412), 1601, 1651.
- Commonwealth v. Carroll (124 Mass. 30), 1368.
- Commonwealth v. Casey (12 Allen, 214), 524.
- Commonwealth v. Casey (134 Mass. 194), 212, 214, 344, 345.
- Commonwealth v. Cauley (150 Mass. 272; 22 N. E. 909), 687, 688, 690, 1639.
- Commonwealth v. Cavanaugh (2 Pa. Co. Ct. 344), 247.
- Commonwealth v. Certain Intoxicating Liquors (97 Mass. 63), 1055.



[References are to pages.]

- Commonwealth v. Certain Intoxicating Liquors (97 Mass. 92), 1060.
- Commonwealth v. Certain Intoxicating Liquors (97 Mass. 334), 1068.
- Commonwealth v. Certain Intoxicating Liquors (97 Mass. 601), 1062.
- Commonwealth v. Certain Intoxicating Liquors (103 Mass. 448), 1018, 1034.
- Commonwealth v. Certain Intoxicating Liquors (105 Mass. 181), 1038.
- Commonwealth v. Certain Intoxicating Liquors (107 Mass. 216), 1041.
- Commonwealth v. Certain Intoxicating Liquors (107 Mass. 386; 107 Mass. 392, *note*), 1023, 1066, 1075, 1664.
- Commonwealth v. Certain Intoxicating Liquors (108 Mass. 19), 1023.
- Commonwealth v. Certain Intoxicating Liquors (110 Mass. 182), 1066, 1068.
- Commonwealth v. Certain Intoxicating Liquors (113 Mass. 13), 1034.
- Commonwealth v. Certain Intoxicating Liquors (117 Mass. 427), 1038.
- Commonwealth v. Certain Intoxicating Liquors (116 Mass. 21), 1089.
- Commonwealth v. Certain Intoxicating Liquors (116 Mass. 24; 116 Mass. 27), 1066.
- Commonwealth v. Certain Intoxicating Liquors (116 Mass. 27), 1055, 1659.
- Commonwealth v. Certain Intoxicating Liquors (122 Mass. 36), 1052.
- Commonwealth v. Certain Intoxicating Liquors (128 Mass. 72), 1034.
- Commonwealth v. Certain Intoxicating Liquors (138 Mass. 506), 1529.
- Commonwealth v. Certain Intoxicating Liquors (142 Mass. 470; 8 N. E. 421), 1503.
- Commonwealth v. Chisholm (103 Mass. 213), 1513.
- Commonwealth v. Chadwick (142 Mass. 595; 8 N. E. 589), 1513, 1616, 1672.
- Commonwealth v. Chaney (148 Mass. 6; 18 N. E. 572), 1578, 1677.
- Commonwealth v. Cheney (141 Mass. 102; 6 N. E. 724), 2034.
- Commonwealth v. Chappel (116 Mass. 7), 8, 10, 11, 12.
- Commonwealth v. Churchill (2 Met. 118), 1605.
- Commonwealth v. Churchill (136 Mass. 148, 150), 1796.
- Commonwealth v. Clapp (5 Gray [Mass.] 97), 110, 307, 1483, 1513.
- Commonwealth v. Clark (14 Gray, 367), 1113, 1115, 1165, 1167, 1452, 1500, 1501, 1513, 1527, 1598, 1604, 1607, 1666.
- Commonwealth v. Clark (145 Mass. 251; 13 N. E. 888), 1486, 1547.
- Commonwealth v. Clary (8 Mass. 72), 1070.
- Commonwealth v. Cleary (105 Mass. 384), 1089, 1658, 1659.
- Commonwealth v. Cleary (152 Mass. 491; 25 N. E. 834), 1596.
- Commonwealth v. Cleary (135 Pa. St. 64; 19 Atl. 1017; 8 L. R. A. 301), 2032.
- Commonwealth v. Cleary (148 Pa. St. 26; 23 Atl. 1110; 30 Wkly. Notes Cas. 1), 2040, 2247.
- Commonwealth v. Clymer (150 Mass. 71; 22 N. E. 436), 1673, 1747.

[References are to pages.]

- Commonwealth v. Coffee** (9 Gray, 139), 1774.  
**Commonwealth v. Cogan** (107 Mass. 212), 1099.  
**Commonwealth v. Collier** (134 Mass. 203), 1701.  
**Commonwealth v. Collins** (16 Gray, 29), 1581, 1602.  
**Commonwealth v. Colter** (97 Mass. 336), 1113, 1115.  
**Commonwealth v. Colton** (11 Gray, 1), 1535.  
**Commonwealth v. Colton** (138 Mass. 500), 1610.  
**Commonwealth v. Commesky** (13 Allen, 585), 1610, 1725.  
**Commonwealth v. Conant** (6 Gray, 482), 1500, 1513.  
**Commonwealth v. Conley** (1 Allen, 6), 2027.  
**Commonwealth v. Conlin** (184 Mass. 195; 68 N. E. 207), 2027.  
**Commonwealth v. Connolly** (108 Mass. 480), 1099, 1665, 1671.  
**Commonwealth v. Conway** (112 S. W. 575; 33 Ky. L. Rep. 996), 389.  
**Commonwealth v. Cook** (12 Allen, 542), 1758.  
**Commonwealth v. Coolidge** (138 Mass. 193), 1665.  
**Commonwealth v. Cope** ([Ky.] 53 S. W. 272; 21 Ky. L. Rep. 845), 1467.  
**Commonwealth v. Costello** (133 Mass. 192), 212, 213, 344, 1111, 1536, 1537, 1737.  
**Commonwealth v. Costello** (1 Wilcox [Pa.] 182), 1367.  
**Commonwealth v. Cotter** (97 Mass. 336) 1667.  
**Commonwealth v. Cotton** (138 Mass. 500), 1664, 1619.  
**Commonwealth v. Coughlin** (14 Gray, 389), 1616, 1617.  
**Commonwealth v. Coughlin** (123 Mass. 436), 2033, 2035.  
**Commonwealth v. Coughlin** (182 Mass. 558; 66 N. E. 207), 1083, 1086, 1491, 1610, 1654.  
**Commonwealth v. Crawford** (9 Gray, 129), 1454.  
**Commonwealth v. Crosley** (162 Mass. 515; 39 N. E. 278), 1513.  
**Commonwealth v. Crozier** (1 Brewster, 349), 2068, 2069, 2072.  
**Commonwealth v. Cummings** (6 Gray, 487), 1479.  
**Commonwealth v. Cummins** (121 Mass. 63), 1661, 1752.  
**Commonwealth v. Curran** (119 Mass. 206), 47, 1116, 1446, 1447, 1643.  
**Commonwealth v. Current** (11 Ky. L. Rep. [abstract] 764), 950.  
**Commonwealth v. Currier** (164 Mass. 544; 42 N. E. 96), 1725.  
**Commonwealth v. Cutler** (9 Allen, 486), 1719.  
**Commonwealth v. Dady** (7 Allen 531), 1115, 1667, 1668.  
**Commonwealth v. Dady** (14 Gray, 412, 531), 1113.  
**Commonwealth v. Daily** (133 Mass. 577), 1099, 1596.  
**Commonwealth v. Daly** (148 Mass. 428; 19 N. E. 209), 1185, 1368, 1369.  
**Commonwealth v. Davenport** (2 Allen 299), 1595.  
**Commonwealth v. Davis** (12 Bush, 240), 1162, 1165, 1166, 1173, 1233, 1235, 1238, 1561.  
**Commonwealth v. Day** (95 Ky. 120; 23 S. W. 952; 15 Ky. L. Rep. 466), 837.  
**Commonwealth v. Dean** (21 Pick. 334), 1488, 1497, 1502.  
**Commonwealth v. Dean** (14 Gray, 99), 7, 10, 11, 49, 968.  
**Commonwealth v. Dean** (109 Mass. 349), 1746.

[References are to pages.]

- Commonwealth v. Dean (110 Mass. 357), 232, 235, 240, 1643.
- Commonwealth v. Dearborn (109 Mass. 368), 1594, 1660, 1672, 1673.
- Commonwealth v. Deibert (12 Pa. Co. Ct. Rep. 504; 2 Pa. Dist. Rep. 446), 756.
- Commonwealth v. Desmond (103 Mass. 445), 1478.
- Commonwealth v. Dickerson [Ky.] 76 S. W. 1084; 25 Ky. L. Rep. 1043), 949, 1158, 1178.
- Commonwealth v. Dilbo (29 Leg. Int. 150), 1643.
- Commonwealth v. Dillane (1 Gray, 483), 1591, 1623, 1649.
- Commonwealth v. Dillane (11 Gray, 67), 1479, 1637, 1650.
- Commonwealth v. Dixon (1 Wilcox [Pa.] 211), 1581.
- Commonwealth v. Dobbryn (14 Gray, 44), 1701.
- Commonwealth v. Doe (108 Mass. 418), 898, 1656, 1670.
- Commonwealth v. Dolan (121 Mass. 374), 1446, 1447.
- Commonwealth v. Donahue (149 Pa. St. 104; 24 Atl. 188; 30 Wkly. N. C. 124), 488, 495.
- Commonwealth v. Donnelly (14 Gray, 86, *note*), 1486.
- Commonwealth v. Dooly (6 Gray, 360), 1757.
- Commonwealth v. Dorsey (103 Mass. 412), 2067.
- Commonwealth v. Doucey (126 Mass. 269), 165, 171.
- Commonwealth v. Dougherty (1 Browne [Pa.] Appendix xviii), 2040.
- Commonwealth v. Dove (2 Va. Cas. 26), 1505.
- Commonwealth v. Dow (12 Gray, 133), 1097, 1658.
- Commonwealth v. Dow (10 Met. [Mass.] 506), 294.
- Commonwealth v. Dowdican (114 Mass. 257), 1587, 1701, 1735.
- Commonwealth v. Dowling (114 Mass. 259), 1375.
- Commonwealth v. Downey (148 Mass. 14; 18 N. E. 584), 1678.
- Commonwealth v. Downing (4 Gray, 29), 1188.
- Commonwealth v. Doyle (132 Mass. 244), 1647.
- Commonwealth v. Drew (3 Cush. 279), 514, 1219.
- Commonwealth v. Dudash (204 Pa. 124; 53 Atl. 756), 2038, 2044, 2047.
- Commonwealth v. Ducey (126 Mass. 269), 469.
- Commonwealth v. Dun (14 Gray, 401), 1520.
- Commonwealth v. Dunbar (9 Gray, 298), 1097, 1658, 1671.
- Commonwealth v. Duncan (11 Ky. Rep. [abstract] 402), 945.
- Commonwealth v. Dunn (14 Gray, 401), 1035, 1513.
- Commonwealth v. Dunn (111 Mass. 425), 1513.
- Commonwealth v. Duprey (180 Mass. 523; 62 N. E. 726), 1649.
- Commonwealth v. Eagan (151 Mass. 45; 23 N. E. 494), 1677.
- Commonwealth v. Early (161 Mass. 186; 36 N. E. 794), 1508.
- Commonwealth v. Eaton (9 Pick. 165), 1499.
- Commonwealth v. Eaton (15 Pick. 273), 1446.
- Commonwealth v. Edds (14 Gray, 406), 1513, 1544, 1615, 1619, 1675.
- Commonwealth v. Edinger (7 Ky. L. Rep. [abstract] 442), 946.
- Commonwealth v. Edwards (4 Gray, 1), 1527, 1533, 1534.
- Commonwealth v. Eggleston (128 Mass. 408), 1283, 1284.

[References are to pages.]

- Commonwealth v. Elger** (217 Pa. 512; 66 Atl. 746; 11 L. R. A. [N. S.] 639), 1734.
- Commonwealth v. Elliott** (1 Lack. Leg. N. 140; 16 Pa. Co. Ct. Rep. 122; 4 Pa. Dist. Rep. 89), 724.
- Commonwealth v. Elmore** ([Ky.] 58 S. W. 369; 22 Ky. L. Rep. 510), 576.
- Commonwealth v. Elwell** (1 Gray, 463), 1650, 1655, 1746.
- Commonwealth v. Emerson** (140 Mass. 434; 5 N. E. 155), 130.
- Commonwealth v. Emmons** (98 Mass. 6), 1353.
- Commonwealth v. Estabrook** (10 Pick. 293), 69, 509, 691, 1267.
- Commonwealth v. Everman** (140 Mass. 434; 5 N. E. 155), 247, 1752.
- Commonwealth v. Everson** (140 Mass. 292; 2 N. E. 839), 592, 1182, 1671, 1675.
- Commonwealth v. Everson** (140 Mass. 572; 5 N. E. 155), 135.
- Commonwealth v. Ewing** (7 Bush, 105), 1560.
- Commonwealth v. Ewing** (145 Mass. 121; 13 N. E. 365), 1341.
- Commonwealth v. Faher** (126 Mass. 56), 1088.
- Commonwealth v. Farrand** (12 Gray, 177), 1670, 1671, 1676.
- Commonwealth v. Farrell** (137 Mass. 579), 1581, 1604.
- Commonwealth v. Farren** (9 Allen, 489), 1555.
- Commonwealth v. Fell** (144 Pa. 426; 22 Atl. 915; 28 W. N. C. 429), 648.
- Commonwealth v. Fernden** (141 Mass. 28; 6 N. E. 239), 213, 345, 1548.
- Commonwealth v. Finnegan** (109 Mass. 363), 1099.
- Commonwealth v. Finnegan** (124 Mass. 324), 1233.
- Commonwealth v. Finnerty** (148 Mass. 162; 19 N. E. 215), 1594, 1595, 1657.
- Commonwealth v. Fischer** (17 S. & R. [Pa.] 160), 216.
- Commonwealth v. Fisher** (138 Mass. 504), 386, 1659, 1673.
- Commonwealth v. Fisher** (1 Leg. Opinion, 50), 2034.
- Commonwealth v. Fitzgerald** (14 Gray, 14), 1658.
- Commonwealth v. Fitzpatrick** (140 Mass. 455; 5 N. E. 272), 1612.
- Commonwealth v. Flaherty** (140 Mass. 454; 5 N. E. 258), 1368.
- Commonwealth v. Fleckner** (167 Mass. 13; 44 N. E. 1053), 1098.
- Commonwealth v. Fleece** (5 Ky. Rep. 429), 1449.
- Commonwealth v. Fleming** (130 Pa. 138; 18 Atl. 622; 25 W. N. C. 122; 5 L. R. A. 470; 17 Am. St. 763), 1280.
- Commonwealth v. Fletcher** (33 Phila. Leg. Int. 13; 8 Leg. Gaz. 13), 2068.
- Commonwealth v. Foley** (99 Mass. 499), 2031.
- Commonwealth v. Fontz** (135 Pa. St. 389; 19 Atl. 1025), 1159.
- Commonwealth v. Foran** (110 Mass. 179), 1580.
- Commonwealth v. Foss** (14 Gray, 50), 1446, 1447, 1641.
- Commonwealth v. Foster** (182 Mass. 276; 65 N. E. 391), 1083.
- Commonwealth v. Fowler** (96 Ky. 166; 28 S. W. 786; 33 L. R. A. 839), 112, 186, 221.
- Commonwealth v. Fowler** (98 Ky. 648; 34 S. W. 31), 186, 188, 825, 829,

[References are to pages.]

- |   |   |
|---|---|
| Commonwealth v. Fowler (145 Mass. 398; 14 N. E. 457), 1226, 1560.                                     | Commonwealth v. Gay (153 Mass. 211; 26 N. E. 852), 111, 298, 300, 307, 1527, 1677.  |
| Commonwealth v. Fraher (126 Mass. 56), 1081, 1094, 1103, 1717.  | Commonwealth v. Geary (146 Mass. 139; 15 N. E. 363), 1663.                          |
| Commonwealth v. Francis (152 Mass. 508; 25 N. E. 836), 1121, 1310, 1318.                              | Commonwealth v. Gedikoh (101 Pa. St. 354), 1304, 1307, 1308.                        |
| Commonwealth v. Fredericks (119 Mass. 199), 139, 167, 397, 402, 1513.                                 | Commonwealth v. Gibbons (134 Mass. 197), 213, 1447, 1480, 1537.                     |
| Commonwealth v. French (Thacher Cr. Cas. 163), 205, 2048.   | Commonwealth v. Gilbert (165 Mass. 45; 72 N. E. 336), 2041, 2047, 2058, 2069, 2085. |
| Commonwealth v. Frost (155 Mass. 273; 34 N. E. 334), 508.   | Commonwealth v. Giles (1 Gray, 466), 1608, 1609, 1711.                              |
| Commonwealth v. Funai (146 Mass. 570; 16 N. E. 458), 1584.  | Commonwealth v. Gillon (2 Allen, 505), 1452.  |
| Commonwealth v. Gaffey (122 Mass. 334), 1670, 1671, 1674.   | Commonwealth v. Gillon (148 Mass. 15; 18 N. E. 368), 1460, 1530, 1595, 1615.        |
| Commonwealth v. Gagne (153 Mass. 205; 26 N. E. 449; 10 L. R. A. 442), 111, 298, 307, 327, 1527, 1664. | Commonwealth v. Gilliland (95 Mass. [9 Gray] 3), 1035, 152.                         |
| Commonwealth v. Gallagher (124 Mass. 29), 1089, 1659.   | Commonwealth v. Glennan (116 Mass. 46), 1670.                                       |
| Commonwealth v. Gallagher (145 Mass. 104; 13 N. E. 359), 989, 1543.                                   | Commonwealth v. Godley (11 Gray, 454), 1671.  |
| Commonwealth v. Galligan (156 Mass. 270; 30 N. E. 1142), 1605, 1650, 1651.                            | Commonwealth v. Goodman (97 Mass. 117), 1081, 1082, 1185, 1700.                     |
| Commonwealth v. Galligan (144 Mass. 171; 10 N. E. 788), 1375.   | Commonwealth v. Gormley (133 Mass. 580), 1368, 1624.                                |
| Commonwealth v. Galligan (155 Mass. 54; 28 N. E. 1129), 1452.   | Commonwealth v. Gould (158 Mass. 499; 33 N. E. 656), 828, 832, 1629.                |
| Commonwealth v. Garvin (148 Mass. 449; 19 N. E. 554), 1758.   | Commonwealth v. Gourdiere (14 Gray, 390), 43, 369, 1701.                            |
| Commonwealth v. Gavin (148 Mass. 449; 19 N. E. 554), 1098, 1659.                                      | Commonwealth v. Grady (108 Mass. 412), 1035, 1513.                                  |
| Commonwealth v. Gavin (160 Mass. 523; 35 N. E. 484), 1712.  | Commonwealth v. Graves (18 B. Mon. 33), 528, 683.                                   |
|   | Commonwealth v. Graves (16 Ky. L. Rep. [abstract] 272), 1096, 1117, 1545.           |
|   | Commonwealth v. Gray (13 Gray, 26), 1541.   |
|   | Commonwealth v. Graves (97 Mass. 114), 1112, 1115, 1660.                            |



[References are to pages.]

- Commonwealth v. Gray (2 Gray, 501; 61 Am. Dec. 476), 1451, 1493.
- Commonwealth v. Gray (150 Mass. 327; 23 N. E. 47), 163.
- Commonwealth v. Green (80 Ky. 178; 3 Ky. L. Rep. 659), 1526.
- Commonwealth v. Green (98 Ky. 21; 32 S. W. 169), 875, 895, 1463, 1467.
- Commonwealth v. Greenfield (121 Mass. 40), 1285.
- Commonwealth v. Greenan (11 Allen, 241), 1670.
- Commonwealth v. Greness (11 Allen, 241), 1671.
- Commonwealth v. Greenwell (8 Ky. L. Rep. 609 [abstract]), 1500, 1510.
- Commonwealth v. Grey (2 Gray, 501; 61 Am. Dec. 476), 14, 23, 26, 29.
- Commonwealth v. Griffin (3 Cush. 523), 1484, 1765.
- Commonwealth v. Griffin (103 Mass. 175), 1508.
- Commonwealth v. Guja (28 Pa. Super. Ct. 58), 1283.
- Commonwealth v. Guy (153 Mass. 211; 26 N. E. 571, 852), 1743.
- Commonwealth v. Hadercraft (6 Bush, 91), 1450, 1563.
- Commonwealth v. Hadley (11 Met. 66), 513, 514, 695, 1372, 1375.
- Commonwealth v. Hadley (11 Met. 71), 694.
- Commonwealth v. Haeher (113 Mass. 207), 1672.
- Commonwealth v. Haffner (8 Leg. Gaz. 166), 1180.
- Commonwealth v. Hagan (140 Mass. 289; 3 N. E. 207), 1310, 1362.
- Commonwealth v. Hagan (152 Mass. 565; 26 N. E. 95), 1671.
- Commonwealth v. Hagenlock (140 Mass. 125; 3 N. E. 36), 2069, 2073, 2075.
- Commonwealth v. Hagerman (10 Allen, 401), 1487.
- Commonwealth v. Halback (101 Ky. 166; 40 S. W. 245; 19 Ky. L. Rep. 278), 1553.
- Commonwealth v. Hall (8 Gratt. 588), 516.
- Commonwealth v. Hallett (103 Mass. 452), 49, 53, 1185, 1705.
- Commonwealth v. Ham (150 Mass. 22; 22 N. E. 704), 1660.
- Commonwealth v. Hamer (128 Mass. 76), 740, 1641.
- Commonwealth v. Hamilton (120 Mass. 383), 189.
- Commonwealth v. Hamor (8 Gratt. 698), 1371.
- Commonwealth v. Hampton (3 Gratt. 590), 1516.
- Commonwealth v. Hanley (121 Mass. 377), 1516.
- Commonwealth v. Hanley (140 Mass. 457; 5 N. E. 468), 1722.
- Commonwealth v. Hardman (9 Gray, 136), 11.
- Commonwealth v. Hardiman (9 Gray, 136), 83.
- Commonwealth v. Hardin Co. (99 Ky. 188; 35 S. W. 275), 932.
- Commonwealth v. Hardy (124 Ky. 375; 99 S. W. 239; 30 Ky. Law Rep. 532), 1458.
- Commonwealth v. Harper (145 Mass. 100; 13 N. E. 459), 956.
- Commonwealth v. Harrington (3 Pick. 26), 1797.
- Commonwealth v. Harrington (130 Mass. 35), 1572.
- Commonwealth v. Harrison (11 Gray [Mass.] 308), 1121, 1600.
- Commonwealth v. Harris (7 Gratt. 600), 1765.
- Commonwealth v. Harrison (11 Gray, 310), 1306.
- Commonwealth v. Harrison (13 Allen, 559), 1323.
- Commonwealth v. Hart (11 Cush. 130), 1527, 1533.
- Commonwealth v. Hart (2 Brewst. [Pa.] 546), 2040, 2068, 2069.

[References are to pages.]

- Commonwealth v. Harvey (16 B. Mon. 1), 1516, 1517.
- Commonwealth v. Hastings (9 Met. 259), 2034.
- Commonwealth v. Hatcher (6 Gratt. 667), 1556.
- Commonwealth v. Hatton (15 B. Mon. 537), 1246.
- Commonwealth v. Hawkins (3 Gray, 463), 2043, 2060.
- Commonwealth v. Hayes (125 Mass. 209), 1516.
- Commonwealth v. Hayes (149 Mass. 32; 20 N. E. 456), 558.
- Commonwealth v. Hayes (114 Mass. 282), 1065, 1089, 1658, 1659.
- Commonwealth v. Hayes (145 Mass. 289; 14 N. E. 151), 1100.
- Commonwealth v. Hayes (150 Mass. 506; 23 N. E. 216), 1670.
- Commonwealth v. Hayes (167 Mass. 167; 45 N. E. 82), 1100, 1105.
- Commonwealth v. Haywood (105 Mass. 187), 46.
- Commonwealth v. Hazeltine (108 Mass. 479), 1664.
- Commonwealth v. Head (11 Gratt. 819), 1478.
- Commonwealth v. Heaganey (137 Mass. 574), 592, 595.
- Commonwealth v. Heasey ([Mass.] 9 N. E. 837), 1531.
- Commonwealth v. Heckler (168 Pa. St. 575; 32 Atl. 52; 36 W. N. C. 363; reversing 14 Pa. Co. Ct. Rep. 465), 1307.
- Commonwealth v. Heffron (102 Mass. 148), 1715.
- Commonwealth v. Helbeck (101 Ky. 166; 40 S. W. 245), 401.
- Commonwealth v. Helbeck (101 Ky. 166; 40 S. W. 245), 448.
- Commonwealth v. Henderson (140 Mass. 303; 5 N. E. 832), 1081, 1088, 1089, 1491, 1662, 1664, 1669.
- Commonwealth v. Hendrie (2 Gray, 503), 1626.
- Commonwealth v. Heney ([Mass.] 9 N. E. 837), 1487.
- Commonwealth v. Henley (158 Mass. 159; 33 N. E. 342), 1596.
- Commonwealth v. Herrick (6 Cush. 465), 12, 14, 15, 23, 1626.
- Commonwealth v. Hersey (144 Mass. 297; 11 N. E. 116), 1543, 1655, 1671, 1676.
- Commonwealth v. Hessey ([Mass.] 9 N. E. 837), 1738.
- Commonwealth v. Hess (148 Pa. 98; 23 Atl. 977), 1283.
- Commonwealth v. Heywood (105 Mass. 187), 10, 1671.
- Commonwealth v. Hickey (126 Mass. 250), 1544.
- Commonwealth v. Higgins (16 Gray, 19), 1595, 1650, 1670.
- Commonwealth v. Hildreth (11 Gray, 327), 1582, 1594, 1668.
- Commonwealth v. Hill (14 Gray, 24), 1550, 1551.
- Commonwealth v. Hill (4 Allen, 589), 1547, 1548.
- Commonwealth v. Hill (145 Mass. 385; 14 N. E. 124), 1091, 1369.
- Commonwealth v. Hill (127 Pa. St. 540; 19 Atl. 141), 291, 558.
- Commonwealth v. Hill (5 Gratt. 682), 1509, 1510.
- Commonwealth v. Hinds (145 Mass. 182; 13 N. E. 397), 1058.
- Commonwealth v. Hitchings (5 Gray [Mass.] 482), 294, 1508, 1740.
- Commonwealth v. Hoar (121 Mass. 375), 1089, 1658.
- Commonwealth v. Hogan (11 Gray, 315), 1673.
- Commonwealth v. Hogan (97 Mass. 120), 1172, 1722.

[References are to pages.]

- Commonwealth v. Hoge (9 Gray, 292), 1486.
- Commonwealth v. Hoke (14 Bush [Ky.] 485), 234.
- Commonwealth v. Hoke (14 Bush [Ky.] 668), 236, 882, 907, 929, 936.
- Commonwealth v. Holbrook (92 Mass. [10 Allen] 200), 451.
- Commonwealth v. Holland (104 Ky. 323; 47 S. W. 216; 20 Ky. L. Rep. 581), 541, 1268, 1269.
- Commonwealth v. Holland (7 Ky. L. Rep. [abstract] 299), 513.
- Commonwealth v. Holley (69 Mass. [3 Gray] 458), 262.
- Commonwealth v. Holmes (119 Mass. 195), 1354.
- Commonwealth v. Holsapple (9 Ky. L. Rep. [abstract] 437), 543.
- Commonwealth v. Holstine (132 Pa. 357; 19 Atl. 273; 25 W. N. C. 423), 1186, 1267, 1285.
- Commonwealth v. Hornbrook (10 Allen, 200), 523.
- Commonwealth v. Houle (147 Mass. 380; 17 N. E. 896), 1361.
- Commonwealth v. Howe (9 Gray, 110), 1583.
- Commonwealth v. Howe (13 Gray, 26), 110, 256, 1547, 1549.
- Commonwealth v. Howe ([Ky.] 32 S. W. 133), 1463.
- Commonwealth v. Hoyer (9 Gray, 292), 1097, 1552, 1653.
- Commonwealth v. Hoyer (11 Gray, 462), 1534.
- Commonwealth v. Hoyer (125 Mass. 209), 1640.
- Commonwealth v. Hughes (165 Mass. 7; 42 N. E. 121), 1097, 1657, 1658, 1670, 1673.
- Commonwealth v. Hurley (160 Mass. 10; 35 N. E. 89), 1349, 1361, 1657.
- Commonwealth v. Hurley (14 Gray, 411), 1617, 1659.
- Commonwealth v. Hurst. ([Ky.] 62 S. W. 1024; 23 Ky. L. Rep. 365), 84, 936, 1344, 1697.
- Commonwealth v. Hutchinson (6 Allen, 595), 1528.
- Commonwealth v. Hyland (155 Mass. 7; 28 N. E. 1055), 1091, 1368, 1615, 1617.
- Commonwealth v. Hyneman (101 Mass. 30), 1306.
- Commonwealth v. Iles (13 Ky. L. Rep. [abstract] 236), 554.
- Commonwealth v. Intoxicating Liquors (79 Mass. [13 Gray] 52), 1045.
- Commonwealth v. Intoxicating Liquors (14 Gray, 375), 1016, 1075.
- Commonwealth v. Stebbins (8 Gray, 492), 1063.
- Commonwealth v. Intoxicating Liquors (88 Mass. [6 Gray] 596), 1060.
- Commonwealth v. Intoxicating Liquors (86 Mass. [4 Allen] 593), 1044, 1060, 1062, 1068, 1074.
- Commonwealth v. Intoxicating Liquors (86 Mass. [4 Allen] 601), 1035, 1065.
- Commonwealth v. Intoxicating Liquors (6 Allen, 596), 1040, 1057, 1060, 1061, 1067.
- Commonwealth v. Intoxicating Liquors (6 Allen, 599), 1048, 1068.
- Commonwealth v. Intoxicating Liquors (88 Mass. [9 Allen] 596), 1049.
- Commonwealth v. Intoxicating Liquors (95 Mass. [13 Allen] 52), 1035, 1043, 1056, 1057.
- Commonwealth v. Intoxicating Liquors (13 Allen, 561), 1016, 1049, 1067.
- Commonwealth v. Intoxicating Liquors (97 Mass. 63), 1043, 1043, 1059, 1062, 1739.

[References are to pages.]

Commonwealth v. Intoxicating Liquors (97 Mass. 332), 1018, 1041, 1054.	Commonwealth v. Intoxicating Liquors (113 Mass. 13), 1018, 1021, 1033, 1040, 1078, 1759.
Commonwealth v. Intoxicating Liquors (97 Mass. 601), 1067.	Commonwealth v. Intoxicating Liquors (113 Mass. 23), 1016, 1065.
Commonwealth v. Intoxicating Liquors (103 Mass. 448), 1739.	Commonwealth v. Intoxicating Liquors (113 Mass. 208), 1040.
Commonwealth v. Intoxicating Liquors (105 Mass. 175), 1739.	Commonwealth v. Intoxicating Liquors (113 Mass. 455), 1040.
Commonwealth v. Intoxicating Liquors (105 Mass. 178), 1018, 1048.	Commonwealth v. Intoxicating Liquors (115 Mass. 142), 1064.
Commonwealth v. Intoxicating Liquors (105 Mass. 181), 1039, 1045, 1046.	Commonwealth v. Intoxicating Liquors (115 Mass. 145), 1039, 1056.
Commonwealth v. Intoxicating Liquors (105 Mass. 595), 1016, 1045, 1064.	Commonwealth v. Certain Intoxicating Liquors (115 Mass. 153), 110, 129, 972.
Commonwealth v. Intoxicating Liquors (107 Mass. 216), 1016, 1056.	Commonwealth v. Intoxicating Liquors (115 Mass. 159), 91.
Commonwealth v. Intoxicating Liquors (107 Mass. 396), 255, 1008, 1021, 1038.	Commonwealth v. Intoxicating Liquors (116 Mass. 21), 1037.
Commonwealth v. Intoxicating Liquors (108 Mass. 19), 1048, 1068.	Commonwealth v. Intoxicating Liquors (116 Mass. 24), 1587, 1659.
Commonwealth v. Intoxicating Liquors (109 Mass. 371, 373), 1039, 1054.	Commonwealth v. Intoxicating Liquors (116 Mass. 27), 1035, 1041, 1587.
Commonwealth v. Intoxicating Liquors (110 Mass. 182), 1040, 1041.	Commonwealth v. Intoxicating Liquors (116 Mass. 342), 1049.
Commonwealth v. Intoxicating Liquors (110 Mass. 187), 1067.	Commonwealth v. Intoxicating Liquors (117 Mass. 427), 1040, 1042, 1057.
Commonwealth v. Intoxicating Liquors (110 Mass. 188), 1074.	Commonwealth v. Intoxicating Liquors (122 Mass. 8), 1014, 1016, 1039, 1071.
Commonwealth v. Intoxicating Liquors (110 Mass. 416), 1043.	Commonwealth v. Intoxicating Liquors (122 Mass. 14), 1041, 1056.
Commonwealth v. Intoxicating Liquors (110 Mass. 499), 1039.	Commonwealth v. Intoxicating Liquors (122 Mass. 36), 1039, 1057, 1065, 1071, 1072.
Commonwealth v. Intoxicating Liquors (110 Mass. 500), 1065.	Commonwealth v. Intoxicating Liquors (128 Mass. 72), 1055, 1067, 1068.

[References are to pages.]

- Commonwealth v. Certain Intoxicating Liquors** (130 Mass. 29), 1062.
- Commonwealth v. Intoxicating Liquors** (135 Mass. 519), 1048.
- Commonwealth v. Intoxicating Liquors** (138 Mass. 506), 1528.
- Commonwealth v. Intoxicating Liquors** (140 Mass. 287; 3 N. E. 4), 1040, 1053.
- Commonwealth v. Intoxicating Liquors** (142 Mass. 470; 8 N. E. 421), 1045, 1046.
- Commonwealth v. Intoxicating Liquors** (146 Mass. 509; 16 N. E. 298), 1039, 1054, 1067, 1068.
- Commonwealth v. Intoxicating Liquors** (148 Mass. 124; 19 N. E. 23), 1756, 1757.
- Commonwealth v. Intoxicating Liquors** (150 Mass. 164; 22 N. E. 628), 1049, 1071.
- Commonwealth v. Intoxicating Liquors** (163 Mass. 42; 39 N. E. 348), 1021.
- Commonwealth v. Intoxicating Liquors** (172 Mass. 311; 52 N. E. 389), 220, 257.
- Commonwealth v. Intoxicating Liquors** (89 N. E. 918), 1059, 1062.
- Commonwealth v. Jacobs** (152 Mass. 276; 25 N. E. 463), 1545, 1595, 1636.
- Commonwealth v. James** (98 Ky. 30; 32 S. W. 219; 17 Ky. L. Rep. 588), 518, 1364.
- Commonwealth v. Jarrell** (8 Ky. L. Rep. [abstract] 783), 543.
- Commonwealth v. Jarrell** (9 Ky. Law, 572; 5 S. W. 563), 930.
- Commonwealth v. Jarvis** (120 Ky. 334; 86 S. W. 556; 27 Ky. Law Rep. 712), 1493, 1494.
- Commonwealth v. Jenkins** (137 Mass. 572), 592.
- Commonwealth v. Jenkins** (137 Mass. 572), 247.
- Commonwealth v. Jenks** (1 Gray, 490), 1746.
- Commonwealth v. Jennings** (107 Mass. 488), 1097.
- Commonwealth v. Jessup** (63 Pa. 34), 1223, 1237.
- Commonwealth v. Johnson** (8 Pa. Co. Ct. Rep. 378), 774.
- Commonwealth v. Johnston** (5 Pa. Super. Ct. 585; 28 Pittsb. L. J. [N. S.] 141; 44 W. N. C. 92), 1371.
- Commonwealth v. Jones** ([Ky.] 84 S. W. 305; 27 Ky. L. Rep. 16), 870, 924.
- Commonwealth v. Jones** (7 Gray, 415), 1535.
- Commonwealth v. Jones** (8 Gray, 415), 1534.
- Commonwealth v. Jones** (142 Mass. 573; 8 N. E. 603), 130, 134, 247, 592, 1278.
- Commonwealth v. Jones** (10 Pa. Co. Ct. Rep. 611), 714, 715, 716.
- Commonwealth v. Jones** (1 Leigh, 598), 2039.
- Commonwealth v. Jordan** (18 Pick. 228), 29, 43, 48, 508.
- Commonwealth v. Joseph Kohlne Brewing Co.** (1 Pa. Super. Ct. 627), 720.
- Commonwealth v. Joslin** (158 Mass. 482; 33 N. E. 653; 21 L. R. A. 449), 53, 828, 832, 1227, 1228, 1237, 1359, 1360, 1759.
- Commonwealth v. Joyce** (22 Pa. Co. Ct. Rep. 397; 30 Pittsb. Leg. J. [N. S.] 28), 1298.
- Commonwealth v. Julius** (143 Mass. 132; 8 N. E. 898), 1251, 1255.
- Commonwealth v. Kahlmeyer** (124 Mass. 322), 1065.
- Commonwealth v. Kane** (143 Mass. 92; 8 N. E. 880), 213, 344, 345.



[References are to pages.]

- Commonwealth v. Kane (150 Mass. 294; 22 N. E. 903), 995, 1754.
- Commonwealth v. Keefe (7 Gray, 332), 1456, 1740.
- Commonwealth v. Keefe (9 Gray, 290), 1487, 1513, 1552.
- Commonwealth v. Keefe (143 Mass. 467; 9 N. E. 840), 1528, 1537.
- Commonwealth v. Keefe (150 Mass. 272; 22 N. E. 910), 688, 690, 1639.
- Commonwealth v. Keenan (11 Allen, 262), 523, 525.
- Commonwealth v. Keenan (148 Mass. 470; 20 N. E. 101), 1088, 1594, 1595, 1664.
- Commonwealth v. Keenan (152 Mass. 12; 25 N. E. 32), 1615, 1619.
- Commonwealth v. Kelley (116 Mass. 341), 1582.
- Commonwealth v. Kelley (140 Mass. 441), 214, 345, 1533.
- Commonwealth v. Kelley (152 Mass. 486; 25 N. E. 835), 1593, 1670, 1671.
- Commonwealth v. Kelly (10 Ky. L. Rep. [abstract] 721), 1559.
- Commonwealth v. Kelly (12 Gray, 175), 1547, 1548.
- Commonwealth v. Kelly (10 Cush. 69), 1643, 1650.
- Commonwealth v. Kelly (7 Gray, 332, *note*), 1547.
- Commonwealth v. Kelly (177 Mass. 221; 58 N. E. 691), 1308.
- Commonwealth v. Kemp (14 B. Mon. 385), 72, 508.
- Commonwealth v. Kenan (148 Mass. 470; 20 N. E. 101), 1754.
- Commonwealth v. Kendall (12 Cush. 414), 110 1487, 1533, 1534.
- Commonwealth v. Kennan (10 Ky. L. Rep. [abstract] 723), 1490.
- Commonwealth v. Kennedy (97 Mass. 224), 1595.
- Commonwealth v. Kennedy (108 Mass. 292), 1754.
- Commonwealth v. Kennedy (119 Mass. 211), 1368.
- Commonwealth v. Kenner (11 B. Mon. 1), 1514.
- Commonwealth v. Kenney (115 Mass. 149), 1610, 1725.
- Commonwealth v. Kern (147 Mass. 595; 18 N. E. 566), 1531.
- Commonwealth v. Kerns (2 Pa. Super. Ct. 59), 648, 664.
- Commonwealth v. Kerrisey (141 Mass. 110; 4 N. E. 820), 1655, 1677.
- Commonwealth v. Kervill (108 Mass. 422), 932.
- Commonwealth v. Kevin (18 Pa. Super. Ct. 414), 1384.
- Commonwealth v. Keyes (11 Gray, 323), 1604, 1607.
- Commonwealth v. Kiley (150 Mass. 325; 23 N. E. 55), 722.
- Commonwealth v. Kimball (24 Pick. 359; 35 Am. Dec. 326), 53, 294, 313, 314, 316, 328, 824, 1189, 1581.
- Commonwealth v. Kimball (7 Met. 304), 1533, 1554, 1555, 1640, 1642.
- Commonwealth v. Kimball (7 Gray, 328), 1540, 1543.
- Commonwealth v. Kimball (7 Gray, 332, *note*), 1541.
- Commonwealth v. Kimball (105 Mass. 465), 1099, 1101, 1375.
- Commonwealth v. King (86 Ky. 436; 6 S. W. 124), 897, 938.
- Commonwealth v. King (8 Ky. L. Rep. [abstract] 608), 936.
- Commonwealth v. Kingman (14 Gray, 85), 1479, 1486, 1535.

[References are to pages.]

- Commonwealth v. Kingsbury (5 Mass. 496), 1566.
- Commonwealth v. Kinsley (108 Mass. 24), 1671.
- Commonwealth v. Kirk (7 Gray, 496), 1112, 1115, 1666, 1668.
- Commonwealth v. Knoerr (3 Ky. L. Rep. [abstract] 694), 1495, 1559.
- Commonwealth v. Kohlmeyer (124 Mass. 322), 1596, 1670.
- Commonwealth v. Lafayette (148 Mass. 130; 19 N. E. 26), 1354, 1357, 1363, 1368, 1615.
- Commonwealth v. Lafontaine (3 Gray, 479), 1513.
- Commonwealth v. Lahy (8 Gray, 459), 1643, 1645, 1717.
- Commonwealth v. Lamere (11 Gray, 319), 1112, 1655, 1656, 1666, 1667.
- Commonwealth v. Lattinville (120 Mass. 385), 1227, 1516.
- Commonwealth v. Lattinville ([Mass.] 25 N. E. 972), 1595, 1670.
- Commonwealth v. Lawrence (11 Gray, 319), 1115.
- Commonwealth v. Leddy (105 Mass. 381), 1019, 1041, 1048, 1052.
- Commonwealth v. Ledford ([Ky.] 110 S. W. 889; 33 Ky. L. Rep. p. 624), 755.
- Commonwealth v. Leeds (9 Phila. 569), 1219.
- Commonwealth v. Lee (148 Mass. 3; 18 N. E. 586), 1547, 1551, 1671, 1752.
- Commonwealth v. Leighton (140 Mass. 305; 6 N. E. 221), 1123, 1660, 1728.
- Commonwealth v. Lemon ([Ky.] 76 S. W. 40; 25 Ky. L. Rep. 522), 932.
- Commonwealth v. Leo (12 Gray, 33), 1614.
- Commonwealth v. Leo (110 Mass. 414), 1643, 1645, 1712.
- Commonwealth v. Leonard (8 Met. 529), 1534, 1556, 1711.
- Commonwealth v. Levy (126 Mass. 240), 1089, 1659.
- Commonwealth v. Lillard (10 Ky. Law Rep. 561; 9 S. W. 710), 917, 920.
- Commonwealth v. Lincoln (4 Gray, 288), 1656, 1660.
- Commonwealth v. Line (149 Mass. 65; 20 N. E. 697), 1674, 1723.
- Commonwealth v. Livermore (2 Allen, 292), 1586, 1587, 1668.
- Commonwealth v. Livermore (4 Gray, 18), 12, 15, 23, 29.
- Commonwealth v. Locke (114 Mass. 288), 386, 413, 956, 1514, 1529, 1725.
- Commonwealth v. Locke (145 Mass. 401; 14 N. E. 621), 1596, 1675.
- Commonwealth v. Locke (148 Mass. 125; 19 N. E. 24), 1095, 1679.
- Commonwealth v. Locke (29 Leg. Int. 172; affirmed 72 Pa. St. 491), 233.
- Commonwealth v. Logan (12 Gray, 136), 1160, 1550.
- Commonwealth v. Louisville, etc., Co. (117 Ky. 936; 80 S. W. 154; 25 Ky. L. Rep. 2098), 1300.
- Commonwealth v. Lowry (145 Mass. 212; 13 N. E. 611), 1753.
- Commonwealth v. Luck (2 B. Mon. [Ky.] 296), 395, 400.
- Commonwealth v. Luddy (143 Mass. 563; 10 N. E. 448), 1026, 1027, 1035, 1289, 1459, 1488, 1516.
- Commonwealth v. Lufkin (167 Mass. 553; 46 N. E. 109), 1086, 1098, 1697.
- Commonwealth v. Luken (7 Lack. Leg. N. 4; 10 Pa. Dist. Rep. 95), 1759.

[References are to pages.]

- Commonwealth v. Lynch (151 Mass. 358; 23 N. E. 1137), 1595, 1660.
- Commonwealth v. Lynch (164 Mass. 541; 42 N. E. 95), 1090, 1660.
- Commonwealth v. Lynn (107 Mass. 214), 1035, 1513.
- Commonwealth v. Lyons (160 Mass. 174; 35 N. E. 312), 1657.
- Commonwealth v. McAnany (3 Brewster, 292), 2033, 2098.
- Commonwealth v. McArty (11 Gray, 456), 1671.
- Commonwealth v. McAtee (8 Dana, 28), 1455.
- Commonwealth v. McCabe (163 Mass. 98; 39 N. E. 777), 1596, 1679.
- Commonwealth v. McCann ([Ky.] 29 Ky. L. Rep. 707; 94 S. W. 645), 217, 263, 1128.
- Commonwealth v. McCarty ([Ky.] 76 S. W. 173; 25 Ky. L. Rep. 585), 868, 871.
- Commonwealth v. McCaughey (9 Gray, 296), 1670, 1722.
- Commonwealth v. McCloskey (123 Mass. 401), 1066, 1670.
- Commonwealth v. McClure (204 Pa. 196; 53 Atl. 759), 653.
- Commonwealth v. McCluskey (116 Mass. 64), 1725.
- Commonwealth v. McConnell (11 Gray, 204), 1087, 1306, 1323, 1725.
- Commonwealth v. McCormick (150 Mass. 270; 22 N. E. 911), 683, 688, 690, 1267.
- Commonwealth v. McCue (121 Mass. 358), 116, 1081, 1088, 1675.
- Commonwealth v. McCullow (140 Mass. 370; 5 N. E. 165), 1657, 1675.
- Commonwealth v. McCurdy (109 Mass. 364), 1099, 1671.
- Commonwealth v. McDermott ([Ky.] 96 S. W. 475; 29 Ky. L. Rep. 752), 948, 1288.
- Commonwealth v. McDonald (147 Mass. 527; 18 N. E. 402), 1605.
- Commonwealth v. McDonald (187 Mass. 581; 73 N. E. 852), 2079.
- Commonwealth v. McDonough (13 Allen 581), 104, 105, 486, 1082, 1101, 1106, 1109.
- Commonwealth v. McDonough (150 Mass. 504; 23 N. E. 112), 213, 345, 346.
- Commonwealth v. McGrath (185 Mass. 1; 69 N. E. 340), 964, 968.
- Commonwealth v. McGregor (9 B. Mon. 3), 71.
- Commonwealth v. McGroerty (148 Pa. 606; 24 Atl. 91), 797.
- Commonwealth v. McGrorty (5 Ky. L. Rep. [abstract] 605), 826, 836.
- Commonwealth v. McGuire (11 Gray, 460), 1503, 1555.
- Commonwealth v. McHugh (147 Mass. 401; 18 N. E. 74), 1596, 1597.
- Commonwealth v. McIvor (117 Mass. 118), 1487, 1672.
- Commonwealth v. McKenna (158 Mass. 207; 33 N. E. 389), 1089, 1660.
- Commonwealth v. McKiernan (128 Mass. 414), 1567.
- Commonwealth v. McLaughlin (108 Mass. 477), 1529.
- Commonwealth v. McManus (161 Mass. 64; 36 N. E. 675), 1754.
- Commonwealth v. McNamara (116 Mass. 340), 2031.
- Commonwealth v. McNamee (112 Mass. 286), 65, 1253, 2030, 2085, 2260.
- Commonwealth v. McNamee (113 Mass. 12), 451, 523.

[References are to pages.]

- Commonwealth v. McNeese** (156 Mass. 231; 30 N. E. 1021), 1309, 1634, 1728.
- Commonwealth v. McNeff** (145 Mass. 406; 14 N. E. 616), 1096, 1097, 1679, 1747.
- Commonwealth v. McSherry** (3 Gray, 481, *note*), 1513.
- Commonwealth v. Madden** (1 Gray, 486), 1668, 1674.
- Commonwealth v. Magee** (141 Mass. 111; 4 N. E. 819), 87, 1709, 1753.
- Commonwealth v. Mahony** (14 Gray, 46), 1113, 1115, 1374, 1667, 1668.
- Commonwealth v. Major** (6 Dana, 293), 1349, 1377.
- Commonwealth v. Malone** (114 Mass. 295), 2041, 2049.
- Commonwealth v. Maloney** (16 Gray, 20), 1595, 1650, 1651, 1678.
- Commonwealth v. Maloney** (113 Mass. 211), 1084.
- Commonwealth v. Maloney** (152 Mass. 493; 25 N. E. 833), 968.
- Commonwealth v. Mandeville** (142 Mass. 469; 8 N. E. 327), 508.
- Commonwealth v. Mann** (1 Va. Cas. 308), 2031.
- Commonwealth v. Manning** (164 Mass. 547; 42 N. E. 95), 1487.
- Commonwealth v. Marchand** (155 Miss. 8; 29 N. E. 578), 1572.
- Commonwealth v. Markoe** (17 Pick. 465), 508, 559.
- Commonwealth v. Maroney** (105 Mass. 467, *note*), 1099, 1101, 1375.
- Commonwealth v. Martin** (108 Mass. 29), 229, 1480, 1513.
- Commonwealth v. Martin** (162 Mass. 402; 38 N. E. 708), 1090, 1791.
- Commonwealth v. Martin** (170 Pa. St. 118; 32 Atl. 624), 807.
- Commonwealth v. Marzynski** (149 Mass. 849; 21 N. E. 228), 73.
- Commonwealth v. Maskill** 165 Mass. 142; 42 N. E. 562), 1085.
- Commonwealth v. Mason** (116 Mass. 66), 1672.
- Commonwealth v. Mason** (135 Mass. 555), 1580.
- Commonwealth v. Matthews** (3 Ky. L. Rep. [abstract] 473), 833.
- Commonwealth v. Matthews** (129 Mass. 487), 452, 493, 1660, 1661.
- Commonwealth v. Mead** (10 Allen, 398), 1158, 1744.
- Commonwealth v. Mead** (140 Mass. 300; 3 N. E. 39), 1090, 1660, 1661.
- Commonwealth v. Mead** (153 Mass. 284; 26 N. E. 855), 1672, 1673.
- Commonwealth v. Meaney** (151 Mass. 55; 23 N. E. 730), 1632, 1677.
- Commonwealth v. Melling** (14 Gray, 388), 1503.
- Commonwealth v. Merriam** (136 Mass. 433), 688, 1267.
- Commonwealth v. Merriam** (148 Mass. 425; 19 N. E. 405), 1354, 1374, 1377, 1097, 1658.
- Commonwealth v. Middleton** (8 Ky. L. Rep. 264), 1554, 1555.
- Commonwealth v. Miller** (107 Pa. St. 276), 1446.
- Commonwealth v. Miller** (126 Pa. St. 137; 17 Atl. 623), 186, 796.
- Commonwealth v. Miller** (131 Pa. St. 118), 163.
- Commonwealth v. Miller** (4 Phila. 195; affirmed, 4 Phila. 210; 17 Leg. Int. 276, 285), 2069, 2079.

[References are to pages.]

- Commonwealth v. Miller (8 Gray, 484), 262, 2027, 2031.
- Commonwealth v. Mills (157 Mass. 405; 32 N. E. 360), 1664.
- Commonwealth v. Minor (88 Ky. 422; 11 S. W. 472; 10 Ky. L. Rep. 1008), 267, 269, 843, 844.
- Commonwealth v. Mitchell (115 Mass. 141), 1670, 1671.
- Commonwealth v. Molter (142 Mass. 533; 8 N. E. 428), 1310.
- Commonwealth v. Monahan (140 Mass. 463; 5 N. E. 259), 86, 1708.
- Commonwealth v. Moore (143 Mass. 136; 9 N. E. 25), 1749.
- Commonwealth v. Moore (145 Mass. 244), 214, 214, 345, 1126, 1303, 1655, 1670.
- Commonwealth v. Moore (157 Mass. 324; 31 N. E. 1070), 1663.
- Commonwealth v. Moore (145 Mass. 244; 13 N. E. 893), 1310.
- Commonwealth v. Moorehouse (1 Gray 470), 1451, 1452.
- Commonwealth v. Moran (148 Mass. 453; 19 N. E. 554), 558.
- Commonwealth v. Morgan (149 Mass. 314; 21 N. E. 369), 6, 10, 18, 32, 1708.
- Commonwealth v. Morgan (149 Mass. 314; 21 N. E. 369), 1490, 1491.
- Commonwealth v. Morris (129 Ky. 440; 112 S. W. 580; 33 Ky. L. Rep. 987), 1810.
- Commonwealth v. Morrissey (157 Mass. 471; 32 N. E. 664), 277.
- Commonwealth v. Morten (162 Mass. 402; 38 N. E. 708), 1660.
- Commonwealth v. Moulton (10 Cush. 404), 1488, 1489.
- Commonwealth v. Moylan (119 Mass. 109), 1641.
- Commonwealth v. Mueller (81 Pa. St. 127), 930, 933.
- Commonwealth v. Muir (180 Pa. St. 47), 426.
- Commonwealth v. Mullen (166 Mass. 377; 44 N. E. 343), 1103, 1105.
- Commonwealth v. Munn (14 Gray, 361), 1112, 1115, 1666, 1667, 1758.
- Commonwealth v. Munsey (112 Mass. 287), 1601.
- Commonwealth v. Murphy (95 Ky. 38; 23 S. W. 655), 1319.
- Commonwealth v. Murphy (2 Gray, 510), 1509, 1513.
- Commonwealth v. Murphy (2 Gray, 560), 1369.
- Commonwealth v. Murphy (155 Mass. 284; 29 N. E. 469), 1490.
- Commonwealth v. Murphy (95 Ky. 38; 23 S. W. 655), 1125.
- Commonwealth v. Murphy (10 Gray, 1), 112, 1586, 1590.
- Commonwealth v. Murphy (11 Gray, 53), 1739.
- Commonwealth v. Murphy (147 Mass. 525; 18 N. E. 403), 1594.
- Commonwealth v. Murphy (147 Mass. 577; 18 N. E. 418), 1743.
- Commonwealth v. Murphy (153 Mass. 290; 26 N. E. 860), 1656.
- Commonwealth v. Murphy (155 Mass. 284; 29 N. E. 469), 1223.
- Commonwealth v. Murray (144 Mass. 170; 10 N. E. 802), 1739.
- Commonwealth v. Myrick (6 Ky. L. Rep. [abstract] 520), 1464.
- Commonwealth v. Nagle (157 Mass. 554; 32 N. E. 861), 1629.
- Commonwealth v. Nally (151 Mass. 63; 23 N. E. 660), 1597.



[References are to pages.]

- Commonwealth v. Naylor (34 Pa. St. 86), 215, 1304, 1309, 1310.
- Commonwealth v. Nazarko ([Pa.] 73 Atl. 210), 2039, 2063, 2068.
- Commonwealth v. Neal (11 Ky. L. Rep. [abstract] 678), 844.
- Commonwealth v. Neason ([Ky.] 50 S. W. 66; 20 Ky. L. Rep. 1825), 233, 1469, 1470.
- Commonwealth v. Neff (9 Ky. L. Rep. [abstract] 442), 548, 1545.
- Commonwealth v. Nelson ([Ky.] 57 S. W. 495; 22 Ky. L. Rep. 414), 939.
- Commonwealth v. Newhall (164 Mass. 338; 41 N. E. 647), 331.
- Commonwealth v. Newhard (3 Pa. Super. Ct. 215), 1368.
- Commonwealth v. Newton (123 Mass. 420), 1051, 1052.
- Commonwealth v. Ney (12 Gray, 124), 1191.
- Commonwealth v. Neylon (159 Mass. 241; 34 N. E. 1078), 1657.
- Commonwealth v. Nichols (10 Met. 259; 43 Am. Dec. 432), 1349, 1353, 1361.
- Commonwealth v. Nichols (10 Allen, 199), 1446.
- Commonwealth v. Nilson ([Ky.] 50 S. W. 66; 20 Ky. L. Rep. 1825), 229.
- Commonwealth v. Nunan ([Ky.] 104 S. W. 731; 31 Ky. L. Rep. 1090), 540, 543.
- Commonwealth v. O'Brien (134 Mass. 198), 1560, 1628.
- Commonwealth v. O'Connor (11 Gray, 94), 1660, 1661.
- Commonwealth v. O'Connor (7 Allen, 583), 2033.
- Commonwealth v. Odlin (23 Pick. 275), 23, 25, 1112, 1114, 1492, 1499, 1500, 1533.
- Commonwealth v. O'Donnell (8 Allen, 548), 451, 523.
- Commonwealth v. O'Donnell (143 Mass. 178; 9 N. E. 509), 86, 1702.
- Commonwealth v. O'Hanlon (155 Mass. 198; 29 N. E. 518), 1652, 1745.
- Commonwealth v. O'Hearn (132 Mass. 553), 1623.
- Commonwealth v. O'Kean (152 Mass. 584; 26 N. E. 97), 44, 1185.
- Commonwealth v. O'Leary (143 Mass. 95; 8 N. E. 887), 1226, 1229, 1490, 1503.
- Commonwealth v. O'Neal (11 Ky. L. Rep. [abstract] 678), 1526.
- Commonwealth v. Overby (107 Ky. 169; 53 S. W. 36; 21 Ky. L. Rep. 843), 928.
- Commonwealth v. Owens (114 Mass. 252), 1587.
- Commonwealth v. Packard (5 Gray, 101), 1161, 1177, 1621.
- Commonwealth v. Packard (136 Mass. 50), 683.
- Commonwealth v. Page (6 Gray, 361), 1656.
- Commonwealth v. Park (1 Gray, 553), 1353, 1615.
- Commonwealth v. Parsons (195 Mass. 560; 81 N. E. 291), 2038, 2051.
- Commonwealth v. Pattee (12 Cush. [Mass.] 501), 929.
- Commonwealth v. Patten (151 Mass. 536; 25 N. E. 20), 1647, 1660.
- Commonwealth v. Patterson (138 Mass. 498), 1100, 1670.
- Commonwealth v. Patterson (153 Mass. 5; 26 N. E. 136), 1671.
- Commonwealth v. Paulin (187 Mass. 568; 73 N. E. 655), 1192, 1755.
- Commonwealth v. Pearson (23 Pick. 280, *note*), 1499.
- Commonwealth v. Pearson (3 Met. 449), 1459.
- Commonwealth v. Pease (110 Mass. 412), 1702, 1703.

[References are to pages.]

- Commonwealth v. Peckham (2 Gray, 514), 11, 34, 79, 81.
- Commonwealth v. Pefferman (12 Pa. Super. Ct. 202), 1330.
- Commonwealth v. Pendergast (138 Pa. St. 633; 21 Atl. 12), 337.
- Commonwealth v. Penniman (8 Met. 519), 1455.
- Commonwealth v. Pennsylvania Coal Co. (66 Pa. St. 41), 99.
- Commonwealth v. People's Express Bureau ([Mass.] 88 N. E. 420, 820), 386, 387.
- Commonwealth v. Peppin ([Ky.] 40 S. W. 252), 1467.
- Commonwealth v. Perley (2 Cush. 559), 1112, 1115.
- Commonwealth v. Perrier (3 Phila. 229), 2040, 2068, 2069.
- Commonwealth v. Perry (148 Mass. 160; 19 N. E. 212), 828, 1361, 1646.
- Commonwealth v. Peto (136 Mass. 155), 87, 1081, 1699, 1712.
- Commonwealth v. Petranich (183 Mass. 217; 66 N. E. 807), 158, 967, 1512.
- Commonwealth v. Petrie Co. (90 S. W. 987; 28 Ky. L. Rep. 940), 190.
- Commonwealth v. Petri (122 Ky. 20; 90 S. W. 987; 25 Ky. L. Rep. 940), 557.
- Commonwealth v. Pfaff (17 Pa. Co. Ct. Rep. 302; 5 Pa. Dist. Rep. 59; 26 Pitts. L. J. [N. S.] 254), 1508.
- Commonwealth v. Phelps (11 Gray 73), 1613, 1675.
- Commonwealth v. Pierce (107 Mass. 487), 1656, 1667.
- Commonwealth v. Pierce (147 Mass. 161; 16 N. E. 705), 822, 832.
- Commonwealth v. Pillsbury (12 Gray 127), 384, 476, 1668.
- Commonwealth v. Pine ([Ky.] 94 S. W. 32; 29 Ky. L. Rep. 593), 218.
- Commonwealth v. Platt (11 Phila. 415), 2063, 2068, 2072.
- Commonwealth v. Powderly (148 Mass. 457; 19 N. E. 781), 1093, 1113, 1667.
- Commonwealth v. Powell ([Ky.] 62 S. W. 19; 22 Ky. L. Rep. 1932), 824, 934.
- Commonwealth v. Powell (148 Mass. 457; 19 N. E. 781), 1115.
- Commonwealth v. Powers (123 Mass. 244), 1064, 1660.
- Commonwealth v. Powers (17 Pa. Co. Ct. Rep. 304), 1508.
- Commonwealth v. Pollak (33 Pa. Super. Ct. 600), 1608, 1611.
- Commonwealth v. Pomplaret (137 Mass. 564; 50 Am. Rep. 340), 1166, 1329.
- Commonwealth v. Pool (16 Ky. L. Rep. [abstract] 351), 559.
- Commonwealth v. Porter (4 Gray 426), 1116.
- Commonwealth v. Porter (10 Phila. 217), 822.
- Commonwealth v. Porter (31 Leg. Int. 398), 1476, 1489, 1524.
- Commonwealth v. Pratt (126 Mass. 462), 1368.
- Commonwealth v. Pratt (145 Mass. 248; 13 N. E. 886), 1626.
- Commonwealth v. Pray (13 Pick. 359), 1480, 1533.
- Commonwealth v. Presby (14 Gray 65), 2033, 2034.
- Commonwealth v. Price ([Ky.] 94 S. W. 32; 29 Ky. L. Rep. 593), 219, 357.
- Commonwealth v. Price, etc., Co. ([Ky.] 105 S. W. 102; 31 Ky. L. Rep. 1350), 949.
- Commonwealth v. Price (5 Pa. Co. Ct. Rep. 175; 4 Kulp. 289), 1447.

[References are to pages.]

- Commonwealth v. Purcell (154 Mass. 388; 28 N. E. 288), 978, 1103.
- Commonwealth v. Purdy (146 Mass. 138; 15 N. E. 664), 1655.
- Commonwealth v. Purdy (147 Mass. 29), 1484, 1541, 1582, 1661.
- Commonwealth v. Purtle (77 Mass. [11 Gray] 78), 1035, 1527, 1530, 1659.
- Commonwealth v. Putnam (4 Gray 16), 1353, 1359, 1639.
- Commonwealth v. Quinn (12 Gray 178), 1547.
- Commonwealth v. Quinlan (153 Mass. 483; 27 N. E. 8), 1547, 1550.
- Commonwealth v. Rafferty (133 Mass. 574), 1644.
- Commonwealth v. Ramsdell (130 Mass. 68), 20, 51, 55, 79, 822, 1088.
- Commonwealth v. Redman (121 Ky. 158; 88 S. W. 1073; 28 Ky. L. Rep. 117), 569.
- Commonwealth v. Reed (162 Mass. 215; 38 N. E. 364), 1074, 1075.
- Commonwealth v. Regan (182 Mass. 22; 64 N. E. 407), 1084, 1086, 1312.
- Commonwealth v. Reily (9 Gray 1), 1528.
- Commonwealth v. Remby (2 Gray 508), 1624, 1653, 1747.
- Commonwealth v. Reyburg (122 Pa. St. 299; 16 Atl. 351; 2 L. R. A. 415), 24, 48, 49, 50, 87, 965, 1699, 1712.
- Commonwealth v. Reynolds (89 Ky. 147; 12 S. W. 132; 20 S. W. 167), 112, 832, 835.
- Commonwealth v. Reynolds (4 Ky. L. Rep. 623), 1467, 1463.
- Commonwealth v. Reynolds (6 Ky. L. Rep. [abstract] 520), 836.
- Commonwealth v. Reynolds (114 Mass. 306), 1367.
- Commonwealth v. Rhoades (1 Pa. Co. Ct. Rep. 639), 821, 1487.
- Commonwealth v. Rhodes (1 Pittsb. 499), 76.
- Commonwealth v. Riley (14 Bush 44), 1442, 1542, 1545.
- Commonwealth v. Riley (157 Mass. 89; 31 N. E. 708), 1752.
- Commonwealth v. Riley (196 Mass. 60; 81 N. E. 881; 10 L. R. A. [N. S.] 1122), 1726.
- Commonwealth v. Risner ([Ky.] 47 S. W. 213), 1498.
- Commonwealth v. Roberts (1 Cush. 505), 1520, 1556.
- Commonwealth v. Robertson (5 Cush. [Mass.] 438), 408.
- Commonwealth v. Robinson (9 Pa. Super. Ct. 569), 796.
- Commonwealth v. Roby (12 Pick. 496), 2252.
- Commonwealth v. Roese (1 Wilcox [Pa.] 253), 967.
- Commonwealth v. Rogers (1 Del. Cr. Rep. 517), 1125, 1319.
- Commonwealth v. Rogers (135 Mass. 536), 1095.
- Commonwealth v. Roland (12 Gray, 132), 1101, 1513.
- Commonwealth v. Rome (14 Gray [Mass.] 47), 264.
- Commonwealth v. Rooks (150 Mass. 59; 22 N. E. 436), 1354, 1362, 1629.
- Commonwealth v. Rooney (142 Mass. 474; 8 N. E. 411), 1671.
- Commonwealth v. Rosenbaum (6 Ky. L. Rep. [abstract] 365, 575), 553.
- Commonwealth v. Rourke (10 Cush. 397), 1774.
- Commonwealth v. Rourke (111 Mass. 321; 6 N. E. 383), 213, 345, 1679.

[References are to pages.]

- Commonwealth v. Rowe (14 Gray 47), 265, 1554, 1585.
- Commonwealth v. Rucker (14 B. Mon. 228), 1459.
- Commonwealth v. Rumrill (1 Gray 388), 1112, 1115, 1667.
- Commonwealth v. Russell (11 Ky. L. Rep. [abstract] 576), 950, 1187.
- Commonwealth v. Ryan (9 Gray 137), 1491, 1500, 1643.
- Commonwealth v. Ryan (14 Gray 367), 1491.
- Commonwealth v. Ryan (136 Mass. 436), 1547, 1671.
- Commonwealth v. Ryan ([Mass.] 25 N. E. 465), 1636.
- Commonwealth v. Ryan (160 Mass. 172; 35 N. E. 673), 1088, 1112, 1619.
- Commonwealth v. Saal (10 Phila. 496), 1748.
- Commonwealth v. Salmon (136 Mass. 431), 344, 345.
- Commonwealth v. Salyards ([O. & T.] 13 Pa. Co. Ct. R. 470), 2247.
- Commonwealth v. Sampson (113 Mass. 191), 1543.
- Commonwealth v. Sanborn (116 Mass. 61), 451, 523, 525.
- Commonwealth v. Sansville (140 Mass. 450; 5 N. E. 254), 344.
- Commonwealth v. Sassaman (2 Del. Co. Rep. 333), 1307.
- Commonwealth v. Savery (145 Mass. 212; 13 N. E. 611), 1185.
- Commonwealth v. Savings Bank (5 Allen [Mass.] 428), 791.
- Commonwealth v. Sawtelle (150 Mass. 320; 23 N. E. 54), 213, 345.
- Commonwealth v. Schadt (214 Pa. 592; 64 Atl. 320), 445.
- Commonwealth v. Scheckles (78 Va. 36), 452.
- Commonwealth v. Schoenhult (3 Ohio 20), 1505.
- Commonwealth v. Schoenthaler ([Ky.] 122 S. W. 828), 566.
- Commonwealth v. Schowenhutt (3 Phila. 20), 139, 140, 1504.
- Commonwealth v. Scranton (214 Pa. 595; 64 Atl. 321), 445.
- Commonwealth v. Scruggs (10 Ky. L. Rep. [abstract] 446), 1483.
- Commonwealth v. Sellers (130 Pa. St. 32; 18 Atl. 541; 15 Atl. 891; 25 Wkly N. C. 154), 165, 289, 488, 494, 1460.
- Commonwealth v. Shaffer (128 Pa. St. 575; 18 Atl. 390; 24 W. N. C. 539), 153.
- Commonwealth v. Shaw (5 Cush. 522), 1516.
- Commonwealth v. Shaw (116 Mass. 8), 1089, 1097, 1658, 1659, 1660.
- Commonwealth v. Shaw (152 Mass. 510; 25 N. E. 837; 1310, 1318).
- Commonwealth v. Shea (14 Gray 386), 8, 961, 1655, 1697.
- Commonwealth v. Shea (185 Mass. 89; 69 N. E. 1066), 387.
- Commonwealth v. Shea (115 Mass. 102), 1493, 1693.
- Commonwealth v. Shea (160 Mass. 6; 35 N. E. 83), 1089, 1099, 1660.
- Commonwealth v. Sheckler (78 Va. 36), 523, 525.
- Commonwealth v. Sheehan (105 Mass. 174), 1460.
- Commonwealth v. Sheehan (143 Mass. 468; 9 N. E. 839), 1552.
- Commonwealth v. Shelton (99 Ky. 120; 35 S. W. 128), 1463, 1467.
- Commonwealth v. Shoup (9 Pa. Co. Ct. Rep. 289), 796.
- Commonwealth v. Shuck (10 Ky. L. Rep. [abstract] 874), 911.



[References are to pages.]

- Commonwealth v. Shultz (129 Pa. 644; 18 Atl. 571; 25 Wkly. N. S. 151), 522.
- Commonwealth v. Silverman (138 Pa. St. 642; 22 Atl. 13), 336.
- Commonwealth v. Simmons (4 Pa. Dist. Rep. 35), 720.
- Commonwealth v. Sinclair (138 Mass. 493), 1180, 1372, 1375, 1600.
- Commonwealth v. Sisson (126 Mass. 48), 1097, 1658, 1673.
- Commonwealth v. Skelley (10 Gray 464), 1550, 1551.
- Commonwealth v. Slaughter (12 Ky. L. Rep. 893), 824, 1518, 1570, 1765.
- Commonwealth v. Slavery (145 Mass. 212; 13 N. E. 611), 1081.
- Commonwealth v. Sloan (4 Cush. 52), 53.
- Commonwealth v. Slosson (152 Mass. 489; 25 N. E. 835), 1582, 1655.
- Commonwealth v. Smith (127 Ky. 171; 105 S. W. 397; 32 Ky. L. Rep. 35), 1365.
- Commonwealth v. Smith (102 Mass. 144), 11, 19, 49, 1329, 1340, 1752.
- Commonwealth v. Smith (129 Mass. 104), 127.
- Commonwealth v. Smith (1 Leg. Gaz. 196), 2068.
- Commonwealth v. Smith (2 Pa. Super. Ct. 474), 1330.
- Commonwealth v. Smith (16 Pa. Co. Ct. Rep. 644), 1111, 1280.
- Commonwealth v. Smith (1 Gratt. 553), 1505, 1507.
- Commonwealth v. Smoulter (126 Pa. 137; 17 Atl. 532; 24 W. N. C. 48), 186, 796.
- Commonwealth v. Snow (14 Gray 20), 1486, 1535.
- Commonwealth v. Snow (133 Mass. 575), 8, 10, 85, 1588.
- Commonwealth v. Snyder ([Pa.] 73 Atl. 910), 2039, 2083.
- Commonwealth v. Southern Exp. Co. (103 S. W. 339; 31 Ky. L. Rep. 813), 307.
- Commonwealth v. Sprague (128 Mass. 75), 1081, 1530.
- Commonwealth v. Spring (19 Pick. 396), 687.
- Commonwealth v. Stamper (8 Ky. L. Rep. [abstract] 787), 1464, 1467.
- Commonwealth v. Steffee (7 Bush [Ky.] 161), 408.
- Commonwealth v. Steffner (2 Pa. Dist. Rep. 152), 1330.
- Commonwealth v. Stegala (3 Ky. L. Rep. [abstract] 687), 1516.
- Commonwealth v. Stevens (153 Mass. 4; 26 N. E. 96), 1599, 1728.
- Commonwealth v. Stevens (153 Mass. 421; 26 N. E. 992), 1354, 1360, 1362, 1630.
- Commonwealth v. Stevens (155 Mass. 291; 29 N. E. 508), 1648.
- Commonwealth v. Stevenson (142 Mass. 466; 8 N. E. 341), 1615, 1629.
- Commonwealth v. Stoebr (109 Mass. 365), 1672, 1673.
- Commonwealth v. Stowell (9 Met. 569), 1447, 1480, 1483, 1516.
- Commonwealth v. Stratton (150 Mass. 188; 22 N. E. 893), 690, 1267.
- Commonwealth v. Sullivan (150 Mass. 315; 23 N. E. 47), 1722.
- Commonwealth v. Sullivan (156 Mass. 229; 30 N. E. 1023), 1099, 1560, 1619, 1656, 1672, 1674.
- Commonwealth v. Sullivan (156 Mass. 487; 31 N. E. 647), 1596.



[References are to pages.]

- Commonwealth v. Sweitzer (129 Pa. St. 644; 18 Atl. 569; 25 Wkly. N. C. 151), 449, 522.
- Commonwealth v. Tabor (138 Mass. 496), 1099, 1224.
- Commonwealth v. Taggart (8 Gratt. 647), 1623.
- Commonwealth v. Tarver (8 Met. 527), 1534.
- Commonwealth v. Tate (178 Mass. 121; 59 N. E. 646), 1086.
- Commonwealth v. Tay (146 Mass. 146; 15 N. E. 503), 1081, 1089, 1169.
- Commonwealth v. Taylor ([Ky.] 116 S. W. 682), 793.
- Commonwealth v. Taylor (14 Gray 26), 369, 1712.
- Commonwealth v. Tenney (148 Mass. 452; 19 N. E. 556), 1657.
- Commonwealth v. Terry (15 Pa. Super. Ct. 608), 1223, 1241, 1242.
- Commonwealth v. Thayer (5 Met. 246), 25, 26, 1522.
- Commonwealth v. Thayer (8 Mete. 525), 1196, 1198, 1516, 1554, 1556, 1559.
- Commonwealth v. Thompson (2 Gray 82), 778, 1742.
- Commonwealth v. Thornley (88 Mass. [6 Allen] 445), 451, 523.
- Commonwealth v. Thornton (14 Gray 41), 1587, 1593, 1626.
- Commonwealth v. Tierney (148 Pa. St. 552; 24 Atl. 64), 1341.
- Commonwealth v. Timothy (8 Gray 480), 7, 34, 81, 87, 1491, 1656, 1660.
- Commonwealth v. Tinkham (14 Gray 12), 1578, 1595, 1620.
- Commonwealth v. Trainor (123 Mass. 414), 1504, 1580, 1581.
- Commonwealth v. Traverse (11 Allen 260), 1484.
- Commonwealth v. Traylor ([Ky.] 45 S. W. 356), 1491.
- Commonwealth v. Trickey (13 Allen 559), 1306.
- Commonwealth v. Trimble (150 Mass. 89; 22 N. E. 439), 1250, 1754.
- Commonwealth v. Tryon (99 Mass. 442), 1371.
- Commonwealth v. Tubbs (1 Cush. 2), 1112, 1115, 1667.
- Commonwealth v. Tuney (148 Mass. 452; 19 N. E. 556), 1659.
- Commonwealth v. Turner (4 B. Mon. 4), 1542.
- Commonwealth v. Turner (1 Cush. 493), 414.
- Commonwealth v. Tuttle (12 Cush. 502), 1451, 1512, 1641, 1643, 1745.
- Commonwealth v. Twombly (119 Mass. 104), 1582, 1674.
- Commonwealth v. Tynnauer (33 Pa. Super. Ct. 604), 1605.
- Commonwealth v. Uhrig (138 Mass. 492), 1238, 1353.
- Commonwealth v. Uhrig (146 Mass. 132; 15 N. E. 156), 1729, 1732.
- Commonwealth v. Vahey (151 Mass. 57; 23 N. E. 659), 1065, 1657, 1670.
- Commonwealth v. Van Stone (97 Mass. 548), 1113, 1115, 1667.
- Commonwealth v. Very (12 Gray 124), 1555, 1563.
- Commonwealth v. Voorhies (12 B. Mon. 361), 396, 413.
- Commonwealth v. Wachendorf (141 Mass. 270; 4 N. E. 817), 1353, 1361.
- Commonwealth v. Wall (145 Mass. 216; 13 N. E. 486), 740, 749.
- Commonwealth v. Wallace (73 Mass. [7 Gray] 22), 1585.
- Commonwealth v. Wallace (123 Mass. 400), 1065, 1596, 1656, 1660.

[References are to pages.]

- Commonwealth v. Wallace (143 Mass. 88; 9 N. E. 5), 1675.
- Commonwealth v. Walters (11 Gray 81), 386, 956, 1726.
- Commonwealth v. Walton (11 Allen 238), 1487.
- Commonwealth v. Warren (10 Ky. L. Rep. [abstract] 490), 945.
- Commonwealth v. Waters (11 Gray 81), 1527, 1528.
- Commonwealth v. Watson (2 Pa. Dist. Rep. 526), 1760.
- Commonwealth v. Webster (6 Allen, 593), 1667.
- Commonwealth v. Weisenburgh (126 Ky. 8; 102 S. W. 846; 31 Ky. L. Rep. 449), 924, 941.
- Commonwealth v. Welch (1 Allen 1), 1550, 1552, 1670, 1671.
- Commonwealth v. Welch (97 Mass. 593), 1370, 1722.
- Commonwealth v. Welch (110 Mass. 360), 1066, 1103, 1656.
- Commonwealth v. Welch (140 Mass. 372; 5 N. E. 166), 1081, 1089, 1116, 1669.
- Commonwealth v. Welch (142 Mass. 473; 8 N. E. 342), 1648, 1659.
- Commonwealth v. Welch (144 Mass. 356; 11 N. E. 423), 497, 499, 502, 506, 1639.
- Commonwealth v. Weller (77 Ky. [14 Bush] 218; 29 Am. Rep. 407), 232.
- Commonwealth v. Weller (14 Bush, 218; 29 Am. Rep. 407), 234, 240, 931, 945, 957.
- Commonwealth v. Wellington (146 Mass. 566; 16 N. E. 446), 830, 1596.
- Commonwealth v. Wentworth (146 Mass. 36; 15 N. E. 138), 389.
- Commonwealth v. Wenzel (24 Pa. Super. Ct. 467), 964, 1643.
- Commonwealth v. Whalen (16 Gray 23), 1371, 1656, 1666, 1667, 1668.
- Commonwealth v. Whalen (131 Mass. 419), 70.
- Commonwealth v. Wheeler (79 Ky. 284), 552.
- Commonwealth v. Whelan (134 Mass. 206), 247, 589, 592, 595, 683, 1278.
- Commonwealth v. Whitcomb (12 Gray 126), 1580.
- Commonwealth v. White (18 B. Mon. 492), 1442, 1554, 1555.
- Commonwealth v. White (15 Gray 407), 87, 1699, 1701.
- Commonwealth v. White (10 Met. 14), 24, 1711.
- Commonwealth v. Whitney (5 Gray 85), 65, 2030, 2031, 2032.
- Commonwealth v. Whitney (11 Cush. 447), 61, 2086, 2154.
- Commonwealth v. Wilcox (1 Cush. 503), 1446, 1447, 1534.
- Commonwealth v. Willard (22 Pick. 476), 1219, 1221, 1578.
- Commonwealth v. Williams (120 Ky. 314; 86 S. W. 553; 27 Ky. L. Rep. 695), 844.
- Commonwealth v. Williams (6 Gray [Mass.] 1), 264, 265, 1586, 1605.
- Commonwealth v. Williams (4 Allen, 587), 1180, 1375.
- Commonwealth v. Wilson (11 Cush. 412), 1513, 1520.
- Commonwealth v. Wilson (127 Pa. 542; 18 Atl. 601; 25 W. N. C. 148), 763, 764.
- Commonwealth v. Wolf (3 S. and R. [Pa.] 50), 216.
- Commonwealth v. Wood (116 Ky. 748; 76 S. W. 842; 25 Ky. L. Rep. 1019), 685.
- Commonwealth v. Wood (4 Gray 11), 1533, 1534, 1650, 1655.
- Commonwealth v. Woods (4 Ky. L. Rep. [abstract] 262), 546, 550.

[References are to pages.]

- Commonwealth v. Woods (9 Gray 131), 1535.
- Commonwealth v. Woods (165 Mass. 145; 42 N. E. 565), 1624, 1754.
- Commonwealth v. Worcester (126 Mass. 256), 1163, 1621.
- Commonwealth v. Worcester (141 Mass. 58; 6 N. E. 700), 213, 344.
- Commonwealth v. Wright (79 Ky. 22), 280.
- Commonwealth v. Wright (12 Allen 190), 1547.
- Commonwealth v. Young (15 Gratt. 664), 1488, 1510, 1520.
- Commonwealth v. Zelt (138 Pa. St. 615; 21 Atl. 7; 11 L. R. A. 602), 210, 336, 1255, 1589, 1761.
- Compler v. State (18 Ind. 447), 1635.
- Componovo v. State ([Tex. Cr. App.] 39 S. W. 1114), 344 1646.
- Compton v. Simoneau (21 Rev. Leg. 265), 434.
- Compton v. State (95 Ala. 25; 11 So. 69), 970, 1185.
- Comstock v. Drohan (8 Hun 373), 2008.
- Conant v. Jackson (16 Vt. 335), 2093, 2104, 2106.
- Concord v. Patterson (53 N. C. 182), 432.
- Condell v. Price (1 Hans. [N. B.] 333), 1048.
- Confer v. Elizabethtown ([Ky.] 99 S. W. 608; 30 Ky. L. Rep. 706), 415.
- Conforti v. Romano (50 N. Y. Misc. Rep. 148; 98 N. Y. Supp. 194), 1769.
- Confrey v. Stark (73 Ill. 137), 1839, 1847.
- Conlan v. Roemer (52 N. J. L. 53; 18 Atl. 858), 2126.
- Conlee v. Clay City ([Ky.] 102 S. W. 862; 31 Ky. L. Rep. 533), 653
- Conley, *Ex parte* ([Tex. Cr. App.] 75 S. W. 301), 889.
- Conley v. Nailor (118 U. S. 127; 6 Sup. Ct. 1001; 30 L. ed. 112), 2099, 2122.
- Conley v. Rushville (60 Ind. 327), 397.
- Conley v. State (5 W. Va. 522), 1445.
- Conley v. Zerber (74 Iowa 699; 39 N. W. 113), 985.
- Conlon v. Muldowney ([1904] 2 Irish Rep. 498), 1355, 1357.
- Conly v. Commonwealth (98 Ky. 125; 32 S. W. 285), 2041, 2045.
- Conner & Co., *In re* (171 Fed. 261), 703.
- Conner v. Commonwealth ([Ky.] 16 S. W. 454; 13 Ky. L. Rep. 403), 749, 1760.
- Conner v. Elliott (18 How. 591), 311.
- Connecticut Breweries Co. v. Murphy (81 Conn. 145; 70 Atl. 450), 480, 537, 538, 646, 647, 687.
- Connecticut Mut. L. Ins. Co. v. Bear (26 Fed. 582), 2233.
- Connell v. State (46 Ind. 446), 1491.
- Conner & Co., *In re* (171 Fed. 261), 480.
- Connolly, *In re* ([N. Y.] 403), 2134.
- Connolly v. Atlanta (79 Ga. 664; 4 S. E. 263), 44, 171.
- Connolly v. Crescent City R. Co. (41 La. 57; 5 So. 259; 6 So. 520; 3 L. R. A. 133), 2205 2207, 2212, 2215.
- Connolly v. McConnell (1 Penne-will [Del.] 133; 39 Atl. 773), 1802.
- Connolly v. People (42 Ill. App. 36), 1232.

[References are to pages.]

- Connolly v. Scarr** (72 Iowa, 227; 33 N. W. 641), 1802, 1804.  
**Connolly v. Stenniker** (22 Viet. L. R. 257; 18 Austr. L. T. 60; 2 Austr. L. R. [C. N.] 322), 360, 1134.  
**Connolly v. Whitty** (1 Austr. L. R. 105), 1672.  
**Connors, In re Temp. Wood** ([Manitoba] 284, 993), 611.  
**Conover v. Atlantic City** (73 N. J. L. 596; 64 Atl. 146, reversing [N. J. L.] 6 Atl. 31), 403.  
**Conover v. Gregson** (72 N. J. L. 103; 60 Atl. 31), 415.  
**Conover v. Mass. Mut. L. Ins. Co.** (1 Cent. L. Jr. 597; 4 Bigelow, etc. Ins. Rep. 189), 2221, 2231.  
**Conrad v. State** (70 Miss. 733; 12 So. 851), 1687.  
**Conservative Realty Co. v. St. Louis Brewing Ass'n** (133 Mo. 261; 113 S. W. 229), 1812.  
**Consumers Brewing Co., In re** (4 Lack. Legg. N. 165; 20 Pa. Co. Ct. Rep. 597; 7 Pa. Dist. Rep. 193), 536, 540.  
**Consumers Brewing Co. v. Norfolk** (101 Va. 171; 43 S. E. 336), 1196.  
**Consumers Co. v. Harless** (131 Ind. 446; 29 N. E. 1062), 243.  
**Continental Life Ins. Co. v. Thoen** (26 Ill. App. 495), 2221, 2241.  
**Converse v. Damariscotta Bank** (15 Me. 433), 1058.  
**Converse v. Foster** (32 Vt. 828), 1807.  
**Converse v. Railway Co.** (2 McArthur 564), 2208.  
**Convey, In re** (52 Iowa 197; 2 N. W. 1084), 2134.  
**Conway ([Pa.] In re, 1 Atl. 727), 635.**  
**Conway v. Fayette Co.** (132 Iowa 510; 109 N. W. 1074), 578.  
**Conwell v. Overmeyer** (145 Ind. 689; 44 N. E. 548), 601, 610.  
**Conwell v. Sears** (65 Ohio St. 49; 61 N. E. 155), 794.  
**Cook v. Boston** (9 Allen 393), 811.  
**Cook v. Marshall County** ([Iowa] 196 U. S. 261 [25 Sup. Ct. 233]), 1436.  
**Cook v. Mercer Co.** (51 N. J. L. 85; 16 Atl. 176), 400.  
**Cook v. Newton** (14 Ky. L. Rep. [abstract] 860), 2004.  
**Cook v. Pennsylvania** (97 U. S. 566), 316, 1426.  
**Cook v. State** (25 Fla. 698; 6 So. 451), 1463, 1467, 1469.  
**Cook v. Standard Life, etc. Ins. Co.** (84 Mich. 12; 47 N. W. 568), 2242, 2244, 2245.  
**Cook v. State** (46 Fla. 20; 35 So. 665), 2038, 2062, 2068, 2084.  
**Cook v. State** (100 Ga. 72; 25 S. E. 919), 1199.  
**Cook v. State** (124 Ga. 653; 53 S. W. 104), 1163.  
**Cook v. State** (81 Miss. 146; 32 So. 312), 1300, 1602.  
**Cook v. State** ([Tex. Cr. App.] 89 S. W. 641), 1691.  
**Cook v. Territory** (3 Wyo. 110; 4 Pac. 887), 2062, 2072.  
**Cook County v. McCrea** (93 Ill. 236), 396.  
**Cooke v. Clayworth** (18 Ves. Jr. 17), 2152.  
**Cooke v. Common Pleas** (51 N. J. L. 85; 16 Atl. 176), 558.  
**Cooke v. Loper** (151 Ala. 546; 44 So. 78), 559.  
**Cool v. State** (16 Ind. 355), 1500, 1501.  
**Cooley v. Davis** (34 Iowa 428), 1027.  
**Cooley v. Port Wardens** (12 How. [U. S.] 298), 303.  
**Coombe v. Carthew** [N. J. L.] 43 Atl. 1057), 2094, 2105, 2106, 2108.  
**Coombs v. State** (81 Ga. 780; 8 S. E. 318), 1679, 1680.

[References are to pages.]

- Cooper v. Anderson (22 N. Z. 1010), 1154.
- Cooper v. Dickinson (unreported English case, January, 1877), 1297.
- Cooper v. Greenfield (169 Ind. 14; 81 N. E. 56), 171.
- Cooper v. Hot Springs (87 Ark. 12; 111 S. W. 997), 91, 192, 415.
- Cooper v. Hunt (103 Mo. App. 9; 77 S. W. 483), 576, 626, 645, 646, 658, 675.
- Cooper v. McMullen (16 N. Z. L. R. 560), 1257.
- Cooper v. Osborne (34 L. T. [N. S.] 347; 40 J. P. 759), 374, 1145, 1318.
- Cooper v. Shelton (97 Ky. 282; 30 S. W. 623), 932, 938.
- Cooper v. State (37 Ark. 412), 1162, 1224.
- Cooper v. State (88 Ga. 441; 14 S. E. 592), 1120, 1126.
- Cooper v. State ([Tex. Cr. App.] 65 S. W. 916), 908.
- Cooper v. Turbill ([1808] 3 Camp. 286), 1818.
- Cope v. Landles (13 T. L. R. 18), 1316, 1317.
- Cope v. Somers Point (73 N. J. L. 376; 64 Atl. 156), 588.
- Copeland v. Sheridan (152 Ind. 107; 51 N. E. 474), 411.
- Copley v. Burton (L. R. 5 C. P. 489; 22 L. T. 888; 39 L. J. M. C. 141), 1151, 1155.
- Coppen v. Moore (No. 2 [1898] 2 Q. B. 306; 62 J. P. 453; 67 L. J. Q. B. 689; 78 L. T. 520; 46 W. R. 620; 14 T. L. R. 414), 1352, 1355.
- Corbet v. Duncan (63 Miss. 84), 561, 564, 574, 674.
- Corbett v. Haigh (5 C. P. Div. 50; 44 J. P. 39; 42 L. T. [N. S.] 185; 28 W. R. 430), 1145, 1175, 1313, 1317.
- Corbett v. Territory (1 Wash. Tr. 431), 395, 402.
- Corbin v. Houlehan (100 Me. 246; 61 Atl. 131), 122, 123, 193, 1798, 1799.
- Corbin v. McConnell (71 N. H. 350; 52 Atl. 447), 335.
- Cordes v. State (37 Kan. 48; 14 Pac. Rep. 493), 222, 390, 1768.
- Corley v. State (87 Ga. 332; 13 S. E. 556), 1595, 1614.
- Corman v. St. Margaret's (J. J. 64 J. P. 648), 678.
- Cornelius v. Holtman (44 Neb. 441; 62 N. W. 891), 1882, 1999, 2001.
- Cornett v. Commonwealth [Ky.] 64 S. W. 415; 23 Ky. L. Rep. 773), 1503, 1623.
- Cornwell v. State (Mart. & Y. 147), 2040, 2051, 2053, 2055, 2067.
- Corson v. State (57 Md. 251), 791.
- Cortland v. Howard (1 N. Y. App. Div. 131; 37 N. Y. Supp. 843), 1476.
- Cory v. Cory (1 Ves. Sr. 19), 2099, 2103, 2115, 2129.
- Cory v. Plymouth Breweries Limited, C. A. [July 24, 1906]), 1823.
- Cost v. State (96 Ala. 60; 11 So. 435), 1474, 1493, 1532.
- Costello v. Keeler (20 R. I. 298; 38 Atl. 927), 703.
- Costello v. State (130 Ala. 143; 30 So. 376), 964, 973, 1698, 1699.
- Cotant v. Hobson (98 Iowa 318; 67 N. W. 255), 1002.
- Corthell v. Holmer (87 Me. 24; 32 Atl. 715), 986.
- Cotter v. Cooper (15 N. J. L. R. 186), 1701.
- Cotterill v. Lempriere (24 Q. B. Div. 634; 59 L. J. M. C. 133; 54 J. P. 583), 1540.
- Cottle v. Cleaves (70 Me. 256), 1807.
- Cotton v. State (62 Ark. 585; 37 S. W. 48), 946.



[References are to pages.]

- Cotton v. State ([Tex.] 120 S. W. 432), 844, 965, 1191, 1714.
- Cottonwood v. H. M. Austin & Co. ([La.] 48 So. 345), 176.
- Couchman v. Prather (161 Ind. 250; 70 N. E. 240), 1893, 1894.
- Coulbert v. Troke (1 Q. B. Div. 1; 40 J. P. 533; 45 L. J. M. C. 7; 33 L. T. 340; 24 W. R. 41), 1151.
- Coulson, *Ex parte* (33 N. B. 341; 1 Can. Cr. Cas. 31), 1346.
- Coulson v. Harris (43 Miss. 728), 183.
- Coulter v. Portland (20 Ore. 469; 26 Pac. 565), 1162.
- Coulterville v. Gillam (72 Ill. 599), 395, 402, 420, 430, 443.
- County of Cass v. Johnson (95 U. S. 360), 904.
- County of Kossuth v. Wallace (60 Iowa, 508; 15 N. W. 305), 225.
- County of Mobile v. Kimball (102 U. S. 691), 156.
- Coursey v. Coursey (60 Ill. 186), 2167.
- Courtright v. Newaygo (96 Mich. 290; 55 N. W. 808), 484, 761, 763, 764.
- Cousineau v. State (10 Mo. 501), 1502, 1541.
- Cousins v. State (46 Tex. Cr. App. 87; 79 S. W. 549), 1481, 1495, 1498, 1714.
- Covel v. Heyman (111 U. S. 176; 4 Sup. Ct. 355), 1012.
- Coverdale v. Edwards (155 Ind. 374; 58 N. E. 495), 106.
- Coverdale v. State (60 Ind. 307), 1518.
- Covert v. Munson (93 Mich. 603; 53 N. W. 733), 869, 878.
- Covey, *Ex parte* (21 Low. Can. Jr. 182), 168.
- Covington v. Lee ([Ky.] 89 S. W. 493; 28 Ky. L. Rep. 492), 2186.
- Covington v. State (51 Tex. Cr. App. 48; 100 S. W. 368), 917, 1465, 1473, 1696, 1706.
- Cowap v. Atherton ([1893] 1 Q. B. 49; 68 L. T. 88; 57 J. P. 8; 41 W. R. 158; 5 R. 86), 1150.
- Cowert, *Ex parte* (92 Ala. 94; 9 So. 225), 169, 232, 402, 447, 474.
- Cowdery v. State (71 Kan. 450; 80 Pac. 953), 975, 996, 2257.
- Cowles, *In re* (34 N. Y. Misc. Rep. 447; 69 N. Y. Supp. 756), 581, 586.
- Cowles v. Gale (L. R. 7 Ch. 12; 41 L. J. Ch. 14; 25 L. T. 524; 20 W. R. 70), 678, 700, 1830.
- Cowley v. Rushville, 60 Ind. 327), 413.
- Cox, *Ex parte* (19 Ark. 688), 573, 576.
- Cox, *Ex parte* (28 Tex. App. 537; 13 S. W. 862), 933.
- Cox v. Burnham (120 Iowa 43; 94 N. W. 265), 295, 296, 616.
- Cox v. Common Council (152 Mich. 630; 116 N. W. 456), 648, 650, 651.
- Cox v. Jackson (152 Mich. 630; 116 N. W. 456), 627, 714, 727, 734.
- Cox v. Newkirk (73 Iowa 42; 34 N. W. 492), 1846, 1912, 1916, 1931.
- Cox v. State ([Miss.] 3 So. 373), 1230.
- Cox v. State ([Okla.] 104 Pac. 1074), 1907.
- Cox v. State ([Tex. Civ. App.] 85 S. W. 1199), 562.
- Cox v. State (202 U. S. 446; 26 Sup. Ct. 71; 50 L. Ed. 1099, affirming 37 Tex. Civ. App. 607; 85 S. W. 34), 159.
- Cox v. Thompson ([Tex. Civ. App.] 73 S. W. 950), 771, 772.
- Cox v. Thompson (32 Tex. Civ. App. 572; 75 S. W. 819), 772.

[References are to pages.]

- Cox v. Thompson ([Tex. Civ. App.] 85 S. W. 34), 562.
- Coxfield v. Coryell (4 Wash. C. C. 371), 311.
- Coyne, *In re* (9 Upp. Can. 448), 687.
- Crabb v. State (47 Fla. 24; 30 So. 169), 268, 1322.
- Crabb v. State (88 Ga. 584), 291, 931, 1281, 1283, 1727.
- Crabtree v. Hale (43 J. P. 499), 376.
- Crabtree v. Reed (50 Ill. 206), 1974.
- Crabtree v. State (30 Ohio St. 382), 1633, 1752.
- Craddick v. State (48 Tex. Cr. App. 385; 88 S. W. 347), 958.
- Craddock v. State (18 Tex. App. 567), 395, 448, 1307.
- Craft, *In re* (17 Ont. App. 21), 902.
- Craig v. Boyan ([1901] 2 Irish Rep. 429), 369, 374.
- Craig v. Burnett (32 Ala. 728), 444, 447.
- Craig v. Fenn (1 C. & M. 43; 41 E. C. L. 29), 2244.
- Craig v. Hasselman (74 Iowa 538; 38 N. W. 402), 985, 991.
- Craig v. McPhee (10 Ct. Sess. Cas. [4th series] 51; 48 J. P. 115), 353.
- Craig v. Plunkett (82 Iowa 474; 48 N. W. 984), 993.
- Craig v. Smith (31 Mo. App.), 799.
- Craig v. Werthmueller (78 Iowa 598; 43 N. W. 606), 70, 148, 153, 255, 258, 978, 1004, 1074.
- Craigellachie Distilling Co. v. Bigelow (36 Nov. Sco. 482), 1786, 1787, 1788.
- Cramer, *In re* (23 Pa. Super. Ct. 596), 635.
- Cramer v. Burlington (42 Iowa 315), 1946, 2171, 2177, 2186, 2190.
- Cramer v. Danielson (99 Mich. 531; 58 N. W. 476), 224, 1840, 1965.
- Crampton v. Starr (24 Vict. L. R. 537; 5 Austr. L. R. 2), 1359.
- Crampton v. State (37 Ark. 108), 1237, 1239.
- Crane v. Camp (12 Conn. 463), 1014.
- Crane v. Conklin (1 N. J. Eq. 346; 22 Am. Dec. 519), 2094, 2099, 2102, 2108, 2128, 2129, 2130.
- Crane v. Hunt (26 Ont. Rep. 641), 1915.
- Cranfield v. State (49 Tex. Cr. App. 397; 92 S. W. 846), 1131, 1481.
- Cranor v. Albany (43 Ore. 144; 71 Pac. 1042), 460, 945, 1446.
- Craven v. Craven (1 Rev. Leg. 508), 2155.
- Cravens v. Adair Co. Ct. ([Ky.] 17 Ky. L. Rep. 71; 30 S. W. 414), 563.
- Craw v. St. Louis, etc., R. Co. (20 Fed. 87), 2198, 2199.
- Crawford, *In re* (33 Pa. Super. Ct. 338), 619.
- Crawford v. State (69 Ark. 360; 63 S. W. 801), 973.
- Crawford v. State (155 Ind. 592; 57 N. E. 931), 1509.
- Crawford v. State ([Tex. Cr. App.] 58 S. W. 1006), 1217.
- Crawford v. State ([Tex. Cr. App.] 76 S. W. 576) 1187.
- Crawford v. State, ([Tex. Cr. App.] 89 S. W. 1079), 1311.
- Crawford Co. v. Laub (110 Iowa, 355; 81 N. W. 590), 806.
- Crawfordsville v. Lutz, 109 Ind. 466; 10 N. E. 411), 397.
- Crawley v. Christensen (137 U. S. 86; 11 Sup. Ct. 13), 102, 103.
- Crawley v. Commonwealth (123 Pa. 275; 16 Atl. 416; 23 W. N. C. 148), 767.

[References are to pages.]

- Creasy v. Commonwealth ([Ky.] 76 S. W. 509; 25 Ky. L. Rep. 893), 1215.
- Creaton v. Savory ([1879] 10 Ch. D. 736), 1833.
- Creek v. State (24 Ind. 151), 2346, 2248, 2249, 2250.
- Creekmore v. Commonwealth ([Ky.] 12 S. W. 628; 11 Ky. L. Rep. 566), 249, 1268.
- Creekmore v. Commonwealth, 11 Ky. L. Rep. 813), 662.
- Creel v. Cordon (44 Tex. Civ. App. 367; 98 S. W. 387), 1241, 1242.
- Creighton v. People (36 Colo. 315; 83 Pac. 1057), 1345.
- Crescent Liquor Co. v. Platt (148 Fed. 894), 307, 324, 325, 326, 335, 1289.
- Cress, *In re* (15 Manitoba 528), 896.
- Cress v. Commonwealth ([Ky.] 37 S. W. 493; 18 Ky. L. Rep. 633), 866, 910, 918, 1467.
- Crestin v. Viroqua (67 Wis. 314; 30 N. W. 515), 795.
- Crew v. St. Louis, etc. R. Co. (20 Fed. 87), 2191.
- Crew v. State ([Tex. Crim. Rep.] 23 S. W. 14), 2040.
- Cribb v. State (118 Ga. 316; 45 S. E. 396), 2038, 2044.
- Crichton v. Crichton (73 Wis. 59; 40 N. W. 638), 2161, 2167.
- Crigler v. Commonwealth ([Ky.] 83 S. W. 587), 1465, 1470, 1680.
- Crigler v. Commonwealth (120 Ky. 512; 87 S. W. 276; 27 Ky. L. Rep. 918; 87 S. W. 280; 27 Ky. L. Rep. 925, 927, 281), 325, 932, 959.
- Cripe v. State (4 Ga. App. 832; 62 S. E. 567), 1696.
- Crittenden v. Lingel (14 O. St. 182; 84 Am. Dec. 370), 1027.
- Croak v. Cowan (64 N. C. 743), 1280.
- Crocker v. Moore (140 N. C. 429; 53 S. E. 229), 382.
- Crocker v. State (49 Ark. 60; 4 S. W. Rep. 197), 389.
- Crockett v. State (45 Tex. Cr. App. 173; 49 S. W. 392), 1684, 1688.
- Croell v. State (25 Tex. App. 755; 9 S. W. 68, reversing 25 Tex. App. 596; 8 S. W. 816), 1125.
- Crofton v. State (25 Ohio St. 249), 389.
- Crofts v. Taylor (19 Q. B. Div. 524; 51 J. P. 782; 56 L. J. M. C. 137; 57 L. T. 310; 36 W. R. 47), 1383.
- Croix v. Fairfield Co. (50 Conn. 321; 47 Am. Rep. 648), 714.
- Croker v. Board ([N. J. Ch.] 63 Atl. 901), 452, 453, 467, 468, 469.
- Cromwell v. Dwings (7 Har. & J. ([Md.] 55), 1027.
- Cromwell v. Stephens (3 Abb. Prac. [N. S.] 26), 544.
- Cronin v. Adams (192 U. S. 108; 48 L. ed. 365; 24 Sup. Ct. 219, affirming 29 Colo. 488, 503; 69 Pac. 500, 1125; 48 L. ed. 368; 24 Sup. Ct. 220), 147, 464, 465.
- Cronin v. Denver (192 U. S. 115; 24 Sup. Ct. 22; 48 L. ed. 368), 466.
- Cronin v. People (82 N. Y. 318), 437.
- Cronin v. Sharp (16 Pa. Super. Ct. 76), 697, 699.
- Cronin v. Stoddard (99 N. Y. 271), 682, 684, 687.
- Croom v. State (25 Tex. App. 556; 8 S. W. 661), 1464, 1471.
- Croone, *In re* (6 Ont. Rep. 188), 468.
- Croot v. Board (20 Colo. App. 254; 78 Pac. 313), 674.
- Crosby v. People (137 Ill. 325; 27 N. E. 49), 2041, 2075.
- Crosby v. Snow (16 Me. 121), 757.

[References are to pages.]

- Cross v. Commonwealth ([Ky.] 56 S. W. 981), 1269.
- Cross v. People (66 Ill. App. 170), 73, 1597.
- Cross v. State ([Ark.] 87 S. W. 1026), 1268.
- Cross v. State (49 Tex. Cr. App. 437; 94 S. W. 1015), 1629.
- Cross v. State (55 Wis. 261; 12 N. W. 425), 2056, 2075.
- Cross v. Watts (13 C. B. [N. S.] 239; 27 J. P. 7; 32 L. J. M. C. 73; 7 L. T. 463; 11 W. R. 210), 692, 1294.
- Crossman v. Lurman (192 U. S. 189), 1438.
- Crothers v. Monteith (11 Manitoba 373; Young v. Blaisdell, 138 Mass. 344), 499, 526, 715, 739, 740.
- Crotty v. People (3 Bradw. 465), 650.
- Crouse v. Commonwealth (87 Pa. 168), 767.
- Crouse v. State (57 Md. 327), 1646, 1682.
- Crow v. State ([Tex. Crim. App.] 23 S. W. 14), 2076.
- Crowder v. State ([Tex. Cr. App.] 49 S. W. 375), 1680, 1681.
- Crowley v. Commonwealth (123 Pa. 275; 16 Atl. 416; 23 W. N. C. 148), 758.
- Crowley v. Crowley ([Ky.] 40 S. W. 380), 3153.
- Crowley v. Christensen (137 U. S. 86; 34 L. ed. 620; 11 Sup. Ct. Rep. 13), 91, 99, 110, 138, 147, 148, 149, 163, 191, 206, 208.
- Crown Point v. Warner (3 Hill 150), 104, 550.
- Croxton v. Truesdale (75 S. C. 418; 56 S. E. 45), 476.
- Croy v. Busenbark (72 Ind. 48), 605.
- Cruse v. Aden (127 Ill. 231; 20 N. E. 73; 3 L. R. A. 327), 1838, 1909.
- Cuirezak v. Keron ([N. J. L.] 70 Atl. 366), 719, 739.
- Cullen v. Ware (3 Austr. L. R. [C. N.] 65), 367.
- Cullinan, *In re* (73 N. E. 1122; 181 N. Y. 527, 530), 745.
- Culler v. State (42 Conn. 55), 492.
- Cullinan, *In re* (185 N. Y. 546; 77 N. E. 1184, affirming 104 N. Y. App. Div. 205; 93 N. Y. Supp. 492), 733.
- Cullinan, *In re* (68 N. Y. App. Div. 119; 74 N. Y. Supp. 182), 719, 741, 1130.
- Cullinan, *In re* (75 N. Y. App. Div. 301; 78 N. Y. Supp. 118), 719, 1130.
- Cullinan, *In re* (76 N. Y. App. Div. 362; 78 N. Y. Supp. 466; 12 N. Y. Ann. Cas. 68; affirmed 173 N. Y. 610; 66 N. E. 1106), 738.
- Cullinan, *In re* (82 N. Y. App. Div. 445; 81 N. Y. Supp. 567; 40 N. Y. Misc. Rep. 423; 82 N. Y. Supp. 337), 282, 1579.
- Cullinan, *In re* (85 N. Y. App. Div. 620, 621; 83 N. Y. App. Div. 643; 82 N. Y. Sup. 1098, affirming 39 N. Y. Misc. Rep. 636; 80 N. Y. Supp. 607), 721.
- Cullinan, *In re* (87 N. Y. App. Div. 47; 83 N. Y. Supp. 1025), 732, 747, 752.
- Cullinan, *In re* (88 N. Y. App. Div. 6; 84 N. Y. Supp. 492), 721.
- Cullinan, *In re* (89 N. Y. App. Div. 613; 85 N. Y. Supp. 1129, affirming 41 N. Y. Misc. Rep. 392; 84 N. Y. Supp. 1075), 738, 739.
- Cullinan, *In re* (90 N. Y. App. Div. 607; 86 N. Y. Supp. 1046), 1129.
- Cullinan, *In re* (93 N. Y. App. Div. 427; 87 N. Y. Supp. 660; 41 N. Y. Misc. Rep. 3; 83 N. Y. Supp. 581), 1310, 1312.

[References are to pages.]

- Cullinan, *In re* (94 N. Y. App. Div. 445; 88 N. Y. Supp. 164), 737, 1129, 1297, 1579.
- Cullinan v. O'Connor (100 N. Y. App. Div. 142; 91 N. Y. Supp. 628), 1312.
- Cullinan, *In re* (109 N. Y. App. Div. 816; 96 N. Y. Supp. 751; order [1904] 89 N. Y. S. 683; 97 App. Div. 122, 630, affirmed), 745.
- Cullinan, *In re* (39 N. Y. Misc. Rep. 354; 79 N. Y. Supp. 840), 738, 743.
- Cullinan, *In re* (39 N. Y. Misc. Rep. 558; 79 N. Y. Supp. 582), 746.
- Cullinan, *In re* (39 N. Y. Misc. Rep. 646; 80 N. Y. Supp. 626), 730, 743.
- Cullinan, *In re* (40 N. Y. Misc. Rep. 423; 82 N. Y. Supp. 337), 738.
- Cullinan, *In re* (41 N. Y. Misc. Rep. 3; 83 N. Y. Supp. 581; affirmed 93 N. Y. App. Div. 427; 87 N. Y. Supp. 600), 1183, 1312.
- Cullinan, *In re* (41 N. Y. Misc. Rep. 392; 84 N. Y. Supp. 1075; affirmed 89 N. Y. App. Div. 613; 85 N. Y. Supp. 1129), 743.
- Cullinan, *In re* (41 N. Y. Misc. Rep. 583; 83 N. Y. Supp. 9), 743.
- Cullinan, *In re* (45 N. Y. Misc. Rep. 497; 92 N. Y. Supp. 802; 90 N. Y. App. Div. 607; 86 N. Y. Supp. 1046), 718, 742, 1312.
- Cullinan v. Bowker (88 N. Y. App. Div. 170; 84 N. Y. Supp. 696, reversing 40 Misc. Rep. 439; 82 N. Y. Supp. 707), 759.
- Cullinan v. Burkhard (93 N. Y. App. Div. 31; 36 N. Y. Supp. 1003, reversing 41 N. Y. Misc. Rep. 321; 84 N. Y. Supp. 825), 754, 756, 767, 769, 778, 784.
- Cullinan v. Criterion Club (39 N. Y. Misc. Rep. 270; 79 N. Y. App. 482), 1343.
- Cullinan v. Devito ([N. Y.] 99 N. Y. Supp. 976), 750.
- Cullinan v. Fidelity, etc. Co. (41 N. Y. Misc. Rep. 119; 83 N. Y. Supp. 969), 761, 782.
- Cullinan v. Fidelity, etc. Co. (84 N. Y. App. Div. 292; 82 N. Y. Supp. 695; affirmed, 177 N. Y. 574; 69 N. E. 1122), 769.
- Cullinan v. Garfinkle (114 N. Y. App. Div. 509; 99 N. Y. Supp. 1119), 1160, 1202.
- Cullinan v. Horan (116 N. Y. App. Div. 711; 102 N. Y. Supp. 132), 783.
- Cullinan v. Hosmer (100 N. Y. App. Div. 148; 91 N. Y. Supp. 607), 1754.
- Cullinan v. Kuch (177 N. Y. 303; 69 N. E. 597; affirming 84 N. Y. App. Div. 642; 82 N. Y. Supp. 1098), 698, 736, 776.
- Cullinan v. McGovern (94 N. Y. Supp. 525), 964, 1710.
- Cullinan v. O'Connor (100 N. Y. App. Div. 142; 91 N. Y. Supp. 628), 765, 780, 1183, 1313.
- Cullinan v. Parker (177 N. Y. 573; 69 N. E. 1122; affirming 84 N. Y. App. Div. 296; 82 N. Y. Supp. 827; affirming 39 N. Y. Misc. Rep. 446; 80 N. Y. 187), 776, 783.
- Cullinan v. Quinn (95 N. Y. App. Div. 429; 88 N. Y. Supp. 963), 783.
- Cullinan v. Sabating (49 N. Y. Misc. Rep. 442; 99 N. Y. Supp. 977), 745.
- Cullinan v. Trolley Club (65 N. Y. App. Div. 202; 72 N. Y. Supp. 629), 1129, 1188, 1310, 1344.
- Culver v. People (11 Mich. 43), 787.
- Cummings v. Henry (10 Ind. 109), 2092, 2116.



[References are to pages.]

- Cundy v. LeCocq (13 Q. B. Div. 207; 48 J. P. 599; 53 L. J. M. C. 125; 51 L. T. 265; 32 W. R. 769), 361, 1251.
- Cunningham, *In re* (21 Can. Prac. 459), 938.
- Cunningham v. Berry (17 Ore. 622; 22 Pac. 115), 1477.
- Cunningham v. Buckey (42 W. Va. 671; 26 S. E. 442; 35 L. R. A. 850), 2187.
- Cunningham v. Davis (105 Ga. 676; 31 S. E. 585), 1165.
- Cunningham v. Gaynor (87 Iowa 449; 54 N. W. 248), 997.
- Cunningham v. Griffin (107 Ga. 690; 33 S. E. 664), 452.
- Cunningham v. Porchet (23 Tex. Civ. App. 80; 56 S. W. 574), 365, 768, 783.
- Cunningham v. State (105 Ga. 676; 31 S. E. 585), 1378, 1493, 1615.
- Cunningham v. State (52 Tex. Civ. App. 522; 108 S. W. 678), 87.
- Curd v. Commonwealth (14 B. Mon. 386), 508, 1192.
- Curlee, *Ex parte* (51 Tex. Cr. App. 614; 103 S. W. 896), 874, 939.
- Curlee v. State ([Tex. Cr. App.] 101 S. W. 1197), 1473.
- Curo v. Feuchter Bros. (54 Ill. App. 112; affirmed 159 Ill. 155; 42 N. E. 308), 194.
- Curran v. Percival (21 Neb. 434; 32 N. W. 213), 1873, 1948, 1957.
- Currant v. Percival (21 Neb. 434; 32 N. W. 213), 1994.
- Current v. Commonwealth (11 Ky. L. Rep. [abstract] 764), 952.
- Currie v. Lamb (17 Rev. Leg. 251), 1267.
- Currier v. Elliott (141 Ind. 394), 280.
- Currier v. McKee (99 Me. 364; 59 A. 442), 1843, 1865, 1866, 1867, 1999, 2001.
- Curry v. Commonwealth (2 Bush, 67), 2041, 2060.
- Curry v. State (28 Tex. App. 475; 13 S. W. 752), 505, 893, 920.
- Curry v. State (35 Tex. 364), 1639.
- Curry v. Tarvas Tp. (81 Mich. 355; 45 N. W. 831), 813.
- Curtin, *In re* (19 Vict. L. R. 12; 14 Austr. L. T. 228), 594.
- Curtin v. Atkinson (36 Neb. 110; 54 N. W. 131), 1847, 1890.
- Curtis, *In re* (173 Pa. 27; 34 Atl. 214), 665.
- Curtis v. Hall (4 N. J. Law [1 Southard] 412 [1832]), 2093, 2100, 2101.
- Curtis v. Kirkpatrick (9 Idaho 629; 75 Pac. 760), 2105.
- Curtis v. March (23 J. P. 633; 3 H. & N. 866; 28 L. J. Exch. 36), 1156.
- Curtis v. State (52 Tex. Cr. App. 606; 108 S. W. 380), 87, 1285, 1689.
- Curtz v. State (4 Ind. 385), 762.
- Cuthbert v. Conley (32 Ga. 211), 448, 496, 521.

## D

- Dale v. Irvin (78 Ill. 170), 894
- Dale v. State (27 Ala. 31), 370.
- D'Amato, Appeal of (80 Conn. 357; 68 Atl. 445), 534, 536, 638, 639, 644, 705, 706.
- Dahlaun v. Gaugeiste (238 Ill. 222; 88 N. E. 287), 2095, 2099, 2108.
- Dahmer v. State (56 Miss. 787), 1622, 1639.
- Dallas Brewing Co. v. Holmes ([Tex. Civ. App.] 112 S. W. 122), 80, 83, 1789, 1790.
- Dalley v. Phillips & Marriott, Limited ([1901] 18 T. L. R. 18), 1822.

[References are to pages.]

- Dallimore v. Fulton (78 L. T. 469; 62 J. P. 423; 19 Cox C. C. 31), 363.
- Dallimore v. Sutton (62 J. P. 423; 78 L. T. 469), 2028, 2029.
- Dallis v. Griffin (117 Ga. 408; 43 S. E. 758), 382.
- Dalrymple v. State (26 Ohio Cir. Ct. Rep. 562), 869, 872, 1531, 1759.
- Dalton, *Ex parte* (27 N. B. 426), 938.
- Dalton v. Bowden (23 N. Y. 165), 1176.
- Daly v. Hinz (113 Cal. 366; 45 Pac. 693), 2195.
- Daly v. State (33 Ala. 431), 1290, 1296.
- Dames v. Bonds (55 J. P. 503), 1149.
- Dammeree's Case (15 How. St. Tr. 522), 2039.
- Danaher, *Ex parte* (27 N. B. 554; 17 N. B. 44), 620.
- Dane v. State (36 Tex. Cr. App. 84; 35 S. W. 661), 1611.
- Danford v. Taylor (20 L. T. 483; 33 J. P. 612), 373.
- Daniel v. State (149 Ala. 44; 43 So. 22), 83, 87, 964, 1359, 1491, 1493, 1704.
- Daniel v. State (32 Tex. Cr. App. 16; 21 S. W. 68), 911.
- Daniels, *In re* (8 Hawaii 746), 1779, 1798.
- Daniels v. Burford (10 Up. Can. 478), 453.
- Daniels v. Grayson College (20 Tex. Civ. App. 562; 50 S. W. 205), 767, 777, 1245.
- Daniels v. People (6 Mich. 381), 1014.
- Daniels v. State (150 Ind. 438; 50 N. E. 74), 144, 280.
- Danner v. Hotz (74 Iowa 389; 37 N. W. 969), 987, 998.
- Danrel, *In re* (31 Pa. Super Ct. 156), 696, 705.
- Dansey v. State (23 Fla. 316; 2 So. 692), 1491, 1505, 1111, 1533, 1552, 1650.
- Dant v. State (83 Ind. 60), 13, 1200, 1587, 1598, 1618, 1622, 1637, 1700, 1701.
- Danville v. Hatcher (101 Va. 523; 44 S. E. 727), 91, 99, 148, 149.
- Darbourne v. Oberlin (121 La. 641; 46 So. 679), 920.
- Darby v. Cabanne (1 Mo. App. 126), 2109.
- Darling v. Boesch (67 Iowa 702; 25 N. W. 887), 573, 576, 607, 676, 944.
- Darling v. Rogers (7 Kan. 592), 228.
- Darling v. St. Paul (19 Minn. 389), 405, 420.
- Darr v. Howard (6 Ark. 641), 270.
- Darrach's Appeal (62 Pa. St. 491), 793.
- Darst v. People (51 Ill. 286; 2 Am. Rep. 301), 256, 1013.
- Darter v. Earl (3 Gray 489), 1795, 1797.
- Dartford Brewing Co., Limited v. Till ([1906] 70 J. P. 519; 95 L. T. 836; 22 T. L. R. 792), 623, 1826.
- Dash v. United States Express Co. ([Iowa] 99 N. W. 298), 998.
- Dater v. Earl (3 Gray 482), 1790, 1801.
- Daughter, *In re* (27 Vt. 325), 110, 1748.
- Davanney v. Hanson (60 W. Va. 3; 53 S. E. 603), 576.
- Davenport v. Bird (34 Iowa 524), 271.
- Davenport v. Kelly (7 Iowa 103; Burlington v. —; 18 Ia. 59), 448.
- Davey v. Aetna Life Ins. Co. (38 Fed. 650), 2245.
- David v. Hardin Co. (104 Iowa 204; 73 N. W. 576), 797, 805.

[References are to pages.]

- David Mayer Brewing Co. v. Mack  
(59 N. Y. Misc. Rep. 202;  
110 N. Y. Supp. 245), 697,  
699, 703.
- Davidge v. Crandall (23 Ill. App.  
360), 2099.
- Davidson v. State (27 Tex. App.  
262; 11 S. W. 371), 513, 1372,  
1759.
- Davidson v. State (44 Tex. Cr.  
App. 586; 73 S. W. 808), 878,  
1285.
- Davies v. Burnett (71 L. J. K. B.  
355 [1902]; 1 K. B. 666; 86  
L. T. 565; 50 W. R. 391; 66  
J. P. 406), 1332.
- Davis, *Ex parte* (2 H. & N. 149;  
26 L. J. M. C. 178; 5 W. R.  
522; 21 J. P. 280), 1301.
- Davis v. Affleck (34 Ind. 572; 73  
N. E. 283), 606, 610, 611, 612.
- Davis v. Auld (96 Mo. 559; 53  
Atl. 118), 976, 991, 1000.
- Davis v. Board (7 Cal. App. 571;  
95 Pac. 170), 611.
- Davis v. Borland ([Neb.] 119 N.  
W. 454), 1955, 1973.
- Davis v. Bronson (6 Iowa 410),  
1790.
- Davis v. Burnett (71 L. J. K. B.  
355 [1902]; 1 K. B. 666; 86  
L. T. 565; 50 W. R. 391; 66  
J. P. 406), 690, 1347.
- Davis v. Commonwealth (82 S. W.  
277; 26 Ky. L. Rep. 597),  
1194.
- Davis v. Dashiell (62 N. C. 114),  
313.
- Davis v. Evans (62 J. P. 120; 77  
L. T. 688; 14 T. L. R. 163),  
710.
- Davis v. Fasig (128 Ind. 271;  
27 N. E. 726), 166, 1315, 1457.
- Davis v. Henderson (127 Ky. 13;  
104 S. W. 1009; 31 Ky. L.  
Rep. 1252), 853, 859.
- Davies v. McKnight (146 Pa. 610;  
23 A. 320), 1891, 1999, 2001.
- Davis v. Oregon, etc. R. Co. (8  
Ore. 172), 2177.
- Davis v. Patterson (12 Pa. Super.  
Ct. 479), 801.
- Davis v. People (19 Ill. [9 Peck.]  
74), 2247.
- Davis v. Slater (17 Iowa 250),  
1784.
- Davis v. Standish (26 Hun [N. Y.]  
608), 1869, 1871, 1873, 1984,  
1985, 1988.
- Davis v. State (4 Stew. & P.  
[Ala.] 83), 521, 523.
- Davis v. State (145 Ala. 247; 40  
So. 663), 382.
- Davis v. State (152 Ala. 86; 44  
So. 561), 2038.
- Davis v. State ([Ala.] 55 So. 561),  
2070.
- Davis v. State (50 Ark. 17; 6 C.  
W. 388), 53, 969, 970, 1446.
- Davis v. State (105 Ga. 783; 32  
S. E. 130), 1651.
- Davis v. State (4 Ga. App. 274;  
61 S. E. 132), 1599.
- Davis v. State (35 Ind. 496; 9  
Am. Rep. 760), 2247, 2250.
- Davis v. State (100 Ind. 154),  
1444, 1446.
- Davis v. State (7 Md. 151), 294.
- Davis v. State (25 Ohio St. 369),  
2063, 2067, 2072.
- Davis v. State (2 Tex. App. 425),  
397, 402.
- Davis v. State (36 Tex. Cr. App.  
393; 37 S. W. 435), 964,  
1699.
- Davis v. State ([Tex. Cr. App.]  
107 S. W. 832, 839), 958.
- Davis v. State (53 Tex. Cr. App.  
373; 109 S. W. 938), 1186.
- Davis v. Stephenson (24 Q. B. Div.  
529; 54 J. P. 565; 59 L. J. M.  
C. 73; 62 L. T. 436; 38 W. R.  
492), 379.
- Davis v. Wentworth (17 N. H.  
567), 1783.
- Davis Hotel Co. v. Platt (172 Fed.  
175), 338.
- Dawson v. State (16 Ind. 428; 79  
Am. Dec. 439), 2080.

[References are to pages.]

- Dawson v. Dawson (23 Mo. App. 169), 63, 68, 2154, 2164.
- Dawson v. State (25 Tex. App. 670; 8 S. W. 820), 492, 929, 941.
- Dawson v. State (55 Tex. Cr. App. 315; 117 S. W. 136), 1651.
- Day, *In re* (38 Up. Can. 528), 914.
- Day, *Ex parte* (15 N. S. W. L. R. 420), 537.
- Day v. Frank (127 Mass. 497), 784.
- Day v. Luhke ([1868] L. R. 5 Eq. 336; 37 L. J. Ch. 330; 16 W. R. 719; 32 J. P. 499), 1830.
- Daykin v. Parker ([1894] 2 Q. B. 273, 556; 58 J. P. 835; 67 L. J. M. C. 246; 71 L. T. 379; 42 W. R. 625), 680.
- Dayton v. Quigley (29 N. J. Eq. 77), 408.
- Daxanbeklar v. People (93 Ill. App. 553), 1481, 1184, 1551.
- Deadwiller v. State ([Tex. Civ. App.] 121 S. W. 864), 44, 965, 1751.
- Deakin v. Deakin (33 J. P. 805), 2169.
- Deal v. Schofield (L. R. 3 Q. B. 8; 32 J. P. 181; 27 L. J. M. C. 15; 17 L. T. 143; 16 W. R. 77; 8 B. & S. 760), 1294.
- Deal v. Singletory (105 Ga. 466; 30 S. E. 765), 172, 175, 176, 259, 659.
- De Albert v. State (34 Tex. Crim. Rep. 508; 31 S. W. 391), 2051, 2052, 2089.
- Deammon v. Blackburn (1 Sneed. [Tenn.] 390; 60 Am. Dec. 160), 1027.
- Dean v. State (100 Ala. 102; 14 So. 762), 1524.
- Dean v. State (49 Tex. Cr. App. 249; 92 S. W. 38), 929, 1343, 1379, 1381.
- Dean v. Wilmington, etc. R. Co. (107 N. C. 686; 12 S. E. 77), 2178, 2179, 2183, 2198.
- Dearborn v. Hoit (41 Me. 120), 1800.
- Dearen v. Taylor Co. (98 Ky. 135; 32 S. W. 402), 553, 933.
- DeArmon v. State ([Tex. Cr. App.] 97 S. W. 479), 1651.
- Deberry v. Holly Springs (35 Miss. 385), 676.
- DeBlanc v. New Iberia (106 La. 680; 31 So. 311), 981.
- DeBois v. State (34 Ark. 381), 135, 247, 424.
- Decamp v. Eveland (19 Barn. 81), 793.
- DeCamp v. New Jersey, etc. Ins. Co. (3 Ins. L. Jr. 89), 2223, 2225.
- DeCamp v. N. J. L. Ins. Co. (4 Bigelow L. & Acc. Ins. Rep. 287), 2234.
- Decie v. Brown (167 Mass. 290; 45 N. E. 765), 172.
- Deck v. State (47 Ind. 245), 1714.
- Deckard v. Drewery (64 Ark. 599; 44 S. W. 351), 762.
- Decker v. Board (57 N. J. L. 603; 31 Atl. 235), 716, 727, 743.
- Decker v. McGowan (59 Ga. 805), 491, 522.
- Decker v. Sargeant (125 Ind. 404; 25 N. E. 458), 144, 166, 263, 456, 458, 459, 1315.
- Decker v. State (39 Tex. Cr. Rep. 20, 44 S. W. 845), 8, 19, 941, 1705.
- Deehan v. Johnson (141 Mass. 23; 6 N. E. 240), 649.
- Deer v. Bell (58 J. P. 513), 1277.
- Deggender v. Seattle, etc. Co. (41 Wash. 385; 83 Pac. 898), 491, 698, 699.
- DeGraff v. State ([Okla.] 103 Pac. 538), 1450, 1452, 1491, 1492), 1746.
- DeGrazier v. Stephens ([Tex.] 105 S. W. 992), 103, 123, 191, 208.
- DeHaven, *In re* (31 Pa. Super. Ct. 335), 664.

[References are to pages.]

- Deignan v. Providence License Com'rs. (16 R. I. 727; 19 Atl. 332), 744, 749.
- Deisher v. State ([Tex. Civ. App.] 96 S. W. 28), 1224, 1606.
- Deitz v. City of Central (1 Colo. 323), 409, 470, 1760.
- Delameter v. South Dakota (205 U. S. 93; 27 Sup. Ct. 447; 51 L. Ed. 724), 329.
- Delaplain v. Cook (7 Wis. 43, 264, 1505).
- Delavina v. Hill (65 N. H. 94), 1801.
- Delfel v. Hanson (2 Wash. St. 194; 26 Pac. 220), 1932.
- Delgado v. State (34 Tex. Cr. Rep. 157; 29 S. W. 1970), 2056, 2058, 2089.
- DeLesdernier v. DeLesdernier (45 La. Ann. 1364; 14 So. 191), 64, 2155, 2156.
- DeMery, *In re* (20 Viet. L. N. 95; 15 Austr. L. T. 232), 682.
- Demarco, *Ex parte* (77 Vt. 445; 61 Atl. 36), 1762.
- Den v. DuBois (16 N. J. L. 285), 929.
- Denby v. Fie (106 Iowa 299; 76 N. W. 702), 998.
- Denman v. St. Paul, etc. R. Co. (26 Minn. 357), 2180, 2184.
- Dennehy v. Chicago (120 Ill. 627; 12 N. E. 227), 186, 347, 414, 428, 440, 443, 448, 755.
- Dennis v. Dennis (68 Conn. 186; 36 Atl. 34; 34 L. R. A. 449; 57 Am. St. 95), 67, 2159, 2161.
- Dennison v. Collins (1 Cow. 111), 2255.
- Dennison v. Van Wormer (107 Mich. 461; 65 N. W. 274), 1879, 1880.
- Denton v. Logan (3 Met. ([Ky.] 434), 1805.
- Denton v. State (52 Tex. Cr. App. 58; 105 S. W. 199), 1729.
- Denton v. Vann (8 Cal. App. 677; 97 Pac. 675), 235.
- Denver v. Domedian (15 Colo. App. 36; 60 Pac. 1107), 364, 365.
- Denver Tramway Co. v. Reid (4 Colo. App. 53; 36 Pac. 500), 2174, 2191, 2194.
- Deposit v. Devereux (8 Hun 317), 807.
- Depree v. State ([Tex.] 119 S. W. 301), 974.
- D'Eresby, *Ex parte* ([1881] 44 L. T. 781; 29 W. R. 527), 1834.
- Dermott v. Commonwealth ([Ky.] 96 S. W. 474; 20 Ky. L. Rep. 750), 950.
- Derrel, *In re* (55 N. Y. Misc. Rep. 618; 106 N. Y. Supp. 1030), 729.
- Deselms v. Baltimore, etc. R. Co. (149 Pa. 432; 24 Atl. 283), 2196.
- Deshazo v. State (65 Ark. 38; 44 S. W. 453), 1653.
- Des Moines Union Ry. Co., *In re* (137 Iowa 730; 115 N. W. 740, 743), 794, 795.
- Desroches v. Cole (11 Rev. Leg. 386), 922.
- DeTarr v. State (37 Ind. App. 323; 76 N. E. 897), 825, 832, 833, 834.
- Detroit Realty Co. v. Barnett (156 Mich. 385; 120 N. W. 804; 16 Let. L. N. 107), 975.
- Deuel, *In re* (55 N. Y. Misc. Rep. 618; 106 N. Y. Supp. 1030), 744.
- Deutschman v. Charlestown (40 Ind. 449), 412.
- DeVancene, *In re* (31 How. Pro. 289, 337), 291.
- DeVan v. Commercial Travel, etc. Ins. Co. (157 N. Y. 690; 51 N. E. 1090; affirming 92 Hun 256; 36 N. Y. Supp. 931), 2239.
- Devanney v. Hanson (60 W. Va. 3; 53 S. E. 603), 652, 976, 985.
- Deveney v. State (47 Ind. 208), 1253, 1256, 1455, 1566, 1586.



[References are to pages.]

- Devin v. Belt (70 Md. 352; 17 Atl. 375), 622, 635, 648.  
 Devin v. Scott (34 Ind. 67), 277, 2016, 2020, 2110, 2119.  
 Devine v. Board (121 Mich. 433; 80 N. W. 109), 650.  
 Devine v. Commonwealth (107 Va. 860; 60 S. E. 37), 1609, 1702, 1707.  
 Devine v. Fallon (3 Austr. L. R. [C. N.] 42), 1314.  
 Devine v. O'Sullivan (23 Viet. L. R. 75; 19 Austr. L. T. 3; 3 Austr. L. R. [C. N.] 33), 351.  
 Devine v. State (4 Clarke [Iowa] 443), 1196, 1559.  
 Deverry v. Holly Springs (35 Miss. 385), 674.  
 DeWalt, *In re* (186 Pa. 204; 42 W. N. C. 114; 40 Atl. 470), 139.  
 Dewant v. Neilsen (2 F. [Just Cas.] 57), 1113.  
 Dewar v. People (40 Mich. 401; 29 Am. Rep. 545), 70, 169, 419, 474.  
 DeWitt v. LaCotts (76 Ark. 250; 88 S. W. 877), 2025, 2033.  
 Dexter v. Cumberland (17 R. I. 222; 21 Atl. 347), 572, 669, 674, 677.  
 Dexter v. Sprague (22 R. I. 324; 47 Atl. 889), 589.  
 Dial v. State ([Ala.] 49 So. 230), 1164, 1186.  
 Dice v. Sherberneau (152 Mich. 601; 116 N. W. 416; 15 Det. L. N. 255), 1869, 1907.  
 Dichett v. Spuyten Duyvil, etc., R. Co. (5 Hun 165), 2171, 2177.  
 Dick, *Ex parte* (141 Fed. 5; 72 C. C. A. 667), 1260.  
 Dick v. People (47 Ill. App. 223), 1629.  
 Dick v. United States (208 U. S. 340; 28 Sup. Ct. 399; 52 L. ed.), 1258, 1259.  
 Dickey v. Hurlburt (5 Cal. 343), 882, 883.  
 Dickinson v. Eichorn (78 Iowa 710; 43 N. W. 620; 6 L. R. A. 721), 983.  
 Dickson, *Ex parte* (3 N. S. W. L. R. 358), 1299.  
 Dickson v. Gamble (16 Fla. 687), 798.  
 Dickson v. Holt (30 Tex. Civ. App. 297; 70 S. W. 342), 772.  
 Dickson v. State (89 Ga. 785; 15 S. E. 684), 1227.  
 Diehl v. State (157 Ind. 549; 62 N. E. 51), 1444.  
 Dienstag v. Fagan (74 N. J. L. 418; 65 Atl. 1021), 559.  
 Dikeman v. Harrison (38 Mich. 617), 2014.  
 Dilkes v. Pancoast (53 N. J. L. 553; 22 Atl. 122), 617.  
 Dillard v. State (152 Ala. 86; 44 So. 537), 1651.  
 Dillard v. State (31 Tex. Cr. Rep. 470; 20 S. W. 1106), 851, 876.  
 Dillman v. People (4 N. Y. Wkly. Dig. 251), 24, 46.  
 Dills v. State ([Tex.] 117 S. W. 835), 1680.  
 Diltz v. State ([Tex.] 119 S. W. 92), 1197.  
 Dimond's Estate (3 Pa. Dist. Rep. 554), 2134, 2147, 2148.  
 Dimond, *Ex parte* (2 N. S. W. L. R. 207), 521, 529.  
 Dinkins v. State (149 Ala. 49; 43 So. 114), 967.  
 Di Nubile, *In re* (11 Pa. Super. Ct. 571), 664.  
 Dinuzo v. State ([Neb.] 123 Pac. 310), 291, 1764.  
 Disbrow v. Sanders (1 Denio 149), 525.  
 Dispensary Com'rs v. Thornton, 106 Ga. 106; 31 S. E. 733), 476, 790.  
 Dispensary Commissioners v. Hooper (128 Ga. 99; 56 S. E. 997), 175, 382.  
 District of Columbia v. Renter (15 App. D. C. 237), 1311.

[References are to pages.]

- District Tp. v. Frahm (102 Iowa 5; 70 N. W. 721), 808.
- Dittforth v. State (46 Tex. Cr. App. 424; 80 S. W. 628), 1627.
- Ditton v. Morgan (56 Ind. 60), 1937.
- Dival v. Mowry (6 R. I. 479), 2127.
- Divine v. State (4 Ind. 240), 1501.
- Dixon v. Dixon (22 N. J. Eq. 91; 7 Green. Eq. [N. J.] 91), 2106, 2108.
- Dixon v. State (67 Ark. 495; 55 S. W. 850), 1201, 1651.
- Dixon v. State (86 Ga. 754; 13 S. E. 87), 1232.
- Dixon v. State (89 Ga. 785; 15 S. E. 684), 1228, 1646.
- Dixon v. State (21 Tex. App. 517; 1 S. W. 448), 1502, 1503, 1508, 1509.
- Doan v. Doan (3 Clark. 7; 4 Pa. Law J. 332), 2158, 2165.
- Doane v. Lockwood (115 Ill. 490), 2127.
- Dorr, *Ex parte* (3 How. [U. S.] 104), 1012.
- Dobbins v. Erie County (16 Pet. [U. S.] 435), 790.
- Doberneck, Appeal of (1 Pa. Super. Ct. 637), 600, 628, 632, 664, 665.
- Dollins v. State ([Tex. Cr. App.] 38 S. W. 775), 1471.
- Dobson v. State (57 Ind. 69), 1190.
- Dobson v. State (5 Lea 271), 1713.
- Dod v. Monger (6 Mod. 215), 1020.
- Dodd v. Dodd ([1906], p. 189; 70 J. P. 163; 75 L. J. P. 49; 94 L. T. 709; 54 W. R. 541; 22 T. L. R. 484), 2169.
- Doe v. Burnham (31 N. H. 426), 1807.
- Doe v. Douglass (8 Blackf. [Ind.] 10), 95.
- Doe v. Harter (1 Ind. 427), 2116, 2118, 2128.
- Doherty, *Ex parte* (33 N. B. 15), 1663.
- Doherty, *Ex parte* (27 N. B. 292), 1681.
- Doherty v. Colter (68 N. H. 37; 38 Atl. 499), 1799, 1807.
- Dolan's Appeal (108 Pa. St. 564), 733, 747.
- Dolan v. Buzzell (41 Me. 473), 1776.
- Dolan v. Green (110 Mass. 322), 1787.
- Dolan v. McLaughlin (46 Neb. 449; 64 N. W. 1076), 5, 1948.
- Dolan v. State (40 Ark. 454), 2249.
- Dolan v. State (122 Ind. 141; 23 N. E. 761), 1257, 1564, 1565, 1633, 1749, 1751.
- Dolson v. Hope (7 Kan. 161), 553, 1780.
- Dominick v. State (27 Ohio Cir. Ct. Rep. 305), 1129, 1487, 1738.
- Donaghue, *In re* (5 Pa. Super. Ct. 1; 40 W. N. C. 448), 640, 664.
- Donaher, *Ex parte* (27 N. B. 554; 17 N. B. 44), 649.
- Donahue, *Ex parte* (1 W. N. [N. S. W.] 101), 1572.
- Donahue v. Coleman (46 Conn. 319), 1800.
- Donahue v. Maloney (49 Conn. 163), 1777.
- Donald v. Scott (67 Fed. 854), 179, 1325.
- Donald v. Scott (74 Fed. 859), 307.
- Donald v. Scott (76 Fed. 554), 1098.
- Donald v. State ([Miss.] 41 So. 4), 1605.
- Donaldson v. State (3 Ga. App. 451; 60 S. E. 115), 1614, 1707.
- Donaldson v. State (15 Tex. App. 25), 928, 1588, 1680.

[References are to pages.]

- Donavan v. State (170 Ind. 123; 83 N. E. 744), 288, 1456, 1478, 1491, 1507.
- Donchoo's Appeal (2 Mon. [Pa.] 213; 15 Atl. 924), 2121.
- Donelson v. Posey (13 Ala. 752), 2094, 2098, 2128, 2130.
- Doner v. People (92 Ill. App. 43), 1710.
- Donley v. State (48 Tex. Cr. App. 567; 89 S. W. 553), 334, 1280, 1282.
- Donnell v. State (2 Ind. 658), 822.
- Donnelly, *In re* (38 Up. Can. 599), 429.
- Donnelly v. Decker (58 Wis. 461), 97.
- Donnelly v. Smith (128 Iowa 257; 103 N. W. 776), 979, 982, 1004.
- Donner v. Hotz (74 Iowa 389; 27 N. W. 969), 981.
- Donaho v. Metropolitan St. R. Co. (30 N. Y. Misc. Rep. 433; 62 N. Y. Supp. 523), 1735.
- Donnmoyer, *In re* (9 Pa. Co. Ct. Rep. 303), 561, 563.
- Donovan, *In re* (9 Pa. Super. Ct. 647; 44 W. N. C. 34), 664, 666.
- Donovan, *In re* (72 L. J. K. B. 545 [1903] 1 K. B. 13, 895; 88 L. T. 555; 52 W. R. 14; 67 J. P. 147; 20 Cox. C. C. 435), 2018.
- Donovan v. Fairfield Co. (60 Conn. 339; 22 Atl. 847), 896, 898.
- Donovan v. State (170 Ind. 123; 83 N. E. 744), 1549.
- Dooley v. State (52 Tex. Cr. App. 491; 108 S. W. 676), 1216, 1580.
- Doolittle v. Lucerne Co. (6 Kulp. 495), 815.
- Doores v. Commonwealth ([Ky.] 76 S. W. 2; 25 Ky. L. Rep. 459), 1378.
- Doores v. Commonwealth ([Ky.] 109 S. W. 302; 33 Ky. L. Rep. 69), 307, 308.
- Doores v. Commonwealth (121 Ky. 226; 89 S. W. 161; 28 Ky. L. Rep. 192; 89 S. W. 164; 28 Ky. L. Rep. 196), 949, 950.
- Doran v. Phillips (47 Mich. 228; 10 N. W. 350), 481, 484, 798, 799, 800, 801.
- Dorbeneck, Appeal of (1 Pa. Super. Ct. 99; 38 W. N. C. 90), 638.
- Dorman v. State (34 Ala. 216), 110, 132, 135, 1502.
- Dorr v. Munsel (13 Johns. 430), 2093.
- Dorrian v. McHugh ([1907] 2 Irish Rep. 564), 1322.
- Dorsett v. State ([Tex. Cr. App.] 58 S. W. 1003), 1187.
- Dosh v. United States Exp. Co. ([Iowa] 93 N. W. 571), 1104.
- Doss v. Commonwealth (14 Ky. L. Rep. [abstract] 334), 911, 913.
- Doss v. Moore (69 Ark. 258; 63 S. W. 66), 934.
- Doster v. State (93 Ga. 43; 18 S. E. 997), 1285.
- Doty v. Postal (87 Mich. 143; 49 N. W. 434), 1864, 1876, 1972, 1999, 2001.
- Dougdale v. The Queen (1 El. and B. 435), 1080.
- Dougherty v. Commonwealth (143 Mon. 239), 627.
- Dougherty v. Richmond ([R. I. 74 Atl. 625), 563.
- Doughty v. Doughty (3 Halst. [N. J.] 643), 2093, 2098.
- Douglass, *Ex parte* (1 Utah, 108), 216, 271.
- Douglass v. Campbell ([Ark.] 116 S. W. 211), 2262.
- Douglass v. Commonwealth ([Ky.] 47 S. W. 329; 20 Ky. L. Rep. 653), 403.
- Douglass v. Douglass (1 Del. Ch. 465), 311.

[References are to pages.]

- Douglass v. Hamilton ([Ark.] 120 S. W. 387), 923, 926, 947.
- Douglass v. State (21 Ind. App. 302; 52 N. E. 302), 10, 42, 82, 84, 964, 1681.
- Douglassville v. Johns (62 Ga. 423), 413, 443, 814.
- Dousey v. State (23 Fla. 316; 2 So. 692), 1487.
- Douthitt, *Ex parte* ([Tex. Cr. App.] 63 S. W. 131), 908, 934.
- Douthitt v. State (98 Tex. 344; 83 S. W. 795; modifying 82 S. W. 352), 158, 562.
- Douthitt v. State (36 Tex. Civ. App. 396; 82 S. W. 352; 83 S. W. 795), 759, 784.
- Douthitt v. State ([Tex. Cr. App.] 61 S. W. 404), 973.
- Douthitt v. State ([Tex. Civ. App.] 87 S. W. 190), 784, 1253, 1268.
- Dover v. Twombly (42 N. H. 59), 385.
- Dowdell v. State (58 Ind. 333), 1489, 1567.
- Dowdy v. Commonwealth ([Ky.] 101 S. W. 338; 31 Ky. L. Rep. 33), 1470, 1690.
- Dowiat v. People (92 Ill. App. 433; affirmed, 193 Ill. 264; 61 N. E. 1059), 755, 759, 770.
- Downer v. Smith (32 Vt. 1; 76 Am. Dec. 148), 2126.
- Downey v. Charles F. S. Gove Co. (201 Mass. 251; 87 N. E. 597), 1806, 1807.
- Downey v. State (20 Ind. 82), 1491.
- Downing v. Porter (74 Mass. [8 Gray] 539), 1043, 1046, 1048, 1049, 1060.
- Downman v. State (14 Ala. 242), 1290.
- Downs v. Jackson ([1895] 2 Q. B. 203; 59 J. P. 487; 64 L. J. M. C. 238; 72 L. T. 728; 43 W. R. 566; 15 Rep. 466), 378.
- Downs v. State (19 Md. 571), 1742.
- Doyal v. State Tex. Cr. App. (102 S. W. 1123), 1465, 1473.
- Doyle, *In re* (6 Kulp 356), 695.
- Doyle v. Continental Ins. Co. (94 U. S. 535), 106.
- Doyle v. Dufferien (8 Manitoba 286), 939, 940.
- Doylestown Distillery Co., Appeal of (41 W. N. C. 313), 630, 647.
- Dozier v. State (130 Ala. 57; 30 So. 396), 1735.
- Dr. C. Bouvier Specialty Co. v. James ([Ky.] 118 S. W. 381), 12.
- Drady v. Polk Co. (126 Iowa 345; 102 N. W. 115), 1000.
- Drake v. Drewry (112 Ga. 308; 37 S. E. 432), 922, 923.
- Drake v. Freelan (80 Iowa 768; 45 N. W. 576), 1003.
- Drake v. Jordan (73 Iowa 707; 36 N. W. 653), 125, 225, 226.
- Drake v. Kingsbaker (72 Iowa 441; 34 N. W. 199), 981.
- Drake v. Newton (3 Zab. [N. J.] 111), 2255.
- Drake v. State ([Tex. Civ. App.] 23 S. W. 398), 781.
- Draper v. State (6 Ga. App. 12; 64 S. E. 117), 121, 1740.
- Draper v. Fitzgerald (30 Mo. App. 518), 1358.
- Drapert v. State (14 Ind. 123), 669.
- Drechsel v. State (35 Tex. Cr. Rep. 580; 34 S. W. 934), 1502, 1623, 1689.
- Drew Co. v. Bennett (43 Ark. 364), 795.
- Drewrey v. Drewrey (64 Ark. 599; 44 S. W. 351), 763.
- Dryden, *Ex parte* (32 N. B. 98), 1724.
- Dreyfuss v. Goss (67 Kan. 57; 72 Pac. 537), 1779, 1807.
- Dryer v. State ([Tex. Cr. App.] 55 S. W. 65), 1689, 1698, 1701.

[References are to pages.]

- Drysdale v. Pradot (45 Miss. 445),  
 Driggs v. State (52 Ohio St. 37;  
 38 N. E. 882), 131, 1648.  
 Driscoll, *Ex parte* (27 N. B. 216),  
 1159, 1755.  
 Druggists' Cases (85 Tenn. 449;  
 3 S. W. 490), 793, 822, 824.  
 Drummond v. Hopper (4 Harr.  
 327), 2093, 2098.  
 Drummond v. Prestman's Ex'rs  
 (12 Wheat. 515; 6 L. ed.  
 712), 2008.  
 Drummond v. Richland City Drug  
 Co. (133 Iowa 266; 110 N.  
 W. 471), 984, 1004  
 Dtorer v. Haskell (50 Vt. 341),  
 1803.  
 Duay v. Shepard (150 Mich. 547;  
 114 N. W. 238; 14 Detroit  
 Leg. N. 700), 195.  
 Dubois v. Boivin (14 L. C. J. 203),  
 688.  
 Dubois v. Miller (5 Hun 332),  
 1844.  
 Du Bois v. State (87 Ala. 101; 6  
 So. 381), 1379, 1615.  
 Du Boistown v. Rochester (9 Pa.  
 Co. Ct. Rep. 442), 201.  
 Duckwall v. New Albany (25 Ind.  
 283), 436.  
 Dudley, *Ex parte* (1 S. C. [N. S.  
 W.] 63), 1371.  
 Dudley v. Buckfield (51 Me. 254),  
 1788.  
 Dudley v. Parker (55 Hun 29; 8  
 N. Y. Supp. 600), 1910.  
 Dudley v. Sautbine (49 Iowa 650;  
 31 Am. Rep. 165), 1253, 1255.  
 Dudley v. State (91 Ind. 312),  
 500, 505, 1161.  
 Duffield v. Roberson (2 Harr.  
 [Del.] 375), 2149.  
 Dufford v. Nolan (46 N. J. L.  
 87), 617.  
 Dufford v. Staats (54 N. J. L.  
 286; 23 Atl. 667), 674, 676.  
 Dugan, *Ex parte* (13 C. L. T.  
 249), 1724.  
 Dugan's Estate, *In re* (6 Pa. Dist.  
 Rep. 222), 2135, 2151.  
 Dugan v. Neville (49 Ohio St.  
 462; 31 N. E. 1080), 2012.  
 Duke v. Marston ([N. H.] 15 Atl.  
 222), 1548.  
 Duke v. State (146 Ala. 138; 41  
 So. 170), 1196.  
 Dukes v. State (77 Ga. 738), 1177,  
 1278.  
 Dukes v. State (79 Ga. 795; 4 S.  
 E. 876), 1624.  
 Dulany v. Green (4 Harr. 285),  
 2094, 2108, 2123.  
 Dulin v. State (52 Tex. Cr. App.  
 442; 108 S. W. 696), 1624.  
 Duluth v. Abrahamson ([Minn.]  
 104 N. W. 682), 289.  
 Duluth Brewing Co. v. Superior  
 (123 Fed. 353), 333, 427.  
 Dunage v. White (1 Swan St. 137),  
 2107, 2152.  
 Dunaway v. State (9 Yerg. 350),  
 1096.  
 Dunbar v. Boston (101 Mass 317),  
 1771.  
 Dunbar v. Frazer (78 Ala. 538),  
 635, 648.  
 Dunbar v. Garrity (58 N. H.  
 575), 1783.  
 Dunbar v. Locke (62 N. H. 442),  
 122, 334, 1799, 1800.  
 Dunbar v. State (34 Tex. Cr. Rep.  
 596; 31 S. W. 401), 369.  
 Duncan [1909] *In re* (16 App. Ont.  
 L. R. 132), 889.  
 Duncan v. Clement (119 N. Y.  
 Supp. 375), 264, 267, 820.  
 Duncan v. Clement ([N. Y.] 119  
 N. Y. Supp. 374), 491.  
 Duncan v. Commonwealth (2 B.  
 Mon. [Ky.] 281; 38 Am. Dec.  
 152), 510, 511.  
 Duncan v. Dowding ([1897] 1 Q.  
 B. 575; 61 J. P. 280; 66 L.  
 J. Q. B. 362; 76 L. T. 294;  
 45 W. R. 383; 13 T. L. R.  
 290; 18 Cox C. C. 527), 350.  
 Dunham v. Hough (80 Mich. 648;  
 45 N. W. 497), 755.



[References are to pages.]

- Dunlap, *In re* (171 Pa. 454; 32 Atl. 1128; 37 W. N. C. 245), 665.
- Dunlap v. Keith (1 Leigh [Va.] 430), 276.
- Dunlap v. Wagner (85 Ind. 529; 44 Am. Rep. 42), 1856, 1857, 1864, 1868, 1870, 2000, 2187.
- Dunlevey v. Watson (38 Iowa 398), 1971.
- Dunlop v. Uhr (14 N. S. W. L. R. 430), 701.
- Dunn, *Ex parte* (14 Ind. 122), 662, 668.
- Dunn v. Amos (14 Wis. 107), 2101, 2103, 2126, 2130.
- Dunn v. State (82 Ga. 27; 8 S. E. 806; 3 L. R. A. 199), 1280.
- Dunn v. State (48 Tex. Cr. App. 107; 86 S. W. 326), 1208.
- Dunne v. Kretzman (130 Ill. App. 469; 228 Ill. 31; 81 N. E. 790), 631, 634, 640.
- Dunning v. Owen ([1907] 2 K. B. 237; 76 L. J. K. B. 796; 97 L. T. 241; 71 J. P. 383; 21 Cox C. C. 485; 23 T. L. R. 494), 516, 1372.
- Dunnaway v. State (9 Yerg. 350), 1109, 1110.
- Dupree [Tex.] *Ex parte* (105 S. W. 493), 127, 251, 254, 295.
- Dupree v. State ([Tex. Cr. App.] 91 S. W. 578), 1380.
- Dupree v. State ([Tex. Civ. App.] 107 S. W. 926), 1029.
- Dupree v. State ([Tex.] 119 S. W. 301, answering [Tex.] 107 S. W. 926), 110, 122, 253, 255.
- Dupree v. State ([Tex.] 120 S. W. 871, 875), 1723.
- Du Puy v. Cook (35 N. Y. Supp. 632; 90 Hun 43), 1860, 1902.
- Duquesne Distilling Co. v. Greenbaum ([Ky.] 121 S. W. 19), 2263.
- Durach's Appeal (62 Pa. St. 491), 198, 790.
- Duren v. Stephens (126 Ga. 496; 54 S. E. 1045), 159, 168, 432, 452.
- Durein v. Pontious (34 Kan. 353; 8 Pac. 428), 1932, 1933.
- Durein v. Kansas (208 U. S. 226; 28 Sup. Ct. 567; 52 L. ed. —, affirming 70 Kan. 1; 78 Pac. 152; 80 Pac. 987), 139, 211, 1525, 1598, 1652.
- Durfee v. State (53 Neb. 214; 73 N. W. 676), 1083.
- Durkee v. Moses (67 N. H. 115; 23 Atl. 793), 122, 334, 1800.
- Durling v. Loveland (2 Curt. Eccl. Rep. 225), 2150.
- Duroy v. Blinn (11 Ohio St. 331), 1862, 1893.
- Durr v. Commonwealth ([Pa.] 12 Atl. 507), 1739.
- Dutton v. State (2 Ind. App. 488; 28 N. E. 995), 1509.
- Dwight v. Germania L. Ins. Co. (103 N. Y. 341; 57 Am. Rep. 729), 2240, 2244.
- Dwinnels v. Parsons (98 Mass. 470), 384.
- Dwyer v. Hermann (19 N. Y. 209), 1249.
- Dye v. Posen (79 Neb. 149; 112 N. W. 332), 586.
- Dyer v. Augur ([Iowa] 110 N. W. 323), 860, 922.
- Dyke v. Gower ([1892] 1 Q. B. 220; 56 J. P. 168; 61 L. J. M. C. 70; 65 L. T. 760), 1383.
- Dyson v. Mason (22 Q. B. Div. 351; 53 J. P. 262; 58 L. J. M. C. 55; 60 L. T. 285), 373, 374.
- Dziok v. Board (28 R. I. 526; 68 Atl. 479), 734, 743.

**E**

- Eagan v. State (53 Ind. 162), 12, 80, 1502, 1553.
- Earl v. State ([Tex. Cr. App.] 66 S. W. 839), 1237, 1627.
- Earl v. State (33 Tex. Civ. App. 161; 76 S. W. 207), 782.

[References are to pages.]

- Earle v. Latonia, etc. Ass'n [Ky.] 106 S. W. 312; 32 Ky. L. Rep. 469, 586), 133.  
 Early v. Rains (121 Ky. 439; 89 S. W. 289; 28 Ky. L. Rep. 415), 867, 922.  
 Early v. State (23 Tex. App. 364; 5 S. W. 122), 70.  
 Earnmoor S. S. Co. v. Union Ins. Co. (44 Fed. 374), 2198.  
 Earp v. Lilly (120 Ill. App. 123; affirmed 217 Ill. 582; 75 N. E. 552), 1888, 1912, 1982, 1983, 1991.  
 Easley v. Pegg (63 S. C. 98; 41 S. E. 18), 476, 1087.  
 East End Social Club, *In re* (8 Pa. Dist. Rep. 272), 1342.  
 Eastham v. Commonwealth ([Ky.] 49 S. W. 795; 20 Ky. L. Rep. 1639), 934, 1467.  
 Eastman v. Commonwealth ([Ky.] 20 Ky. L. Rep. 1639; 49 S. W. 795), 550.  
 East Feliciana v. Gurth (26 La. Ann. 140), 202.  
 East Saginaw v. Saginaw Co. (44 Mich. 273; 6 N. W. 684), 806.  
 East St. Louis v. Trustee, etc. 102 Ill. 489), 787.  
 East St. Louis v. Wehrung (46 Ill. 392), 191, 420, 428, 799.  
 East St. Louis v. Wehring (50 Ill. 28), 405.  
 Easterling v. State (30 Ala. 46), 1293.  
 Easterling v. State (35 Miss. 210), 1643.  
 East Tennessee, etc. R. Co. v. Winters (85 Tenn. 240; 1 S. W. 790), 2185.  
 Eastwood v. Klann ([Neb.] 120 N. W. 149), 1981.  
 Eastwood v. Miller (L. R. 9; Q. B. 440; 43 L. J. M. C. 139; 30 L. T. 716; 22 W. R. 799; 38 J. P. 647), 380.  
 Eastwood v. People (3 Park Cr. Rep. 25), 2061, 2067.  
 Eaton v. Eaton (37 N. J. Law 108; 18 Am. Rep. 716), 2095.  
 Eaton v. Perry (29 Mo. 96), 2099, 2106, 2128.  
 Eaves v. State (113 Ga. 749; 39 S. E. 318), 83, 964, 973.  
 Eberstadt v. Jones (19 Tex. Civ. App. 480; 48 S. W. 558), 1781, 1807.  
 Eckart v. State (5 W. Va. 515), 1739.  
 Eckersly v. Abbott ([N. J. L.] 74 Atl. 314), 692.  
 Eckert v. David (75 Iowa 302; 39 N. W. 513), 981.  
 Eckert v. State ([Tex. Cr. App.] 68 S. W. 682), 1237.  
 Eddens v. State (47 Tex. Cr. App. 327; 84 S. W. 828), 1219.  
 Eddy v. Courtright (91 Mich. 264; 51 N. W. 887), 1868, 1900, 1901, 2006.  
 Edgar, *Ex parte* (31 N. B. 128), 1571.  
 Edgar v. McDonald ([Tex. Civ. App.] 106 S. W. 1135), 111, 120, 126.  
 Edgar v. State (37 Ark. 219), 12, 32, 80, 1237, 1628, 1645.  
 Edgar v. State (45 Ark. 356), 1348, 1349, 1754.  
 Edgar v. State (46 Tex. Civ. App. 171; 102 S. W. 439), 188, 760, 767, 768, 782.  
 Edge v. Edge (38 N. J. Eq. 211), 2144.  
 Edgerly v. Union St. Ry. Co. ([N. H.] 36 Atl. 558), 2202, 2206, 2207, 2208, 2213.  
 Edgerton, *Ex parte* (59 Fed. 115), 321.  
 Edgett v. Finn ([Tex. Civ. App.] 36 S. W. 830), 777.  
 Edinburg v. Hackney (54 Ind. 83), 811.  
 Edis v. Butler (8 Ohio N. P. 183; 11 Ohio St. & C. P. Dec. 245), 460, 473.

[References are to pages.]

- Edmonson v. Commonwealth (110 Ky. 510; 62 S. W. 1018; 22 Ky. L. Rep. 1902), 400, 1469, 1759.
- Edmunds v. James ([1892] 1 Q. B. 18; 56 J. P. 40; 61 L. J. M. C. 56; 40 W. R. 140; 65 L. T. 675), 359, 2028.
- Edson v. Hatley (27 L. C. J. 312), 649.
- Edwards, *Ex parte* (31 N. B. 118), 1571.
- Edwardes v. Barrington ([1902] 50 W. R. 358; 85 L. T. 650; 18 T. L. R. 169), 1830.
- Edwards v. Brown (67 Mo. 377), 1358, 1937.
- Edwards v. Jagers (19 Ind. 407), 99.
- Edwards v. State (22 Ark. 253), 497, 500.
- Edwards v. State (123 Ga. 542; 51 S. E. 630), 249, 957.
- Edwards v. State (124 Ga. 100; 52 S. E. 319), 1697, 1698.
- Edwards v. State (121 Ind. 450; 23 N. E. 277), 837, 838, 1305, 1306.
- Edwards v. Hanna (5 J. J. Marsh 18), 2126.
- Edwards v. State (38 Tex. Cr. Rep. 386; 43 S. W. 112; 39 L. R. A. 262), 2086, 2087, 2090.
- Edwards v. Woodbury (156 Mass. 21; 30 N. E. 175), 1650, 1943.
- Edwards v. Worcester (172 Mass. 104; 51 N. E. 447), 1735.
- Edwick v. Hawkes ([1881] 18 Ch. D. 199; 50 L. J. 577; 45 L. T. 168), 1815.
- Effinger v. State (47 Ind. 235, 256, 262), 1486, 1566.
- Effinger v. State (9 Ohio Cir. Ct. Rep. 376), 1128.
- Efird v. State (44 Tex. Cr. App. 447; 71 N. W. 957), 911, 912, 1582, 1584, 1610, 1613.
- Efird v. State (46 Tex. Cr. App. 582; 80 S. W. 529), 863.
- Egan v. State (53 Ind. 162), 32 33.
- Eggen v. Offutt (128 Ky. 314; 108 S. W. 333; 32 Ky. L. Rep. 1350), 864, 939.
- Eggleston v. Board (51 N. Y. App. Div. 38; 64 N. Y. Supp. 471), 867, 888, 890.
- Ehlert v. State (93 Ind. 76), 1628.
- Ehrenfried v. Kenney (14 N. Y. 19), 602.
- Eick, *In re* (17 Pa. Co. Ct. Rep. 50; 4 Pa. Dist. R. 461), 720.
- Eilenbreker v. District Court (134 U. S. 31; 10 Sup. Ct. 424), 1748.
- Eilke v. McGrath (38 S. W. 877 [Ky.] 100 Ky. 537), 1850, 1852, 1853.
- Einstein, *In re* (17 Atl. 1100; 24 W. N. C. 184), 675.
- Eisenman v. State (49 Ind. 507), 1292, 1488, 1489, 1635.
- Eisenmonger, *Ex parte* (21 N. S. W. L. R. 387), 1192.
- Eisenmonger, *Ex parte* (21 L. R. Pt. iv., 17 W. N. [N. S. W.] 160), 1075, 1076.
- Elam v. State (25 Ala. 53), 1517, 1633, 1736, 1747, 1752.
- Elba v. Rhodes (142 Ala. 689; 38 So. 807), 174, 241.
- Elbow Lake v. Holt ([Minn.] 72 N. W. 564), 1518.
- Eldora v. Burlingame (62 Iowa 32; 17 N. W. 148), 294, 474.
- Eldridge v. State (27 Fla. 162; 9 So. 448), 2258, 2259.
- Eli v. Thompson (3 A. K. Marsh. [Ky.] 70), 294.
- Elias v. Dunlop ([1906] 1 K. B. 266; 70 J. P. 183; 75 L. J. K. B. 168; 94 L. T. 164; 22 T. L. R. 162), 1275.
- Elk Point v. Vaughn (1 Dak. 113; 46 N. W. 577), 275, 404, 443, 444, 448, 449, 521, 488, 491, 495.
- Elken v. State (63 Miss. 129), 215.

[References are to pages.]

- Elkin v. Buschner ([Pa.] 16 Atl. 102), 61, 64, 1250.
- Elkins v. State (13 Ga. 435), 1641.
- Elkinton v. Buick (44 N. J. Eq. 154; 15 Atl. 391; 1 L. R. A. 161), 2122, 2137, 2149.
- Ellington v. State ([Tex. Cr. App.] 86 S. W. 330), 1214, 1502, 1726.
- Elliott, *Ex parte* (44 Tex. Cr. App. 575; 72 S. W. 837), 863, 935, 941.
- Elliott, *Ex parte* (49 Tex. Cr. App. 108; 91 S. W. 570), 764.
- Elliott v. Barry (34 Hun 129 [N. Y.]), 1886.
- Elliott v. Levy (19 W. N. [N. S. W.] 2), 1642.
- Elliott v. State (73 Ind. 10), 1751.
- Elliott v. Totnes Union (57 J. P. 151), 2169.
- Ellis, *Ex parte* (76 Kan. 368; 91 Pac. 81), 291.
- Ellis v. Board (59 N. J. L. 151; 35 Atl. 795), 559.
- Ellis v. Brooks (101 Tex. 591; 102 S. W. 94; 103 S. W. 1196), 1838.
- Ellis v. Dempster (12 Austr. L. T. 216), 351.
- Ellis v. People (38 Colo. 516; 88 Pac. 461), 364, 1725.
- Ellis v. State ([Tex. Cr. App.] 89 S. W. 974), 914.
- Ellison v. Commonwealth ([Ky.] 69 S. W. 765; 24 Ky. L. Rep. 657), 1365.
- Elmore v. Overton (104 Ind. 548; 4 N. E. 197; 54 Am. Rep. 343), 480, 660.
- Elrod v. State (72 Ind. 292), 822.
- Elshire v. Schuyler (15 Neb. 651; 20 N. W. 29), 1848, 1854, 1862.
- Elsner v. State (30 Tex. 524), 1444.
- Elston v. Chicago (40 Ill. 514), 811.
- Elwood v. Bullock (6 Q. B. 386), 294.
- Elwood v. Price (75 Iowa 228; 39 N. W. 281), 975, 996.
- Ellsworth v. Cummins (134 Ill. App. 397), 1903.
- Ellsworth v. Mitchell (31 Me. 247), 1802.
- Ely, *In re* (16 N. Y. Misc. Rep. 228), 2145.
- Ely v. Webster (102 Mass. 304), 1771, 1798, 1799.
- Elzey v. Elzey (1 Houst. [Del.] 308), 2109, 2115, 2154.
- Embry v. State (110 Ga. 311; 35 S. E. 116), 230.
- Embury v. Conner (3 N. Y. 511), 280.
- Emerick v. Indianapolis (118 Ind. 279; 20 N. E. 795), 144, 168, 187, 198, 406, 443, 450, 521, 522.
- Emerson v. State (43 Ark 372), 9, 17.
- Emmerson v. Noble (32 Me. 380), 1171, 1598.
- Emert v. Missouri (156 U. S. 296; 15 Sup. Ct. 367), 321.
- Emery v. Lowell (127 Mass. 138), 812.
- Emery v. Nolloth (72 L. J. K. B. 620 [1903] 2 K. B. 264; 89 L. T. 100; 52 W. R. 107; 67 J. P. 354; 20 Cox C. C. 507), 1355, 1357.
- Eminence v. Wilson, 103 Ky. 326; 45 S. W. 81; 20 Ky. L. Rep. 29), 809.
- Emmert v. Grill (39 Iowa 690), 1932.
- Emmons v. State ([Tex. Cr. App.] 97 S. W. 1044), 1472.
- Emory v. Addis (71 Ill. 273), 1882, 1912.
- Emporia v. Volmer (12 Kan. 622), 71, 270, 291, 412, 416, 436, 569, 1748.

[References are to pages.]

- Empson, *In re* (3 N. S. W. L. R. 206), 701.
- Endelman v. United State (86 Fed. 456), 174, 1263.
- Engelhardt (88 Ala. 100; 7 So. 154), 2042, 2049, 2062.
- Engelthaler v. Linn Co. (104 Iowa 293; 73 N. W. 578), 797.
- England v. Cox (89 Ill. App. 551), 1983.
- England v. Johnson (86 Iowa 751; 53 N. W. 268), 1001.
- England v. State (82 Ark. 488; 102 S. W. 373), 1206.
- Engle's Estate, *In re* (14 Montg. Co. Law Rep. 74), 2020.
- Engle v. Commonwealth (1 S. W. 593), 931.
- Engle v. Commonwealth (7 Ky. L. Rep. [abstract] 830), 553, 554.
- Engle v. State (97 Ind. 122), 1257, 1565.
- Englehardt v. Delaware, etc. R. Co. (78 Hun 588; 29 N. Y. Supp. 425), 2199.
- Engleken v. Hilger (43 Iowa 563), 1886, 2002.
- Engleken v. Webber (47 Iowa 558 558), 1989, 1968, 2013.
- Engles v. Baker (13 Allen 449), 1772.
- English v. Beard (51 Ind. 489), 1855, 1871, 1893.
- English v. State (7 Tex. App. 171), 1125, 1640.
- English v. Young (10 B. Mon. 141), 2116.
- Ennis v. Shiley (47 Iowa 552), 1846, 1861, 1916, 1968, 1989.
- Enright v. Atlanta (78 Ga. 288), 2141, 2193.
- Enterprising Brewing Co. v. Grimes (173 Mass. 252; 53 N. E. 855), 537, 538, 1171.
- Eppenhaimer v. Commonwealth (7 Ky. L. Rep. [abstract] 223), 448.
- Eppstein v. State (11 Tex. App. 480), 1502, 1532.
- Equitable Life, etc. Co. v. Edwardsville (143 Ala. 162; 38 So. 1016), 110.
- Equitable Life Assurn. Soc. v. Liddell (32 Tex. Civ. App. 252; 74 S. W. 87), 2228.
- Erb v. German-American Ins. Co. (98 Iowa 606; 67 N. W. 583; 40 L. R. A. 845), 1778.
- Erb v. State (35 Ark. 638), 906.
- Erie Licenses, *In re* (4 Pa. Dist. Rep. 167), 639.
- Erlinger v. Bonean (51 Ill. 94), 228, 233.
- Erwin v. Benton (120 Ky. 536; 87 S. W. 191; 27 Ky. L. Rep. 909), 873, 895, 898, 905.
- Erwin v. Cartersville (120 Ga. 150; 41 S. E. 512), 1084.
- Erwin v. Stafford (45 Vt. 390), 1787, 1790.
- Erwin v. State (121 Ga. 580; 49 S. E. 689), 1651.
- Erwin v. State (10 Tex. App. 700), 2051, 2055, 2058.
- E. S. Bonnie & Co. v. Perry (117 Ky. 459; 78 S. W. 208; 25 Ky. L. Rep. 1560), 702.
- E. S. Shelby Vinegar Co. v. C. L. Hawn & Son (149 N. C. 355; 63 S. E. 78), 1788.
- Escanaba Co. v. Chicago (107 U. S. 678; 2 Sup. Ct. 185), 315.
- Eshridge v. State (25 Ala. 30), 1583.
- Eslinger v. East (100 Ind. 434), 594, 598, 622.
- Espy v. State (47 Ala. 533), 1189.
- Essex County v. Barber (2 Halst. [N. J. ] 64), 809.
- Ess v. Bonton (64 Mo. 105), 264, 1585.
- Estes v. State (55 Ga. 30), 2041, 2071.
- Ethelstane, *Ex parte* (40 J. P. 39; 33 L. T. 339), 359, 2028.
- Eureka v. Davis (21 Kan. 578), 573.
- Eureka v. Diaz (89 Cal. 467; 26 Pac. 961), 780.



[References are to pages.]

- Eureka v. Jackson (8 Kan. App. 49; 54 Pac. 5), 403, 438, 454.  
 Eureka Club v. Commonwealth 105 Va. 564; 54 S. E. 470), 1332.  
 Eureka Vinegar Co. v. Gazette Printing Co. (35 Fed. 570), 18, 49, 50, 967.  
 Evans v. Commonwealth (95 Ky. 231; 24 S. W. 632), 568, 637, 799.  
 Evans v. Commonwealth (10 Ky. L. Rep. [abstract] 681), 1464, 1467, 1764.  
 Evans v. Conway, J. J. ([1900] 2 Q. B. 224, 229; 69 L. J. Q. B. 636; 64 J. P. 467; 48 W. R. 577; 82 L. T. 704; 16 T. L. R. 425), 679, 681.  
 Evans v. Hall (45 Pa. 235), 1158.  
 Evans v. Hemingway (52 J. P. 134), 1247, 1248, 1295.  
 Evans v. Police Jury (114 La. 771; 38 So. 555), 650, 934.  
 Evans v. Redwood Falls (103 Minn. 314; 115 N. W. 200), 417.  
 Evans v. State (52 Ark. 227; 15 S. W. 360), 1619.  
 Evans v. State (54 Ark. 227; 15 S. W. 360), 1180.  
 Evans v. State (101 Ga. 780; 29 S. E. 40), 1379, 1615.  
 Evans v. State (59 Ind. 563), 2026.  
 Evans v. State (150 Ind. 651; 40 N. E. 820), 262.  
 Evans v. State ([Tex.] 117 S. W. 167), 233, 249.  
 Evansville Bank v. Button (105 U. S. 322), 355.  
 Evers, *Ex parte* (29 Tex. App. 539; 16 S. W. 343), 2039, 2088, 2090.  
 Evers v. Hudson (36 Mont. 135; 92 Pac. 462), 232.  
 Evers v. State (31 Tex. Cr. App. 318; 20 S. W. 744; 18 L. R. A. 421; 37 Am. St. 811), 2040, 2053, 2054, 2065, 2086, 2088, 2089.  
 Ewart v. Fryer ([1901] 1 Ch. 499), 1818.  
 Ewing v. Lunn (21 So. 66; 115 N. W. 527), 2253.  
 Ewings v. Walker (9 Gray 95), 1033.  
 Exchange Bank v. Hines (3 Ohio 1), 294.  
 Excise License, *In re* ([N. Y.] 38 N. Y. Supp. 425), 635.  
 Ezzell v. State (29 Tex. App. 521; 16 S. W. 782), 851, 852, 914, 917, 928, 1752.
- F**
- F. W. Cook Brewing Co. v. Commonwealth ([Ky.] 99 S. W. 354; 355; 30 Ky. L. Rep. 598, 600), 948, 1280.  
 F. W. Cook Brewing Co. v. Garber (168 Fed. 942), 103, 110, 122, 491, 494.  
 Faber, *In re* (115 N. Y. App. Div. 451; 101 N. Y. Supp. 429), 746, 752.  
 Faber v. Dwyer (3 Gray, 471), 2030.  
 Faber v. Wilder (70 Ark. 449; 69 Ark. 260), 606.  
 Fabor v. Green (72 Vt. 117; 47 Atl. 391), 17, 53.  
 Fagan v. State ([Del.] 74 Atl. 692), 498, 500.  
 Fagg v. Louisville, etc., R. Co. (111 Ky. 30; 63 S. W. 580; 54 L. R. A. 919), 2183, 2213.  
 Faher v. State (27 Tex. App. 146; 11 S. W. 108), 792.  
 Fahey v. State (62 Miss. 402), 1358.  
 Fahnestock v. State (102 Ind. 156; 1 N. E. 372), 1444, 1446.  
 Fairchild v. Snyder (43 Iowa, 23), 2254.

[References are to pages.]

- Fairclough v. Roberts (24 Q. B. Div. 350; 54 J. P. 421; 59 L. J. M. C. 54; 62 L. T. 700; 38 W. R. 330; 54 J. P. 421), 572, 1190, 1192.
- Fairclough v. Whitmore (64 L. J. Ch. 386; 72 L. T. 354; 43 W. R. 421; 13 Rep. 402), 374.
- Fairecloth v. State (73 Ga. 426), 1368.
- Fairly v. State (63 Miss. 333), 87, 1753.
- Fairmont v. Meyer (83 Minn. 456; 86 N. W. 457), 2026.
- Faivre v. Manderschied (117 Iowa 724; 90 N. W. 76), 1912.
- Falconer v. Williams (14 N. Z. L. R. 502), 649.
- Falk v. Ferd Heim Brewing Co. (10 Kan. App. 248; 62 Pac. 716), 1789.
- Fall, *In re* (26 Misc. Rep. 611; 57 N. Y. Supp. 858), 731.
- Falmouth v. Watson (5 Bush 660), 168, 200, 405, 788.
- Falp v. Roanoke, etc., R. Co. (120 N. C. 525; 27 S. E. 74), 2178.
- Fanning, *In re* (23 Pa. Super. Ct. 622), 628, 638.
- Fant v. People (45 Ill. 259), 71, 1538.
- Farback v. State (24 Ind. 77), 1240, 1241, 1628.
- Farenthold v. Tell ([Tex. Civ. App.] 113 S. W. 635), 1962, 1968, 1969.
- Faribault v. Hulett (10 Minn. 30), 1509.
- Farley v. Geisheker (78 Iowa 453; 43 N. W. 279; O. L. R. A 533), 1004.
- Farley v. O'Malley (77 Iowa 531; 42 N. W. 435), 992, 1004.
- Farmer v. People (77 Ill. 322), 1237.
- Farmer v. State (3 R. I. 107), 1077.
- Farmville v. Walker (101 Va. 323; 43 S. E. 558), 91, 148, 198.
- Farndale v. Dillon ([1907] 2 K. B. 513; 71 J. P. 379; 76 L. J. K. B. 922), 1243, 1244.
- Farr v. Anderson (135 Mich. 485; 98 N. W. 6; 10 Detroit Leg. N. 843), 764.
- Farr v. Seward (82 Iowa 221; 48 N. W. 67), 1074.
- Farr v. Waterman ([Tex. Civ. App.] 95 S. W. 65), 771.
- Farrell, *Ex parte* (23 N. B. 467), 919.
- Farrell v. State (3 Ind. 573), 1716.
- Farrell v. State (45 Ind. 371), 1253, 1256, 1257, 1484, 1501, 1517, 1742.
- Farrell v. State (32 Ohio St. 456; 30 Am. Rep. 614), 1290.
- Farrell v. United States (110 Fed. 942; 49 C. C. A. 183), 1259, 1262.
- Farrington v. Turner (53 Mich. 27), 894.
- Farris v. Commonwealth (111 Ky. 236; 63 S. W. 615; 23 Ky. L. Rep. 580), 931, 936, 1469, 1493.
- Farris v. Commonwealth (126 Ky. 463; 104 S. W. 281; 290; 31 Ky. L. Rep. 847, 850), 1194.
- Farroll v. State (32 Ala. 557), 1245, 1645.
- Farwell v. Brown (12 Can. L. J. 216), 1321.
- Farwell v. Hanchett (19 Ill. App. 620), 2127.
- Fassett v. State (16 Tex. App. 375), 1576.
- Fassinow v. State (89 Ind. 235), 1613.
- Faulkner's Case ([1670] 1 Saund. \*249), 104, 488, 1106.
- Faulkner, *In re* (2 Pa. Co. Ct. Rep. 86), 586.

[References are to pages.]

- Faulkner v. Cassidy (39 Tex. Civ. App. 415; 87 S. W. 904), 706, 764, 776.
- Faulks v. People (39 Mich. 200; 33 Am. Rep. 374), 1240, 2141, 1628.
- Fawcett v. State ([Tex. Cr. App.] 73 S. W. 807), 964.
- Fay v. Barber (72 Vt. 55; 47 Atl. 180), 1075.
- Fay v. Williams ([Tex.] 41 S. W. 497), 1850, 1983.
- Fearn, *Ex parte* (69 J. P. 177), 647.
- Fears v. State (102 Ga. 274; 29 S. E. 463), 979.
- Fears v. State (125 Ga. 740; 54 S. E. 661), 80.
- Featherstone v. Lambertville (50 N. J. L. [21 Vroom] 507; 14 Atl. 599), 401, 423.
- Febur Sterling Music Co. v. Weizz (121 Pac. 1099), 349.
- Feddern v. State (79 Neb. 651; 113 N. W. 127), 1698, 1707.
- Fedderwitz, *Ex parte* (130 Cal. xviii; 62 Pac. 935), 188, 1510, 1512.
- Feek v. Bloomingdale Tp. (82 Mich. 393; 47 N. W. 37; 10 L. R. A. 69), 171, 233, 234, 235, 237, 238, 909.
- Feese v. Tripp (70 Ill. 496), 296.
- Fehn v. State (3 Ind. App. 568; 29 N. E. 1137), 1241.
- Feibelman v. State (130 Ala. 122; 30 So. 384), 111, 162.
- Feige v. State (49 Tex. Cr. App. 513; 95 S. W. 506), 1341, 1342, 1343.
- Feige v. State (59 Tex. Cr. App. 513; 95 S. W. 506), 1346, 1347.
- Feigenspan v. Mulligan (63 N. J. E. 179; 51 Atl. 191; affirmed [N. J. L.] 53 Atl. 1124), 1775, 1776.
- Feil v. Kitchen Bros. Hotel (57 Neb. 234; 77 N. W. 344), 568, 608.
- Feineman v. Sachs (33 Kann 621; 7 Pac. 222), 1790, 1797, 1798, 1801.
- Feist v. Tower, J.J. (68 J. P. 264), 670, 681.
- Felchin, *Ex parte* (96 Cal. 360; 31 Pac. 224; 31 Am. St. 223), 218, 795.
- Feldman v. Morrison (1 Ill. App. 460), 27, 29, 48, 49, 50, 73, 967, 1586.
- Fell v. State (42 Md. 71; 20 Am. Rep. 83), 71, 124, 182, 184, 185, 232, 235, 240, 488, 489, 490, 714.
- Felska v. New York, etc., R. Co. 152 N. Y. 339; 46 N. E. 613), 1736.
- Felton v. United States (96 U. S. 699), 1235, 2161.
- Fennick v. Owings (70 Md. 246; 16 Atl. 719), 905.
- Fenton v. Holloway (1 Stark. 126), 2093, 2136.
- Fenton v. State (100 Ind. 598), 35, 80, 81, 1561.
- Fentz v. Meadows (72 Ill. 540), 296, 1350, 1843, 1847, 1908, 1987, 1994.
- Ferch, *In re* (27 Pa. Super. Ct. 92), 540.
- Ferenthold v. Tell ([Tex. Civ. App.] 113 S. W. 635), 1850, 1853.
- Ferguson v. Brown (75 Miss. 214; 21 So. 603), 559, 568, 587, 589, 662, 664, 666, 670, 685.
- Ferguson v. Josey (70 Ark. 94; 66 S. W. 345), 295, 1003.
- Ferguson v. Monroe County (71 Miss. 524; 14 So. 81), 853, 861, 879.
- Ferguson v. Riendeau (2 Mon. [Can.] S. C. 136), 1152.
- Ferguson v. State (71 Miss. 524; 14 So. 81), 861.

[References are to pages.]

- Ferguson v. State (5) Tex. Cr. App. 155; 95 S. W. 111), 1242, 1461, 1462.
- Ferndale v. Dillon ([1907] 2 K. B. 513; 76 L. J. K. B. 922; 97 L. T. 284; 71 J. P. 374; 21 Cox C. C. 500), 354.
- Ferron v. Board (28 R. I. 529; 68 Atl. 480), 743.
- Ferrell v. State (43 Tex. 503), 2040, 2048, 2067, 2073.
- Ferry v. Deneen (110 Iowa 290; 82 N. W. 424), 805.
- Fertilizing Co. v. Hyde Park (97 U. S. 659), 117, 181, 398.
- Fessenden v. Bossa (69 Conn. 335; 37 Atl. 977), 903.
- Fetter v. State (18 Ind. 388), 1491.
- Fetter v. Wilt (46 Pa. St. 457), 138, 247.
- Fidelity, etc., Ins. Co. v. Chambers (93 Va. 138; 24 S. E. 896; 49 L. R. A. 432), 2189, 2238.
- Fidelity, etc., Co. v. Jenness (138 Iowa 725; 116 N. W. 709), 766.
- Fiegenston v. Mulligan (63 N. J. Eq. 179; 51 Atl. 191), 480.
- Fielden v. Alater ([1869] L. R. 7 Eq. 523; 38 L. J. Ch. 379; 20 L. T. 485; 17 W. R. 485), 1813.
- Field v. Tibbetts (57 Me. 358; 39 Am. Dec. 779), 1807.
- Fielding v. La Grange (104 Iowa 530; 73 N. W. 1038), 1237, 1759.
- Fielding v. State (135 Ala. 56; 33 So. 677), 2038, 2091.
- Fielding v. State ([Tex. Cr. App.] 52 S. W. 69), 1237.
- Fielding v. Turner ([1903] 1 K. B. 867; 67 J. P. 252; 72 L. J. K. B. 542; 51 W. R. 543; 89 L. T. 273; 10 T. L. R. 404), 381.
- Fields, *Ex parte* (39 Tex. Cr. App. 50; 46 S. W. 1127), 934.
- Fields, *Ex parte* ([Tex. Cr. App.] 86 S. W. 1022), 938, 940.
- Fields v. State ([Tex. Cr. App.] 98 S. W. 867), 1372.
- Fields v. State (52 Tex. Cr. App. 451; 107 S. W. 857), 1206, 1682.
- Fike v. State (25 Ohio Cir. Ct. Rep. 554), 921.
- Financial Ass'n v. State (6 Kan. App. 206; 49 Pac. 696), 1768, 1769.
- Fincannon v. State (93 Ga. 418; 21 S. E. 53), 333.
- Finch v. Blundell (26 J. P. 71; 5 L. T. 672), 1141.
- Finch v. Mansfield (97 Mass. 89, 92), 1280, 1795, 1799, 1800.
- Finch v. State (120 Ga. 174; 47 S. E. 504), 1701.
- Fink v. Coe (4 G. Greene 555; 61 Am. Dec. 141), 2198.
- Fink v. Garman (40 Penn. St. 95), 1252, 1869.
- Finley, *In re* (58 N. Y. Misc. 639; 110 N. Y. Supp. 71), 295, 591, 592.
- Finley v. Commonwealth (6 Ky. L. Rep. [abstract] 443), 2039.
- Finley v. State ([Tex. Cr. App.] 47 S. W. 1915), 1599, 1603.
- Finn v. Haynes (37 Mich. 63), 804.
- Finnegan, *Ex parte* (27 Nev. 57; 71 Pac. 642), 1576.
- Finnegan v. Lucy (157 Mass. 439; 32 N. E. 656), 1850, 1851.
- Fire Department v. Helfenstein (16 Wis. 136), 426.
- Fish v. Manning (31 Fed. 340), 1484.
- Fisher v. Cass County (75 Iowa 232; 39 N. W. 283), 1000, 1001.

[References are to pages.]

- Fisher v. Howard (34 L. J. M. C. 42; 11 L. T. 373; 29 J. P. 246; 13 W. R. 145), 1155.
- Fisher v. Lord (63 N. H. 514; 3 Atl. 927), 1790, 1791, 1794, 1797, 1798.
- Fisher v. McGirr (1 Gray 1; 61 Am. Dec. 381), 254, 255, 264, 1007, 1013, 1031, 1033, 1072.
- Fisher v. State (64 Ind. 435), 2049, 2045, 2050, 2053, 2054, 2055, 2080.
- Fisher v. State (55 Fla. 17; 46 So. 422), 1172, 1205.
- Fisher v. State (20 Tex. App. 502), 2090.
- Fisher v. West Virginia, etc., R. Co. (39 W. Va. 266; 19 S. E. 578; 23 L. R. A. 758), 2177, 2179, 2197, 2201, 2202, 2217.
- Fisher v. West Virginia, etc., R. Co. (42 W. Va. 183; 24 S. E. 570), 2174.
- Fisk v. Townsend (7 Yerg. 146), 2195, 2106.
- Fitch v. Commonwealth (4 Ky. L. Rep. 339), 1463, 1545.
- Fitch v. Lewiston (137 Ill. App. 570), 463.
- Fitz v. Iles ([1893] 1 Ch. 77; 62 L. J. Ch. 258; 68 L. T. 108; 2 R. 132), 1815.
- Fitze v. State (13 Tex. App. 372), 929.
- Fitze v. State ([Tex. Cr. App.] 85 S. W. 1156), 872, 896, 908, 1207, 1680.
- Fitzenrider v. State (30 Ind. 238), 1240, 1248, 1252.
- Fitzgerald v. Donohy (48 Neb. 852; 67 W. 880), 1902.
- Fitzgerald v. Hurley (180 Mass. 151; 61 N. E. 815), 930.
- Fitzgerald v. Weston (52 Wis. 354), 2173, 2177.
- Fitzgerald v. Witchard ([Ga.] 61 S. E. 227), 182, 814.
- Fitzgibbon v. Maey (118 Iowa 440; 92 N. W. 78), 573.
- Flack v. Fry (32 W. Va. 364; 9 S. E. 240), 167.
- Flack v. State ([Tex. App.] 18 S. W. 414), 1464, 1471.
- Flaherty v. Longley (62 Me. 429), 1051, 1053.
- Flancher v. Camden (56 N. J. L. 244; 28 Atl. 82), 682.
- Flanagan, *In re* (49 N. Y. App. 99; 63 N. Y. Supp. 531), 1269.
- Flanagan v. Plainfield (44 N. J. L. 118), 1508.
- Flanigan v. People (86 N. Y. 554; 40 Am. Rep. 556), 2040, 2043, 2046.
- Flannagan, *Ex parte* (34 N. B. 577), 1717, 1755.
- Flannigan v. Wilkesbarre (10 Kulp. 100), 808.
- Fleeks v. State (47 Tex. Cr. App. 327; 83 S. W. 381), 1510, 1525.
- Fleischman Co. v. Murray (161 Fed. 152), 381.
- Fleming v. New Brunswick (41 N. J. L. 231), 24, 26, 98.
- Fleming v. New Brunswick (47 N. J. L. 231), 1522.
- Fleming v. State (106 Ga. 359; 32 S. E. 338), 1211, 1599.
- Fleming v. State (5 Humph. 564), 2258, 2260.
- Fleming v. State ([Tex. Cr. App.] 22 S. W. 1038), 1743.
- Flersheim v. Cary (39 Ken. 178; 17 Pac. 825), 1774.
- Fletcher v. Commonwealth (106 Va. 850; 56 S. E. 149), 21, 1491, 1505, 1763.
- Fletcher v. Crist (139 Ind. 121; 38 N. E. 472), 602, 608, 1749.
- Fletcher v. Fowler (83 Mich. 52; 46 N. W. 1023; 10 L. R. A. 389), 1937, 1945.
- Fletcher v. Peck (6 Cranch [U. S.] 87), 261.



[References are to pages.]

- Fletcher v. People (81 Ill. 116), 1764.
- Fletcher v. State (54 Ind. 462), 1109.
- Fleetwood v. Hull ([1889] 23 Q. B. D. 35; 58 L. J. Q. B. 341; 54 J. P. 229; 60 L. T. 790; 37 W. R. 714), 1821.
- Flinn, *Ex parte* (68 L. J. Q. B. 1025 [1899]; 2 Q. B. 607; 81 L. T. 221; 48 W. R. 29; 63 J. P. 740), 630.
- Flint v. Ganer (66 Iowa 696; 24 N. W. 513), 1916, 1917, 1989.
- Flint, etc., Woodhull (25 Mich. 103), 106.
- Flora v. Sachs (64 Ind. 155), 276.
- Florence, *Ex parte* (78 Ala. 419), 432.
- Florence v. Berry (61 S. C. 237; 39 S. E. 247), 1677.
- Florence v. Brown ([S. C.] 26 S. E. 880), 168, 170, 246.
- Flosser, *In re* (8 Kulp. 343), 735.
- Flourney v. City of Jeffersonville (17 Ind. 169; 79 Am. Dec. 468), 1014.
- Flournoy v. Grady (25 La. Ann. 591), 553.
- Flower v. State (39 Ark. 209), 822, 1643.
- Flower v. Witkovsky (69 Mich. 371; 37 N. W. 364), 1890, 1893, 1937.
- Floyd v. Anderson (12 N. Z. L. R. 567), 1247.
- Floyd v. Commissioners (14 Ga. 354), 1748.
- Fluck v. Rea (51 N. J. Eq. 233; affirming 51 W. J. Eq. 539), 2148, 2149.
- Fludd v. Equitable, etc., of U. S. (75 S. C. 315; 55 S. E. 762), 2223.
- Fly v. Webster (102 Mass. 304), 1790.
- Flynn v. Forgarty (106 Ill. 263), 1947, 1963.
- Flynn v. Galesburg (12 Bradw. [Ill.] 200), 1237.
- Flynn v. Taylor (145 Ind. 533; 44 N. E. 546), 144, 601, 603, 613, 857.
- Foerkter v. United States (116 Fed. 860), 1263.
- Foley, *Ex parte* (29 N. B. 113), 649.
- Foley v. Leisy Brewing Co. (116 Iowa 176; 89 N. W. 230), 1792, 1803, 1804.
- Foley v. State (42 Neb. 233; 60 N. W. 574), 1477.
- Follis v. U. S. Mut. Acc. Acc'n. (94 Iowa 435; 62 N. W. 807), 2243.
- Foltyn, *In re* ([Neb.] 118 N. W. 119), 671.
- Foltz v. State (33 Ind. 215), 215.
- Fonney, *In re* (28 Pa. Super. Ct. 71), 565.
- Fontain v. Draper (49 Ind. 441), 1253, 1256, 1882, 1912.
- Fontana v. Grant (6 Kan. App. 462; 50 Pac. 104), 433, 452.
- Fonville v. State (91 Ala. 39; 8 So. 688), 2042, 2051, 2057, 2067.
- Fooks v. Purnell (101 Md. 321; 61 Atl. 582), 658.
- Foot v. Baker (6 Scott N. R. 301; 5 Man. & Gr. 335), 374.
- Foot v. Tewksbury (2 Vt. 97), 2093, 2094, 2098.
- Foote v. Butler (41 J. P. 792), 378.
- Foote v. Foote (71 N. J. Eq. 273; 61 Atl. 90), 2153.
- Foote v. People (56 N. Y. 321; reversing 2 T. & C. 216), 1759.
- Foppiano v. Speed (199 U. S. 501; 26 Sup. Ct. 138; 50 L. Ed. — [affirming 113 Tenn. 167; 82 S. W. 222]), 329, 331, 427, 548.

[References are to pages.]

- Forbes v. Edinburgh, etc., Co.  
(10 S. C. Sess. Cas. [1st.  
series] 451), 2220.
- Ford v. Ames (36 Hun 571),  
1936.
- Ford v. Cheever (105 Mich. 685;  
63 N. W. 975), 1882, 1955,  
1985, 1986.
- Ford v. Denver (10 Colo. App.  
500; 51 Pac. 1015), 1188.
- Ford v. Moss (124 Ky. 288; 98  
S. W. 1015; 30 Ky. L. Rep.  
428), 1320.
- Ford v. State (79 Neb. 309; 112  
N. W. 606), 1087.
- Ford v. State (71 Ala. 385),  
2041, 2061.
- Ford v. State (82 Ark. 603; 102  
S. W. 1196), 951, 1287.
- Ford v. State (45 Tex. Cr. App.  
288; 77 S. W. 800), 1196.
- Ford v. Umatilla Co. (15 Or.  
313; 16 Pac. 33), 2177, 2190,  
2191, 2192, 2193.
- Foreman, *In re* (20 Pa. Super.  
Ct. 98), 664, 666, 668.
- Foreman v. Hennepin County (64  
Minn. 371; 67 N. W. 207),  
197, 278, 2016, 2023.
- Foreman v. Hunter (59 Iowa  
550; 13 N. W. 659), 1491.
- Forest, *In re* (23 Pa. Super. Ct.  
600; affirmed 208 Pa. St.  
578; 57 Atl. 991), 576, 587.
- Forest v. Tolman (117 Mass.  
109), 1844.
- Forfeter v. Moore (67 N. H. 460;  
36 Atl. 369), 1855, 1869,  
1896, 1941.
- Forkner v. State (95 Ind. 406),  
1166, 1501, 1564.
- Formby v. Barker ([1903] 2  
Ch. 539; 72 L. J. Ch. 716;  
51 W. R. 646; 89 L. T.  
249), 1814.
- Forney v. Forney (89 Cal. 528;  
22 Pac. 294), 2159, 2160.
- Forrester v. State (63 Ga. 349),  
1349, 1353.
- Forst, *In re* (208 Pa. St. 578;  
57 Atl. 991; affirming 23  
Pa. Super. Ct. 600), 576.
- Forteer v. Moore (67 N. H. 460;  
36 A. 369), 1876.
- Fortner v. Duncan (91 Ky. 171;  
15 S. W. 55), 411.
- Ft. Scott v. Dunkerton (78 Kan.  
189; 96 Pac. 50), 990.
- Ft. Smith v. Hunt (72 Ark. 556;  
82 S. W. 163; 66 L. R. A.  
238), 479.
- Fort Worth v. Davis (57 Tex.  
225), 925.
- Ft. Worth Fair Ass'n. v. Ft.  
Worth Driving Club ([Tex.]  
121 S. W. 213), 1812.
- Forwood v. State (49 Md. 531),  
1169.
- Foshee v. State ([Tex. Cr. App.]  
87 S. W. 820), 950.
- Foss v. Hildreth (10 Allen 76),  
2103.
- Fossdahl v. State (89 Wis. 482;  
62 N. W. 185), 1657.
- Foster, *In re* (57 N. Y. Misc.  
Rep. 676; 108 N. Y. Supp.  
788), 889.
- Foster v. Board (102 Cal. 483;  
37 Pac. 763; 41 Am. St.  
194), 532.
- Foster v. Brown (55 Iowa 686;  
8 N. W. 654), 273, 395, 403.
- Foster v. Burt (76 Ala. 229),  
186, 445, 796, 797.
- Foster v. Haines (13 Me. 307),  
1115.
- Foster v. Hazen (12 Barb. 547),  
1509.
- Foster v. Kansas (112 U. S.  
201; 5 S. C. 8; 28 L. Ed.  
629), 109, 315.
- Foster v. Lambe (3 Quebec, S.  
C. 328), 798.
- Foster v. San Francisco (102  
Cal. 483; 37 Pac. 763; 41  
Am. St. 194), 218, 414.
- Foster v. Speed ([Tenn.] 111 S.  
W. 925), 590.

[References are to pages.]

- |  |   |
|--|---|
| Foster v. State (38 Ala. 425), 1649.   | Fox Lake v. Village of Fox Lake (62 Wis. 486; 22 N. W. 584), 806.   |
| Foster v. State (36 Ark. 258), 55, 60.   | Foylton ([Neb.] 118 N. W. 119), 663.  |
| Foster v. State (45 Ark. 361), 1219, 1227, 1578, 1615.                                     | Frae, <i>In re</i> (33 Pa. Super. Ct. 348), 664.  |
| Foster v. Thurston (11 Cush. 322), 1791, 1798.   | Frame v. State (53 Ohio St. 311; 45 N. E. 5), 809.  |
| Fountain v. Draper (49 Ind. 441), 1871.  | France, <i>In re</i> (36 N. Y. Misc. Rep. 693; 74 N. Y. Supp. 379), 889.  |
| Fotheringham v. George (19 Juta 532), 615.   | Francis v. Hayward ([1882] 22 Ch. D. 177; 47 J. P. 517), 1834.  |
| Fouraker v. State 4 Ga. App. 692; 62 S. E. 116), 1579.                                     | Francis v. Smith (2 W. N. C. [N. I. W.] 82), 375.   |
| Fourment v. State ([Ala.] 46 So. 260), 284, 291.   | Francis v. State ([Tex.] 119 S. W. 97), 7.  |
| Fouts v. Hood River (46 Ore. 522; 81 Pac. 370), 228, 233.                                  | Francis v. State ([Tex.] 119 S. W. 97), 1304.   |
| Fowle v. Blake (38 Mo. 528), 1782.   | Frank, <i>In re</i> (52 Cal. 696), 408.   |
| Fowler v. Meadow Brook Water Co. (208 Pa. 473; 57 Atl. 959), 2095.                         | Frank v. Commonwealth ([Ky.] 15 S. W. 877; 13 Ky. L. Rep. 833), 1524.   |
| Fowler v. Morton ([1905] Vict. L. R. 76; 26 Austr. L. T. 143; 10 Aust. L. Rep. 267), 1281. | Frank v. Forgetston (61 N. Y. Supp. 1118), 491  |
| Fowler v. Rome Dispensary (5 Ga. App. 36; 62 S. E. 669), 382, 1839, 1869, 1907.            | Frank v. Hoey (128 Mass. 263), 1280, 1284.  |
| Fowler v. State (85 Ind. 538), 1649.   | Frank v. O'Neil (125 Mass. 473), 1800.  |
| Fowler v. United States (1 Wash. T. 3), 1261.  | Frank Warr & Co. Limited v. London County Council ([1903] 67 J. P. 403; 88 L. T. 689; 19 T. L. R. 436; affirmed C. A. 20 T. L. R. 346), 1834. |
| Fox v. Michigan Cent. R. Co. (138 Mich. 433; 101 N. W. 624; 68 L. R. A. 336), 2191, 2214.  | Frankfort v. Aughe (114 Ind. 77, 600; 15 N. E. 802, 804), 414, 443, 450, 1477.  |
| Fox v. State of Ohio (5 How. 410), 273.  | Franklin v. Schermerhorn (8 Hun 112), 183, 184, 223, 1840, 1864.  |
| Fox v. State (53 Tex. Cr. App. 150; 109 S. W. 370), 935, 1188, 1218, 1219, 1731.           | Franklin Co. v. State (24 Fla. 55; 3 So. 471; 12 Am. St. 183), 904.   |
| Fox v. Territory (2 Wash. T. 297; 5 Pac. 603), 2260.                                       | Franklin v. State (85 Ind. 99), 1019.   |
| Fox v. Wunderlich (64 Iowa 87; 20 N. W. 7), 1974.  | Franklin v. State (12 Md. 236), 1515.   |
| Foxcroft v. Croker (40 Me. 308), 476.  |   |

[References are to pages.]

- Franklin v. Stringam (56 Ill. App. 194), 506.
- Franklin v. Westfall (27 Kan. 614), 258, 491, 1194.
- Fraser, *In re* (1 Can. Law Jour. 327), 1723.
- Frasier v. State (5 Mo. 536), 1538, 1566, 1634.
- Frawley, *In re* ([1907] 14 Ont. App. L. R. 99), 432.
- Frazer v. South, etc., R. Co. (81 Ala. 185; 60 Am. Rep. 145), 2182, 2183.
- Frazier v. State (52 Tex. Cr. App. 131; 105 S. W. 508), 1584.
- Fred Miller Brewing Co. v. Stevens (102 Iowa 60; 70 N. W. 186), 1792, 1806.
- Fredericks v. Passaic (42 N. J. L. 87), 1516, 1643.
- Freedman v. State (37 Tex. Cr. App. 115; 38 S. W. 993), 1357.
- Freeman v. Diggins (2 Jones Eq. [N. C.] 162), 2094, 2099.
- Freeman v. Howe (24 How. [U. S.] 450), 1012.
- Freeman v. Lazarus (61 Ark. 247; 32 S. W. 680; 31 So. 361), 920.
- Freeman v. Staats (9 N. J. Eq. 818), 2104, 2123.
- Freeman v. Staats (4 Halst. Eq. [N. J.] 814; 1 Stockt. Eq. [N. J.] 816), 2096, 2106, 2108, 2121.
- Freeman v. State (119 Ind. 501; 21 N. E. 1101), 1716.
- Freeman v. Commonwealth (8 Bush 139), 521.
- Freeport v. Mark (59 Pa. St. 253), 107.
- Freese v. Tripp (70 Ill. 496), 1843, 1908, 1982, 1987, 1990.
- Freese v. State (14 Tex. App. 31), 492.
- Freiberg v. State (94 Ala. 91; 10 So. 703), 80, 1514, 1645.
- Freleigh v. State (8 Mo. 606), 95, 129, 182, 489.
- French v. Noel (22 Gratt. 454), 635, 664.
- French v. People (3 Parker Cr. Rep. 114), 1372, 1377.
- Freshman v. State (37 Tex. Cr. App. 126; 38 S. W. 1007), 949.
- French v. French (8 Ohio 214; 31 Am. Dec. 441), 2093, 2094, 2098, 2128, 2130.
- French v. State (93 Wis 325; 67 N. W. 706), 2051, 2052.
- Frese v. State (23 Fla. 267; 2 So. 1), 25, 32, 79, 1111, 1740, 1763.
- Fretwell v. Troy (18 Kan. 271), 793.
- Frickie v. State (39 Tex. Cr. App. 254; 45 S. W. 810), 872, 888, 1491.
- Frickie v. State (40 Tex. Civ. App. 626; 51 S. W. 394), 9, 962, 963.
- Fried v. Nelson (30 App. 1; 65 N. E. 216), 606, 854.
- Friedman, *In re* (7 Pa. Super. Ct. 639), 635.
- Friedman v. Commonwealth ([Ky.] 83 S. W. 1040; 26 Ky. L. Rep. 1276), 1163, 1193.
- Friend v. Dunks (37 Mich. 25), 1883, 1973, 1965.
- Friend v. Dunks (39 Mich. 733), 1862, 1955, 1971, 1972.
- Friery v. People (54 Barb. 319), 2040.
- Fries v. Poreh (49 Iowa, 351), 1016, 1028, 1074.
- Frisbie v. State (1 Ore. 248), 1491, 1713.
- Friesner v. Common Council (91 Mich. 504; 52 N. W. 18), 233, 852, 877.
- Fritz v. State (1 Baxt. 15), 24, 26, 43, 965.

[References are to pages.]

- Frobese v. Peary ([Tex. Civ. App.] 43 S. W. 900), 1903.  
 Frohlich v. Alexander (36 Ill. App. 428), 1280.  
 Frolichstein v. Mobile (40 Ala. 725), 214, 215.  
 Frost's Case (22 How. St. Tr. 472), 2039.  
 Frost v. State (64 Miss. 188; 1 So. 49), 182.  
 Frost v. Wheeler (43 N. J. Eq. 573; 12 Atl. 612), 2137.  
 Frudie v. State (66 Neb. 244; 92 N. W. 320), 1730, 1731.  
 Fry v. Kaessner (48 Neb. 133; 66 N. W. 1126), 799.  
 Fryer v. Ewart ([1902] A. C. 187; 71 L. J. Ch. 433; 86 L. T. 242; 18 T. L. R. 426; 9 Mans. 281), 1818.  
 Fulds v. State ([Tex. Cr. App.] 107 S. W. 857), 1202.  
 Fuller v. Fouhy (24 N. Z. 753), 369.  
 Fuller v. Fuller (108 Ga. 256; 33 S. E. 865), 68.  
 Fuller v. Hunt (182 Mass. 299; 65 N. E. 390), 1790.  
 Fuller v. Leet (59 N. H. 163), 1788.  
 Fuller v. McDonnell (75 Iowa 220; 39 N. W. 277), 985.  
 Fuller v. State (122 Ala. 32; 45 L. R. A. 502; 25 So. 146), 2261.  
 Fullwood v. State (67 Miss. 554), 882, 907, 1361.  
 Fulp v. Roanoke, etc., R. Co. (120 N. C. 525; 27 S. E. 74), 2184, 2195.  
 Fulton v. Blythe ([Ky.] 30 S. A. 1018), 796, 798.  
 Funk v. Israel (5 Iowa 438), 1028.  
 Furlong v. Russell (24 N. B. 478), 1789.  
 Furman v. Knapp (19 Johns 248), 449, 521.  
 Furman, etc., Co. v. Long (113 Ala. 203; 21 So. 339), 480.  
 Furnis v. Mutual L. Ins. Co. [N. Y.] 46 N. Y. Super. Ct. 467), 2245.  
 Fuselier v. St. Laundry Parish (107 La. 221; 31 So. 678), 798.  
 Futrill v. Futrill (5 Jones Eq. 61), 2103.
- G**
- Gabel v. Houston (29 Tex. 355), 216, 407, 433, 475.  
 Gable v. Grant (3 N. J. Eq. 629), 2147, 2148.  
 Gable v. State (42 Tex. Cr. App. 501; 60 S. W. 960), 1680.  
 Gaertner v. Fond-du-Lac (34 Wis. 497), 740, 747.  
 Gafford v. Busch (60 Cal. 149), 1739.  
 Gage v. Caraher (125 Ill. 447; 17 N. E. 777), 264, 1585.  
 Gage v. Elsey (52 L. J. M. C. 44; 10 Q. B. Div. 518; 48 L. T. 226; 31 W. R. 500; 47 J. P. 391), 1384.  
 Gage v. Harvey (66 Ark. 68; 48 S. W. 898; 43 L. R. A. 143; 74 Am. St. Rep. 70), 1867.  
 Gage v. State ([Tex. Cr. App.] 76 S. W. 459), 1570.  
 Gahagan v. Boston, etc. R. Co. (1 Allen 189; 79 Am. Dec. 724), 2198.  
 Gaillard v. Cantini (76 Fed. 699; 22 C. C. A. 493), 1046.  
 Gaines v. State ([Tex. Cr. App.] 21 S. W. 367), 1627.  
 Gaines v. State (37 Tex. Cr. App. 73; 38 S. W. 774), 1471.  
 Gaiocchio v. State (9 Tex. App. 387), 202, 204, 1353, 1359.  
 Gaiten v. State (11 Tex. App. 544), 2090.  
 Galbreath v. State (36 Tex. 200), 370.  
 Gale v. Moscow (15 Idaho 332; 97 Pac. 828), 414, 441.



[References are to pages.]

- Galindo v. Walter (8 Cal. App. 234; 96 Pac. 505), 849.
- Gallagher v. Bishop (15 Wis. 276), 1027.
- Gallagher v. Meek (5 Ky. L. Rep. [abstract] 424), 847.
- Gallagher v. People (120 Ill. 179; 11 N. E. 335, affirming 29 Ill. App. 397), 64, 67, 1254, 1633, 1735, 1736, 1754.
- Gallagher v. Rudd (67 L. J. Q. B. 65 [1898]; 1 Q. B. 114; 77 L. T. 367; 46 W. R. 108; 61 J. P. 789; 18 Cox C. C. 654), 1142.
- Gallatin v. Tarwater (143 Mo. 40; 44 S. W. 750), 2026.
- Galligan v. Fannan (7 Allen 255), 1780.
- Galliher v. Commonwealth (2 Duv. 164), 2061.
- Gallimore v. Goodall (38 J. P. 597), 1150.
- Galloway v. State (23 Tex. App. 398; 5 S. W. 246), 33, 80, 81, 380.
- Galveston, etc. R. Co. v. Davis (4 Tex. Civ. App. 468; 22 S. W. 659), 2198, 2199.
- Galveston, etc. R. Co. v. Harris (22 Tex. Civ. App. 16; 53 S. W. 599), 2185.
- Gambill v. Erdrich (143 Ala. 506; 39 So. 297), 795, 797.
- Gambill v. Schunck (131 Ala. 321; 31 So. 604), 1114.
- Gamble v. State (44 Fla. 429; 33 So. 471; 60 L. R. A. 547), 2248, 2249, 2251 2252.
- Gamble v. State ([Tex. Cr. App.] 57 S. W. 95), 1524.
- Gandy v. State (86 Ala. 20; 5 So. 420), 291.
- Ganssly v. Perkins (30 Mich. 492), 1984.
- Garbrecht v. Commonwealth (96 Pa. 449; 42 Am. Rep. 550), 1284.
- Garbrough v. Harper (25 Miss. 112), 1027.
- Gardner v. Campbell (15 Johns. [N. Y.] 401), 1027.
- Gardner v. Day (95 Me. 558; 50 A. 892), 1839, 1843, 1844.
- Gardner v. Gardner (22 Wend. 526; 499 Am. Dec. 340), 2115, 2122, 2135, 2136, 2149.
- Gardner v. Morris (20 Ill. 431), 394.
- Gardner v. Parr (2 R. & G. 255; S. C. 1 Can. L. T. 710), 824.
- Gardner v. People (20 Ill. 430), 402, 466.
- Garey, *In re* ((1 Pa. Co. Rep. 468), 720.
- Garland v. Derir (20 W. N. [N. S. W.] 1), 1363.
- Garner v. State (28 Fla. 113; 9 So. 835), 2041, 2045, 2048, 2062, 2081, 2085.
- Garner v. State (8 Blackf. [Ind.] 368), 928.
- Garner v. State (28 Tex. App. 561; 13 S. W. 1004), 1236, 1628.
- Garrett v. Aby (47 La. Ann. 618), 232, 933.
- Garrett v. Bishop (113 Iowa 23; 84 N. W. 923), 341.
- Garrett v. Mayor (47 La. Ann. 618; 17 So. 238), 938.
- Garrett v. Middlesex (J. J. 12 Q. B. Div. 620; 48 J. P. 358; 53 L. J. M. C. 81; 32 W. R. 646), 671, 681, 704.
- Garrett v. Polk County (78 Iowa 108; 42 N. W. 618), 1057, 1060, 1075.
- Garrety v. Potts (L. R. 6 Q. B. 86; 35 J. P. 168; 40 L. J. M. C. 1; 23 L. T. 554; 10 W. R. 127), 547.
- Garrigan v. Eggleston (17 So. D. 258; 101 N. W. 1081), 1873.
- Garrigan v. Kennedy (19 S. D. 11; 101 S. W. 1081), 283, 1842, 1868, 1979.
- Garrigan v. Thompson (17 S. D. 132; 95 N. W. 294), 1986.

[References are to pages.]

- Garrigan v. Thompson ([S. D.] 101 N. W. 1135), 283.
- Garrigue's Case (28 Pa. 9; 70 Am. Dec. 103), 925.
- Garrison v. State (14 Ind. 287), 1109.
- Garrison v. Steele (46 Mich. 98; 8 N. W. 696), 758, 763, 765.
- Garsed v. Greensboro (126 N. C. 159; 35 S. E. 254), 175, 475, 1476.
- Garst v. State (68 Ind. 37), 1714.
- Garten v. State (11 Tex. App. 544), 2060.
- Gartenstein v. Sindel's License, *In re* (15 Pa. Co. Ct. Rep. 612; 4 Pa. Dist. Rep. 37), 1298.
- Gartside v. Conn. Mut. L. Ins. Co. (8 Mo. App. 593), 2226.
- Garvey v. Commonwealth (8 Gray 382), 262, 1765.
- Garzonick v. State (50 Tex. Cr. App. 533; 100 S. W. 374), 425.
- Gascoyne v. Riley (36 W. R. 605), 679.
- Gaskins v. State (127 Ga. 51; 55 S. E. 1045), 1380, 1381.
- Gassenheimer v. District of Columbia (6 App. D. C. 108), 1739.
- Gaston v. State ([Tex. Cr. App.] 102 S. W. 116), 1696.
- Gastorf v. State (39 Ark. 450), 21.
- Gates v. Hern (150 Ind. 370; 50 N. E. 299), 602, 642.
- Gates v. Lansing (5 Johns [N. Y.] 282), 1014.
- Gates v. Neal (23 Pick. 308), 660.
- Gater v. State (141 Ala. 10; 37 So. 692), 2086.
- Gathings v. State (44 Miss. 343), 1358.
- Gattin v. Tarboro (78 N. Car. 119), 793.
- Gault v. State (34 Ga. 533), 32, 33, 822, 827, 835, 969.
- Gayle v. Owen County Court (83 Ky. 61; 6 Ky. L. Rep. 789), 230, 291, 899, 901.
- Gaylord v. Soragen (32 Vt. 110; 76 Am. Dec. 154), 1790, 1791, 1794, 1797, 1798, 1801.
- Gears v. State (35 Tex. Cr. Rep. 442; 34 S. W. 124), 1218.
- Gebhart v. Shindle (15 Serg. & R. 235), 2259.
- Gee v. State ([Tex. Cr. App.] 89 S. W. 1078), 1380, 1381, 1621.
- Geebric v. State (59a, 491), 231.
- Gelber v. State ([Tex.] 120 S. W. 863), 1747.
- Gemas, Appeal of (169 Pa. 43; 32 Atl. 88; 36 W. N. C. 367), 638.
- Genning v. State (1 McCord 573), 1642.
- Genkinker v. Commonwealth (32 Pa. 99), 929.
- Genoa v. Van Alstine (108 Ill. 555), 683.
- Gentile v. State (29 Ind. 499), 227, 248.
- Geo v. Board ([N. J. L.] 63 Atl. 870), 590, 592.
- Geo. Scalpi & Co. v. State ([Tex. Civ. App.] 73 S. W. 441; 74 S. W. 754), 1359.
- George v. Gobey (128 Mass. 289; 35 Am. Rep. 376), 1350, 1358, 1907.
- George v. Township (16 Kan. 72), 886.
- George H. Goodman Co. v. Commonwealth ([Ky.] 99 S. W. 252; 30 Ky. L. Rep. 519), 1170, 1285.
- George Wiedemann Brewing Co. v. Commonwealth ([Ky.] 96 S. W. 834; 29 Ky. L. Rep. 1026), 1286.
- Geraghty v. State (110 Ind. 103; 11 N. E. 1), 1257, 1565, 1566.
- Gerding v. Board (15 Idaho 444; 99 Pac. 826), 293.
- Gerke Brewing Co., *In re* (23 Pittsb. L. Jr. 420), 695.
- Gerlach v. Skinner (34 Kan. 68; 8 Pac. 257), 1774.

[References are to pages.]

- Gerlau v. Bacon (65 Vt. 516; 27 Atl. 198), 1805.  
 German-American F. Ins. Co. v. Minden (51 Neb. 870), 426.  
 German Brewing Co. v. Rutledge ([S. C.] 65 S. E. 230), 798.  
 Germantown Brewing Co. v. Booth (162 Pa. St. 100; 29 Atl. 386; 34 W. N. C. 340; reversing 14 Pa. Co. Ct. Rep. 189; 3 Pa. Dist. 143), 39, 1784.  
 Gersteman v. State (35 Tex. Cr. App. 318; 33 S. W. 359), 1732.  
 Gerstenkorn v. State (38 Tex. Cr. App. 621; 44 S. W. 501; 1616, 1692, 1732.  
 Gerstlauer, *In re* (5 Pa. Dist. Rep. 97), 639, 723.  
 Gerty v. Monticello (118 Ind. 600; 19 N. E. 735), 415.  
 Gerver, *In re* (7 North Co. R. [Pa.] 382), 723.  
 Getchell v. Page (103 Me. 387; 69 Atl. 624), 1022, 1059, 1062, 1066.  
 Getman, *In re* (28 N. Y. Misc. Rep. 451; 59 N. S. Supp. 1013), 853, 880.  
 Getty v. Devlin (54 N. Y. 403), 2136.  
 Geyer v. Douglass (85 Iowa 93; 52 N. W. 111), 996, 1934.  
 Gharky, *In re* (57 Cal. 274), 2138.  
 Ghio v. Stephens ([Tex. Civ. App.] 78 S. W. 1084), 357, 772.  
 Gibbons v. Ogden (9 Wheat. 1), 298, 301.  
 Gibboney, Appeal of (6 Pa. Super. Ct. 26), 669.  
 Gibbs v. State ([Vt.] 74 Atl. 228), 103, 183.  
 Gibson, *Ex parte* (2 N. S. W. L. R. 203), 648.  
 Gibson, *In re* ([N. Y.] 108 N. Y. Supp. 485), 900.  
 Gibson v. Gibson (24 Mo. 227), 2147.  
 Gibson v. Manley (11 Juta 191), 587.  
 Gibson v. State (34 Tex. Cr. App. 218; 29 S. W. 1085), 550, 552, 934.  
 Gibson v. State ([Tex. Cr. App.] 97 S. W. 468), 1620.  
 Gibson v. Templeton (62 Tex. 556), 925.  
 Giddings v. Wells (99 Mich. 221; 58 N. W. 64), 876, 905, 907, 918.  
 Gieb v. State (31 Tex. Cr. Rep. 514; 21 S. W. 190), 1539.  
 Gifford, *In re* (35 Up. Can. 285), 420.  
 Gifford v. Commonwealth (2 Ky. L. Rep. [abstract] 437), 946.  
 Gignoux v. Bilbruck (63 N. H. 22), 552.  
 Gilbert v. Commonwealth (3 Lack. Jur. 374), 1538.  
 Gilbert v. State (81 Ind. 565), 1538, 1567, 1740.  
 Gilbert v. State (32 Tex. Cr. Rep. 596; 25 S. W. 632), 876, 911.  
 Gilbreath v. State ([Tex. Civ. App.] 82 S. W. 807), 771.  
 Gilday v. Warren (69 Conn. 237; 37 Atl. 494), 694, 697, 699.  
 Gilham v. Wells (64 Ga. 192) 263, 459, 495.  
 Gill v. Kaufman (16 Kan. 571), 310, 951, 1288, 1787.  
 Gill v. Parker (31 Vt. 610), 110 293, 1008, 1035.  
 Gill v. Rochester, etc. R. Co. (37 Hun 109), 2206, 2207.  
 Gill v. State (86 Ga. 751; 13 S. E. 86; 12 L. R. A. 433), 1232.  
 Gill v. State (48 Tex. Cr. App. 517; 89 S. W. 272), 915.  
 Gillan v. State (47 Ark. 555; 2 S. W. 185), 1166, 1176, 1177, 1224, 1229, 1621.  
 Gillen v. Riley (27 Neb. 158; 42 N. W. 1054), 521, 1288.  
 Gillespie v. Palmer (20 Wis. 544), 904.  
 Gillham ([Iowa] *In re* 99 N. W. 179), 532.

[References are to pages.]

- Gillooley v. State (58 Ind. 182), 2040, 2057.
- Gilman v. Eastern R. Co. (13 Allen 433; 90 Am. Dec. 210), 2192, 2194, 2198, 2199, 2201.
- Gilmanton v. Ham (38 N. H. 108), 2253.
- Gilmer v. Cameron (1 Ga. Dec. 142, Pt. 1), 2253.
- Gilmore v. Matthew (67 Me. 517), 1847, 1987.
- Gilmore v. State (125 Ala. 59; 28 So. 382), 1479.
- Gilmore v. State (126 Ala. 20; 28 So. 382), 381, 1755.
- Gilmore v. State (37 Tex. Cr. App. 178; 39 S. W. 105), 1185, 1609, 1611.
- Gilt v. Parker (31 Vt. 610), 1007.
- Ging v. Sherry (32 N. Y. App. Div. 354; 52 N. Y. Supp. 1003), 820.
- Ginnocchio v. State (30 Tex. App. 584; 18 S. W. 82), 402.
- Ginterrez, *Ex parte* (45 Cal. 429), 261.
- Ginz v. State (42 Ind. 218), 232, 1516.
- Giozza v. Tiernan (148 U. S. 657; 13 Sup. Ct. 721; 37 L. ed. 599), 91, 99, 148, 150, 191, 210, 1779.
- Gipps Brewing Co. v. Iler & Co. (91 Iowa 108; 58 N. W. 1087; 28 L. R. A. 396), 1799, 1782.
- Giroux v. People (132 Ill. App. 562), 1254.
- Givens v. State (49 Tex. Cr. App. 267; 91 S. W. 1090, 1091), 941, 1380.
- Glanty v. State (38 Wis. 549), 395, 420.
- Glasgow v. Rowse (43 Mo. 479), 789.
- Glass v. Alt (17 Kan. 444), 1806, 1807.
- Glass v. Commonwealth (33 Gratt. 827), 1458.
- Glass v. State (45 Ark. 173), 1517.
- Glass v. State (68 Ark. 266; 57 S. W. 793), 950, 1179, 1181.
- Glasson v. Whitly (2 N. Z. L. R. 118), 372.
- Glasscock v. State ([Tex. Cr. App.] 43 S. W. 989), 1700.
- Gleason, *In re* (7 W. N. C. [N. S. W.] 140), 670.
- Gleason v. Hobson ([1907] Vict. L. R. 148) 53
- Gleason v. Williams (27 C. P. [Can.] 93), 1257.
- Glenn v. Glenn (87 Mo. App. 377), 2159.
- Glenn v. Lynn (89 Ala. 608; 7 So. 924), 574.
- Glenn v. State (25 Ala. 53), 1461.
- Glenn v. State (1 Swan. 19), 1741.
- Glentz v. State (28 Wis. 549), 397.
- Glockner's Will, *In re* (2 N. Y. Supp. 97), 2136.
- Glover v. State (126 Ga. 594; 55 S. E. 592), 158, 159, 286, 796.
- Glover v. State (4 Ga. App. 455; 61 S. E. 862), 1558.
- Gloversville v. Howell (70 N. Y. 287), 232, 235.
- Goad v. State (73 Ark. 625; 83 S. W. 935), 1695, 1738.
- Goad v. State (52 Tex. Cr. App. 444; 108 S. W. 680), 1378.
- Gober v. State ([Tex. Cr. App.] 123 S. W. 427), 228.
- Goble v. State (42 Tex. Cr. App. 501; 60 S. W. 966), 863, 872.
- Goddard v. Burnham (124 Mass. 578), 1844.
- Goddard v. Jacksonville (15 Ill. 588), 91, 101, 258.
- Godfrey v. St. Felix (14 L. N. [Can.] 297), 649.
- Godfrey v. State (5 Blackf. [Ind.] 151), 694.
- Godfriedson v. People (88 Ill. 284), 12, 32, 85, 1711.
- Godson, *In re* (16 Ont. App. 452), 658.
- Goetcheus v. Matthewson (61 N. Y. 420), 660.

[References are to pages.]

- Goetz v. State (41 Ind. 162), 1240,  
1241, 1242, 1460, 1628.
- Goetz v. Stutsman (73 Iowa 693;  
36 N. W. 644), 1000.
- Goff v. Fowler (3 Pick. 300), 528,  
683.
- Goff v. Frederick (44 Md. 67),  
394.
- Goforth v. State (60 Miss. 756),  
688, 690, 1267.
- Golden v. Bingham (61 Ind. 198),  
531, 534, 598.
- Golden v. Maupin (2 J. J. Marsh.  
236), 2126.
- Golden v. State (25 Ga. 527),  
2041.
- Golding v. Golding (6 Mo. App.  
602), 64, 2153, 2155, 2156,  
2160.
- Goldman, *In re* (138 Pa. St. 321;  
22 Atl. 23), 196, 664.
- Goldman v. Goodrum (77 Ark.  
580; 92 S. W. 865), 751, 1792.
- Goldsmith v. New Orleans (31 La.  
Ann. 646), 796, 797.
- Goldsticker v. Ford (62 Tex. 385),  
210.
- Goldstein v. State ([Tex. Cr. App.]  
35 S. W. 289), 1576.
- Golightly v. State (49 Tex. Cr.  
App. 44; 90 S. W. 26), 1280,  
1380, 1381.
- Gonzales v. State (31 Tex. Crim.  
Rep. 508; 21 S. W. 253),  
2090.
- Gooch v. Commonwealth (8 Ky.  
Law Rep. [abstract] 437), 23,  
24.
- Good v. Commonwealth (12 Ky.  
Law Rep. [abstract] 468),  
1359.
- Good v. Towns (56 Vt. 410; 48  
Am. Rep. 799), 1949.
- Goodall v. Brewing Co. (56 Ohio  
St. 257; 46 N. E. 983), 1792,  
1810.
- Goode v. State (50 Fla. 45; 39  
So. 461), 1695.
- Goode v. State (87 Miss. 618; 40  
So. 12), 963, 969, 971, 833,  
1184.
- Goode v. State (39 So. 461), 1379.
- Goodell v. Woodbury (71 N. H.  
378; 52 Atl. 855), 416, 419.
- Goodenough v. McGrew (44 Iowa  
670), 1989, 2012.
- Goodhue v. Commonwealth (5 Met.  
553), 1533.
- Goodhue v. People (94 Ill. 37),  
1746.
- Goodman v. Hailes (59 Ohio St.  
342; 52 N. E. 829), 2011.
- Goodman Co. v. Commonwealth  
([Ky.] 99 S. W. 252; 30 Ky.  
L. Rep. 519), 1649.
- Goodrich v. Fritz (4 Ark. 525),  
1027.
- Goodrich v. Wheeler ([Iowa] 123  
N. W. 950), 1179.
- Goods v. State (3 Green [Iowa]  
566), 1353.
- Goodwin v. Clark (65 Me. 280),  
1784.
- Goodwin v. Kerr (80 Mo. 276),  
1162.
- Goodwin v. Savannah (53 Ga.  
414), 793.
- Goodwin v. Smith (72 Ind. 113),  
196, 599, 621.
- Goodwin v. State (96 Ind. 550),  
2040, 2044.
- Goodwin v. Young (34 Hun 252),  
1843.
- Goodwine v. Flint (28 Ind. App.  
36; 60 N. E. 1102), 567, 571.
- Goozen v. Phillips (48 Mich. 7;  
12 N. W. 889), 69.
- Gorbracht v. Commonwealth (96  
Pa. 449; 42 Am. Rep. 550),  
1280.
- Gordon, *In re* (16 Montg. Co. Law  
Rep. 25), 718, 721, 723.
- Gordon v. Louisville, etc. R. Co.  
(29 S. W. 321), 2253.
- Gordon v. State (46 Ohio St. 607;  
23 N. E. 63; 6 L. R. A. 749),  
110, 121, 232, 235, 237.



[References are to pages.]

- Gordon v. State ([Tex. Cr. App.] 73 S. W. 398), 834.
- Gore v. Gibson (13 M. & W. 623; 14 L. J. Exch. 152), 2092, 2104, 2106, 2110, 2117.
- Gorey v. Kelley (66 Neb. 605; 90 N. W. 554), 1993.
- Gorman ([1897] *Ex parte* App. Cas. 23; 58 J. P. 316; 63 L. J. M. C. 84; 70 L. T. 46), 681.
- Gorman, *Ex parte* (34 Can. L. Jr. 175), 1755.
- Gorman v. Keough (22 R. I. 47; 46 Atl. 37), 1804.
- Gorman v. State (38 Tex. 165), 801.
- Gorman v. State (52 Tex. Cr. App. 327; 106 S. W. 384), 1648.
- Gorman v. State (52 Tex. Cr. App. 24; 105 S. W. 200), 1679, 1691, 1694, 1701.
- Gorman v. State (52 Tex. Cr. App. 327; 106 S. W. 384), 1602, 1603, 1604, 1611, 1649.
- Gorman v. State ([Tex. Cr. App.] 106 S. W. 384), 1733.
- Gorman v. Williams (117 Iowa 560; 91 N. W. 819), 755, 1785.
- Gorrell v. Newport (1 Tenn. Ch. App. 120), 424.
- Gorsuth v. Butterfield (2 Wis. 237), 1192.
- Goss v. Vermontville (44 Mich. 319; 6 N. W. 684), 764.
- Gostorf v. State (39 Ark. 450), 52, 55, 59, 60, 86, 970.
- Gouin v. State (8 Mo. 493), 509.
- Goulden, *In re* (28 Ont. 387), 420.
- Goulding v. Phillips ([Iowa] 100 N. W. 516), 1904.
- Gough v. State (32 Ind. App. 22; 68 N. E. 1045), 1995.
- Gould v. Crawford (2 Pa. [Barr] 89), 2259.
- Gourlay v. Gourlay (16 R. I. 705; 19 Atl. 142), 64, 2159, 2158.
- Gover v. Agee (128 Mo. App. 427; 107 S. W. 999), 168, 408.
- Gowan v. Smith ([Mich.] 122 N. W. 286; 12 Det. L. N. 365), 975, 1120.
- Gowell v. State (41 Ark. 355), 247.
- Gower v. Agee (128 Mo. App. 427; 107 S. W. 999), 167, 168.
- Grabbs v. Danville (63 Ill. App. 590), 413.
- Grady v. Ragan (2 Willson Civ. Cas. Ct. App., Sec. 259), 767, 781.
- Graf v. State ([Tex. Cr. App.] 102 S. W. 1133), 1465, 1473.
- Graff v. Evans (51 L. J. M. C. 25; 8 Q. B. Div. 373), 1220, 1328, 1346.
- Grafty v. Rushville (107 Ind. 502; 8 N. E. 609), 157.
- Graham v. Fulford (73 Ill. 596), 1847.
- Graham v. Gubbins (26 Aust. L. T. 181; 11 Aust. L. R. 81), 348.
- Graham v. Manhattan R. Co. (149 N. Y. 336; 43 N. E. 917), 2217.
- Graham v. McDougall (6 F. [Just.] 57), 1151, 1152.
- Graham v. State (121 Ga. 590; 49 S. E. 678), 1234.
- Gran v. Houston (45 Neb. 813; 64 N. W. 245), 773, 1964.
- Granbury v. Thurston (23 Conn. 416), 393.
- Grand, *In re* (27 Up. Can. 46), 429.
- Grand Lodge, etc. of United Workmen v. Belcham (145 Ill. 308; 33 N. E. 886), 2223.
- Grand Lodge v. Brand (29 Neb. 644), 2241.
- Grand Lodge A. P. O. U. W. v. Oetzel (139 Ill. App. 4), 2241.
- Granger v. Hayden (17 R. I. 179; 20 Atl. 833), 777, 778.
- Granger v. Knipper (2 Cin. R. 480), 1848.
- Granite Bank v. Treat (18 Me. 340), 1018.

[References are to pages.]

- Grant, *In re* (2 Pa. Co. Ct. Rep. 87), 586.  
 Grant v. Coulter (24 Barb. 232), 233.  
 Grant v. State (73 Ala. 13), 1666.  
 Grant v. State (87 Ga. 265; 13 S. E. 554), 1180.  
 Grant v. State (33 Tex. Cr. Rep. 527; 27 S. W. 127), 373, 1637.  
 Grantham v. State (89 Ga. 121; 14 S. E. 892), 931, 1493.  
 Graves v. Bet Jong (26 Austr. L. T. 101; 10 Austr. L. R. 217), 1067.  
 Graves v. Johnson (156 Mass. 211; 30 N. E. 818; 15 L. R. A. 836), 1797.  
 Graves v. Johnson (179 Mass. 53; 60 N. E. 383), 1798.  
 Graves v. McHugh (58 Mo. 499), 762.  
 Graves v. Panam ([1905] Vict. L. R. 297; 26 Austr. L. T. 232; 11 Austr. L. R. 180), 1215.  
 Graves v. Ranger (52 Vt. 424), 1782.  
 Graves v. Roth (29 Vict. L. R. 841; 26 Austr. L. T. 58; 10 Austr. L. R. 158), 1114, 1178.  
 Graves v. Williams ([1905] Vict. L. R. 215; 26 Austr. L. T. 189; 11 Austr. L. R. 98), 1347.  
 Graw v. Houston (45 Met. 813; 64 N. W. 245), 1890, 1945.  
 Gray, *Ex parte* ([Tex. Cr. App.] 83 S. W. 828), 971.  
 Gray v. Baker (31 Ind. 151), 1020.  
 Gray v. Baltimore (100 U. S. 434), 156, 157.  
 Gray v. Commonwealth (9 Dana 300; 35 Am. Dec. 136), 343.  
 Gray v. Connecticut (159 U. S. 74; 15 Sup. Ct. 985; 40 L. Ed. 80), 150, 195.  
 Gray v. Davis (27 Conn. 447), 1021, 1047, 1048, 1053.  
 Gray v. Kimball (42 Me. 299, 307), 253, 255, 1007.  
 Gray v. State (44 Tex. Cr. App. 470; 72 S. W. 169), 1235.  
 Gray v. Stiens (69 Iowa 124; 28 N. W. 475), 988.  
 Graziano v. New Orleans (121 La. 440; 46 So. 566), 114.  
 Great Falls Bank v. Farmington (41 N. H. 32), 383, 1807.  
 Green v. Collins (3 Cliff. 494), 1795, 1796, 1801.  
 Green v. Commonwealth (15 Ky. L. Rep. [abstract] 297), 957, 1466.  
 Green v. Russell (5 Hill 183), 2125.  
 Green v. Sklara (188 Mass. 363; 74 N. E. 595), 260.  
 Green v. Smith (111 Iowa 183; 82 N. W. 448), 205, 209, 859.  
 Green v. Southard (94 Tex. 470; 61 S. W. 705, reversing 59 S. W. 839), 560, 561, 562, 765.  
 Green v. State (114 Ga. 918; 115 Ga. 254; 41 S. E. 642), 1623.  
 Greene v. State (79 Ind. 537), 1443.  
 Green v. State (59 Miss. 501), 2247.  
 Green v. State ([Tex. Cr. App.] 102 S. W. 416), 1465, 1473.  
 Green v. State ([Tex. Cr. App.] 87 S. W. 1043), 949.  
 Green v. State (53 Tex. Cr. App. 466; 110 S. W. 919), 919, 1681.  
 Green v. State (54 Tex. Cr. App. 3; 111 S. W. 933), 1378.  
 Green v. State ([Tex.] 120 S. W. 425), 1601.  
 Green County v. Wilhite (29 Mo. App. 459), 758, 778, 1358.  
 Greene v. James (2 Curtis C. C. 187), 254.  
 Greencastle v. Thompson (168 Ind. 493; 81 N. E. 497), 144.  
 Greener v. Nilehaus ([Ind.] 89 N. E. 377), 1937.  
 Greenlee v. Schoenheit (23 Neb. 669; 37 N. W. 600), 1857.

[References are to pages.]

- Greenough v. Board ([R. I.] 74 Atl. 785), 538.
- Greenough v. Greenough (11 Pa. St. 494), 1014.
- Greenough v. Narragansett ([R. I.] 71 Atl. 594), 388, 526.
- Greentree v. Wallace (77 Kan. 149; 93 Pac. 598), 1028.
- Greenwood v. State (6 Baxt. [Tenn.] 409), 216, 271.
- Greer v. Severson (119 Iowa, 84; 93 N. W. 72), 1784.
- Greer v. State (22 Tex. 588), 929.
- Gregory v. State (140 Ala. 16; 37 So. 259), 2081.
- Gregory v. United States (17 Blatchf. 325), 356, 1364.
- Greig v. Bendeno (E. B. & E. 133; 27 L. J. M. C. 294), 367, 368, 535, 724.
- Greig v. Macleod ([1908] S. C. C. J. 14), 1355.
- Greiner v. Hoboken ([N. J. L.] 53 Atl. 693), 365, 464.
- Greiner-Kelley Drug Co. v. Truett ([Tex. Civ. App.] 75 S. W. 536), 17, 834, 949, 963, 964.
- Grepel v. State (32 Ohio St. 167), 1232.
- Greystock, *In re* (12 U. C. 458), 420, 452, 462, 533, 575, 756.
- Grier v. Johnson (88 Iowa, 99; 55 N. W. 80), 1000.
- Griesbach v. People (226 Ill. 65; 80 N. E. 734; affirming 127 Ill. App. 462), 578.
- Grieves, *Ex parte* (29 N. B. 543), 1084.
- Griffin, *In re* (56 N. Y. Misc. Rep. 21; 106 N. Y. Supp. 24), 588.
- Griffin v. Atlanta (78 Ga. 673; 4 S. E. 154), 492, 931, 1081, 1083, 1087, 1091.
- Griffin v. Commonwealth (7 Ky. L. Rep. [abstract] 300), 1464, 1467, 1509.
- Griffin v. Commonwealth ([Ky.] 66 S. W. 1034; 23 Ky. L. Rep. 2205), 1193, 1195, 1199, 1600.
- Griffin v. Eaves (114 Ga. 65; 39 S. E. 913), 229.
- Griffin v. State (115 Ga. 577; 41 S. E. 997), 1164, 1456, 1465, 1469, 1475.
- Griffin v. State ([Tex. Cr. App.] 87 S. W. 155), 915.
- Griffin v. Tucker ([Tex.] 118 S. W. 625), 849.
- Griffin v. Tucker ([Tex. Civ. App.] 119 S. W. 338), 363, 900, 901, 926.
- Griffin v. Wilcox (21 Ind. 370), 2033.
- Griffith v. Commonwealth (14 Ky. L. Rep. [abstract] 303), 494, 521.
- Griffith v. Fred. Co. Bk. (6 Gill & J. 424), 2099.
- Griffith v. Smith (22 Wis. 646; 99 Am. Dec. 90), 1027.
- Griffith v. Wells (3 Denio, 226), 1780.
- Grigg, *Ex parte* (4 Vict. L. R. 146), 1531.
- Grills v. Jonesboro (8 Baxt. 247), 453, 459, 461.
- Grim, *In re* (181 Pa. St. 233), 694.
- Grime v. Commonwealth (5 B. Mon. 263), 1478, 1479.
- Grimes v. Jersey City (29 N. J. L. 320), 1669.
- Grimes v. State (37 Tex. Cr. App. 73; 38 S. W. 774), 1171.
- Grimes v. State (44 Tex. Cr. App. 503; 72 S. W. 589), 1609, 1690.
- Grinnell v. Adams (34 Ohio St. 44), 860.
- Groesch v. State (42 Ind. 547), 208, 232, 236, 237, 238, 240, 243.
- Grom v. People (135 Ill. App. 453), 1481, 1550.

[References are to pages.]

- Groom v. Grimes (89 L. T. 129; 67 J. P. 345; 20 Cox C. C. 515), 1241, 1335, 1355, 1357.
- Groome, *In re* (6 Ont. 188), 420.
- Groscep v. Rainer (111 Ind. 361; 39 N. E. 47), 196, 532, 598, 599, 602, 637, 662, 663.
- Gross, *In re* (161 Pa. 344; 29 Atl. 25; 34 W. N. C. 404), 664.
- Gross, Appeal of (1 Pa. Super. Ct. 640), 665.
- Gross v. Allentown (132 Pa. St. 319; 19 Atl. 269), 428.
- Gross v. Feehan (110 Iowa, 163; 81 N. W. 235), 1779, 1781, 1785.
- Gross v. Searr (71 Iowa, 656; 33 N. W. 223), 1283, 1284.
- Grosse v. Wayne Co. (85 Mich. 44; 48 N. W. 153), 806.
- Grottkaw v. State (70 Wis. 462; 36 N. W. 31), 2252.
- Grover v. Huckins (26 Mich. 476), 470.
- Groves v. Panam ([1905] Vict. L. R. 297; 26 Austr. L. T. 232; 11 Austr. L. R. 180), 1204.
- Grubbs v. Griffin ([Miss.] 25 So. 663), 900, 909.
- Grumbauch v. Lelande (154 Cal. 679; 98 Pac. 1059), 125, 127, 172, 559.
- Grumman v. Holmes (76 Ind. 585), 532, 598, 602.
- Grupe v. State (67 Ind. 327), 1498, 1500.
- Grusenmeyer v. Logansport (76 Ind. 549), 1714.
- Grunkemeyer v. State (25 Ohio St. 548), 1561.
- Guadinger v. Commonwealth (4 Ky. L. Rep. 514), 24, 26, 43, 44.
- Guaereno v. State (148 Ala. 637; 42 So. 833), 1368, 1474, 1479, 1523, 1609, 1653.
- Guckavan v. Kenny (4 Kulp. 411), 2094, 2106, 2122.
- Guckenheimer v. Sellers (81 Fed. 997), 1433, 1434, 1435.
- Gue v. Eugene ([Ore.] 100 Pac. 254), 1680.
- Guedert v. Emmet Co. (116 Iowa, 40; 89 N. W. 85), 805, 806.
- Guenther v. Day (6 Gray, 490), 1047, 1048.
- Guernsey v. McHaley ([Ore.] 93 Pac. 158), 892.
- Guerrero, *Ex parte* (69 Cal. 88; 10 Pac. 261), 186, 426, 427, 444, 470, 795.
- Guild v. Chicago (82 Ill. 492), 233.
- Guinn v. Cumberland Co. Ct. ([Ky.] 99 S. W. 274; 28 Ky. L. Rep. 759), 615, 670.
- Guild v. Freeman (36 Sc. L. R. 6), 1272, 1285.
- Gulf Brewing Co., *In re* (11 Pa. Co. Ct. Rep. 346), 537, 564.
- Gulf Port v. Martin ([Miss.] 50 So. 502), 1532.
- Gulick v. State (50 N. J. L. 468; 14 Atl. 751), 1635.
- Gullickson v. Gjorud (89 Mich. 8; 50 N. W. 751), 773, 779, 780, 1350, 1885, 1907.
- Gunn v. Ohio River R. Co. (42 W. Va. 676; 26 S. E. 546; 36 L. R. A. 575), 2182.
- Gunnerssohn v. Sterling (92 Ill. 569), 168, 395, 431, 1589.
- Gunning v. State ([Tex. Cr. App.] 98 S. W. 1057), 1473.
- Gunter v. State (83 Ala. 96; 3 So. 600), 2042, 2046, 2051.
- Guptill v. Richardson (62 Me. 257), 49, 968, 1018, 1047.
- Gurding v. Board (13 Idaho, 444; 90 Pac. 357), 291.
- Gurley v. State (65 Ga. 157), 682.
- Gustafson v. Wind (62 Iowa, 281; 17 N. W. 523), 1940, 1941, 1943.

[References are to pages.]

Gustavensen v. State (10 Wyo. 300; 68 Pac. 1006), 2039, 2060, 2062, 2068, 2069.  
 Gutzweiler v. People (14 Ill. 142), 170, 183, 184, 185, 402.  
 Guy v. Board (122 N. C. 471; 29 S. E. 771), 1476.  
 Guy v. Commissioners (122 N. C. 471; 29 S. E. 771), 103, 172, 183, 249.  
 Guy v. McDaniel (51 S. C. 436; 29 S. E. 196), 381.  
 Guy v. New York, etc., R. Co. (30 Hun, 399), 2197.  
 Guy v. State (90 Md. 29; 44 Atl. 997), 1729.  
 Guy v. State (96 Md. 692; 54 Atl. 879), 1661, 1731.  
 Gwatkin v. Commonwealth (9 Leigh 678; 33 Am. Dec. 264), 2062, 2085.

## H

Haas v. Neosho ([Mo. App.] 123 S. W. 473), 920.  
 Haase v. Mitchell (58 Ind. 213), 2127.  
 Hack v. State (44 Ohio St. 536; 9 N. E. 305), 792.  
 Hackett v. Linsley (77 Ill. 109), 1859, 1882, 1886, 1887, 1912, 1942.  
 Hackney, *Ex parte* ([Tex. Cr. App.] 92 S. W. 1092), 278, 336, 953, 1280.  
 Hadley v. Musselman (104 Ind. 459; 3 N. E. 122), 1121, 1378.  
 Hadtner v. Williamsport (15 W. N. C. 138), 183, 184, 188.  
 Haddox v. Clarke County (79 Va. 677), 662, 884, 885.  
 Hachline Brewing Co. v. Board ([Mich.] 121 N. W. 202; 16 Detroit L. N. 184), 911.  
 Hafter v. State (51 Ala. 37), 1478, 1532.  
 Hagan v. Boonton (62 N. J. L. 150; 40 Atl. 688), 714.  
 Hagan v. Lucas (10 Pet. [U. S.] 400), 1012.  
 Hagan v. State (4 Kan. 89), 1479, 1481.  
 Hagens v. Police Jury ([La.] 46 So. 676), 865, 890, 894, 920.  
 Hager v. Jung Brewing Co. ([Ky.] 92 S. W. 573; 29 Ky. L. Rep. 176), 935.  
 Hagerty v. Tuxbury (181 Mass. 126; 63 N. E. 333), 1114.  
 Haggard v. State (26 Ind. App. 695; 59 N. E. 1135), 1340.  
 Haggart v. Stehlin (137 Ind. 43; 29 N. E. 1073; 22 L. R. A. 577), 98, 144, 183, 496, 594, 944, 975, 1105.  
 Hague, *Ex parte* (3 Low. Can. 94), 1444, 1451.  
 Hague v. Ashland (91 Wis. 629; 65 N. W. 508), 813.  
 Haigh v. Sheffield (L. R. 10 Q. B. 102; 44 L. J. M. C. 17; 31 L. T. 536; 23 W. R. 547; 39 J. P. 230), 380.  
 Haight, *In re* (33 N. Y. Misc. Rep. 544; 68 N. Y. Supp. 920), 580, 729.  
 Hail v. State (48 Tex. Cr. App. 514; 90 S. W. 503), 945.  
 Haile v. State (11 Humph. 154), 2048, 2067, 2072.  
 Hainer v. Burton (75 Kan. 281; 89 Pac. 697), 665.  
 Haines v. Allen (78 Ind. 109; 41 Am. Rep. 555), 1785.  
 Haines v. Einwachter ([N. J. Ch.] 55 Atl. 38), 1809.  
 Haines v. Hanrahan (105 Mass. 480), 10, 48, 82, 87, 1706, 1975.  
 Haines v. State (7 Tex. App. 30), 1125, 1319, 1741.  
 Hainline v. Commonwealth (13 Bush, 35), 821, 825, 1457.



[References are to pages.]

- Halbert, *In re* (15 N. Y. Misc. Rep. 308; 37 N. Y. Supp. 757), 2134, 2135, 2136, 2145, 2149.
- Halcher v. State (80 Tenn. [12 Lea] 368), 247.
- Hale v. Brown (11 Ala. 87), 2104.
- Hale v. State (36 Ark. 150), 1237, 1739, 1751.
- Hale v. Story (7 Colo. App. 165; 42 Pac. 598), 2098.
- Haley v. Chicago, etc., R. Co. (21 Iowa, 15), 2210.
- Haley v. State (42 Neb. 556; 60 N. W. 962; 47 Am. St. 718), 308.
- Halfin v. State (5 Tex. App. 212), 929.
- Halford v. Kirkland ([Ark.] 71 S. W. 264), 670.
- Halfman v. Spreen (75 Iowa, 309; 39 N. W. 517), 981, 991.
- Hall, *Ex parte* ([Ala.] 47 So. 199), 382.
- Hall, *Ex parte* ([Ala.] 47 So. 199), 175.
- Hall v. Barnes (82 Ill. 228), 1974.
- Hall v. Bastrop (11 La. Ann. 603), 802, 1739.
- Hall v. Box ([1870] 18 W. R. 820), 1813.
- Hall v. Bray (51 Mo. 288), 228.
- Hall v. Coffin (108 Iowa, 466; 79 N. W. 274), 992, 993.
- Hall v. Commonwealth (13 Ky. L. Rep. [abstract] 399), 950.
- Hall v. Dunn ([Ore.] 97 Pac. 811), 235, 936.
- Hall v. Germain (131 N. Y. 536; 30 N. E. 591; affirming 59 Hun, 626; 14 N. Y. Supp. 5), 1924, 1925, 1928, 1961.
- Hall v. McKecknie (22 Barb. 244), 1615, 1353.
- Hall v. Moreman (3 McCord L. [S. C.] 477; 4 McCord L. 283), 2103.
- Hall v. Solomon (61 Conn. 476; 23 Atl. 876; 29 Am. Rep. 218), 1809.
- Hall v. South Norfolk (8 Mani-toba, 430), 1681.
- Hall v. State (4 Harr. [Del.] 132), 215, 1303, 1309.
- Hall v. State (3 Kelly [Ga.] 18), 1124, 1126.
- Hall v. State (87 Ga. 233; 13 S. E. 634), 1503, 1624.
- Hall v. State (122 Ga. 142; 50 S. E. 59), 972, 973.
- Hall v. State (125 Ga. 31; 53 S. E. 807), 1372.
- Hall v. State (8 Ind. 439), 1716.
- Hall v. State (9 Lea, 574), 1385.
- Hall v. State (31 Tex. Crim. Rep. 565; 21 S. W. 368), 2090.
- Hall v. State ([Tex. Cr. App.] 34 S. W. 122), 369.
- Hall v. State ([Tex. Cr. App.] 39 S. W. 578), 1471.
- Hallett, *Ex parte* (15 N. N. [N. S. W.] 234), 2025.
- Halloran v. McCullough (68 Ind. 479), 659, 660, 854.
- Halpin v. State (18 Tex. App. 410), 1111.
- Halls v. Cartwright (18 La. Ann. 414), 2156.
- Halstead v. Commonwealth (5 Leigh, 724), 1505.
- Halstead v. Horton (38 W. Va. 727; 18 S. E. 953), 63.
- Halverstadt v. Berger (72 Neb. 462; 100 N. W. 934), 666.
- Ham v. Delaware, etc., Co. (142 Pa. 617; 21 Atl. 1012), 2207.
- Hamel v. St. Jean Deschailions Rap. Jud. Que. (20 C. S. 301), 413, 446.
- Hamer v. Eldridge (171 Mass. 250; 50 N. E. 611), 1358.
- Hamer v. People (104 Ill. App. 555; affirmed 205 Ill. 570; 68 N. E. 1061), 1232.

[References are to pages.]

- Hamilton, *In re* (41 Up. Can. 253), 889.
- Hamilton Co. v. Bailey (12 Neb. 56; 10 N. W. 539), 628, 635.
- Hamilton v. Baker (91 Iowa, 100; 58 N. W. 1080), 994, 1004.
- Hamilton v. Carthage (24 Ill. 22), 1739.
- Hamilton v. Goding (55 Me. 419), 1031, 1162, 1773, 1777.
- Hamilton v. Grainger (5 H. & N. 4), 2092, 2101, 2106.
- Hamilton v. Jos. Schlitz Brewing Co. (129 Iowa, 172; 105 N. W. 438), 1802, 1803.
- Hamilton v. McKinney ([Ky.] 65 S. W. 2; 23 Ky. L. Rep. 1341), 667.
- Hamilton v. State (103 Ind. 96; 53 Am. Rep. 491), 605, 1637.
- Hamilton v. State (78 Ohio St. 76; 84 N. E. 601), 1531, 1544.
- Hamilton v. State (3 Tex. App. 643), 270, 271.
- Hamman v. State ([Tex. Cr. Rep.] 33 S. W. 538), 1646.
- Hammer v. Dunlavy ([Iowa] 121 N. W. 1024), 976.
- Hammock v. State ([Ga.] 65 S. E. 1096), 1656.
- Hammond v. Hanes (25 Md. 541; 90 Am. Dec. 77), 235.
- Hammond v. Hobson (23 N. Z. 395, 1102), 1152, 1153.
- Hammond v. King (137 Iowa, 548; 114 N. W. 1062), 1320.
- Hampson v. Taylor (15 R. I. 83; 8 Atl. 331; 23 Atl. 732), 2191, 2193.
- Hampton v. State (78 Ohio St. 76; 84 N. E. 601), 1761.
- Hampton v. State ([Tex. Cr. App.] 65 S. W. 526), 1548.
- Hanbury v. Cundy ([1888] 58 L. T. 155), 1816.
- Hancock v. Bingham ([Ky.] 102 S. W. 341; 31 Ky. L. Rep. 427), 939, 941.
- Hancock v. Bowman (49 Cal. 413) 605.
- Hancock v. Singer Mfg. Co. (62 N. J. L. 289; 41 Atl. 846; 42 L. R. A. 852), 789.
- Hancock v. State (114 Ga. 439; 40 S. E. 317), 230, 251, 295, 965, 1497, 1505, 1512.
- Hand v. Ballou (12 N. Y. 541), 264.
- Handcock v. Rushe ([1896] 60 J. P. 633), 1818.
- Haney, *Ex parte* (48 Ore. 621; 85 Pac. 332), 867.
- Haney, *Ex parte* (51 Tex. Cr. App. 634; 103 S. W. 1155), 864.
- Haney v. Mann ([Tex. Civ. App.] 81 S. W. 66), 1256, 1949.
- Haney v. State ([Tex.] 122 S. W. 34), 1583.
- Handler, *Ex parte* (176 Mo. 383; 75 S. W. 920), 229, 233.
- Handley v. Stacey (1 Fost. & F. 574), 2136.
- Handy v. People, 29 Ill. App. 99), 683, 688, 799.
- Haneklau v. Felchlin (57 Mo. App. 602), 2109.
- Hanewacker v. Ferman (47 Ill. App. 17), 1957, 1984.
- Hanington v. New York, etc., R. Co. (19 N. Y. St. Rep. 20), 2198, 2199.
- Hankinson v. Charlotte, etc., R. Co. (41 S. C. 1; 19 S. E. 206), 2185, 2191.
- Hanks v. Packett ([Mo.] 119 S. W. 25), 627.
- Hanks v. People (39 Ill. App. 223), 428.
- Hanley v. Kentucky Cent. R. Co. (187 U. S. 617; 47 L. Ed. 333; 23 Sup. Ct. 214), 298.
- Hanlon v. State (51 Ark. 186; 10 S. W. 265), 1665, 1791.
- Hann v. Bedell (61 N. J. L. 148; 50 Atl. 564), 292.
- Hanna v. Conn. L. Ins. Co. (8 N. Y. Misc. Rep. 431; 28 N. Y. Supp. 661), 2236.

[References are to pages.]

- Hanna v. State (48 Tex. Cr. App. 269; 87 S. W. 702), 873, 899, 916, 1380, 1381.
- Hannan v. District of Columbia (12 App. Cas. [D. C.] 265), 1119, 1137.
- Hannibal v. Guyott (18 Mo. 515), 495, 508.
- Hannon v. Chicago (140 Ill. 398; 29 N. E. 732), 426.
- Hannun v. Worrell (2 Del. Co. Rep. 49), 2137.
- Hanrahan v. Ayers (10 N. Y. Misc. Rep. 435; 31 N. Y. Supp. 458), 2253.
- Hanrahan v. State (57 Ind. 527), 358.
- Hans v. State (50 Neb. 150; 69 N. W. 838), 1092, 1610, 1650.
- Hansberg v. People (120 Ill. 1; 8 N. E. 857; 60 Am. Rep. 549), 966.
- Hanson v. State (43 Ind. 550), 356, 1352, 1357, 1359, 1615, 1616.
- Hanvey v. State (68 Ga. 612), 2041, 2063.
- Hapgood v. Needham (59 Me. 442) 1807.
- Harbaugh v. Munough (74 Ill. 371), 395, 474.
- Harbison v. Lemon (3 Blackf. 51; 23 Am. Dec. 376), 2092, 2098, 2103, 2108.
- Harbison v. Shirley (139 Iowa, 605; 117 N. W. 963), 1811.
- Harbottle v. Gill (41 J. P. 742), 1146.
- Hardenbrook v. Town of Ligonier (95 Ind. 70), 276.
- Hardesty v. Hine (135 Ind. 72; 34 N. E. 701), 598, 599, 601, 621, 637, 662, 663.
- Hardesty v. United States (164 Fed. 420), 1602, 1662.
- Harding v. Commonwealth (105 Va. 858; 52 S. E. 832), 1655, 1743.
- Harding v. Commissioners (65 S. W. 56; 3 Tex. Ct. Rep. 162), 925.
- Harding v. McLennan Co. (27 Tex. Civ. App. 25; 65 S. W. 56), 921.
- Harding v. State (65 Neb. 238; 91 N. W. 194), 1179, 1579.
- Hardison v. State (95 Ga. 337; 22 S. E. 681), 1517.
- Hardten v. State (32 Kan. 637; 5 Pac. 212), 1768, 1769.
- Hardwick v. State (55 Tex. Cr. App. 140; 114 S. W. 832), 7, 22, 32, 1491.
- Hardy v. Merrill (56 N. H. 227; 22 Am. Rep. 441), 1736.
- Hardy v. State (48 Tex. Cr. App. 298; 87 S. W. 1038), 921, 923, 1344.
- Hare v. Osborne (34 L. T. 294), 374, 1145, 1318.
- Hare v. State (4 Ind. 241), 1501.
- Hargett v. Bell (134 N. C. 394; 46 S. E. 749), 975.
- Hargrave v. Commonwealth ([Va.] 22 S. E. 314), 1465.
- Harkey v. State (89 Ga. 478; 15 S. E. 552), 1240, 1629.
- Hartgraves v. State ([Tex. Cr. App.] 39 S. W. 661), 1210.
- Hargrove v. State ([Tex. Cr. App.] 76 S. W. 926), 1209.
- Harlan v. Brown (4 Ind. App. 319; 30 N. E. 928), 2092, 2116, 2123, 2131.
- Harlan v. Richmond (108 Iowa, 161; 78 N. W. 809), 1237, 1254.
- Harlan v. State (136 Ala. 150; 33 So. 858), 174, 575, 587, 648, 652.
- Harland v. Adams (76 Miss. 308; 24 So. 262), 553.
- Harley v. State (127 Ga. 308; 56 S. E. 452), 1228, 1229.
- Harman v. Clarkson (22 Can. Pl. C. [Can.] 291), 2263.
- Harman v. Harman (16 Ill. 85), 2154, 2164, 2167.

[References are to pages.]

- Harman v. Powell ([1892] 65 L. T. 255; 56 J. P. 150), 1821.
- Harmon, *In re* (43 Fed. 372), 308, 998, 1434, 1435.
- Harmon v. Chicago ([111.] 26 N. E. 697), 479.
- Harmon v. Johnston (1 MacArthur, 139), 2097.
- Harmon v. State (92 Ga. 455; 17 S. E. 666), 1120, 1126.
- Harmony Lodge, I. O. O. F.'s Appeal (127 Pa. 269; 18 Atl. 10), 2138, 2148.
- Harney v. State (8 Lea, 13), 247, 1221.
- Harp v. Commonwealth ([Ky.] 61 S. W. 467; 22 Ky. L. Rep. 1792), 957, 1743.
- Harper, *In re* (30 N. Y. Misc. Rep. 663; 64 N. Y. Supp. 524), 545, 729.
- Harper's Will, *In re* (4 Bibb, 244), 2136, 2139, 2149.
- Harper v. Archer (4 Smed. & M. [Miss.] 108), 1906.
- Harper v. Golden ([Tex. Civ. App.] 39 S. W. 623), 762, 763, 767.
- Harper v. State ([Ark.] 127 S. W. 738), 1237.
- Harper v. State (85 Miss. 338; 37 So. 956), 1207.
- Harper v. State (7 Ohio St. 73), 1741.
- Harper v. State ([Tex. Cr. App.] 98 S. W. 839), 1603.
- Harper v. State ([Ark.] 121 S. W. 738), 1161, 1205, 1226, 1280, 1282.
- Harrell v. Speed (113 Tenn. 224; 81 S. W. 840), 331.
- Harrigan, *In re* (Myr. Prob. 135), 2138.
- Harring v. State ([Ala.] 48 So. 576), 1739.
- Harrington v. State (36 Ala. 236), 1188, 1219, 1223, 1578.
- Harrington v. State (36 Ark. 236), 1221.
- Harrington v. State (77 Ark. 480; 91 S. W. 747), 1568.
- Harrington v. State (9 Wend. [N. Y.] 525), 394.
- Harris v. Commonwealth (23 Pick. 280), 1760.
- Harris v. Jenns (9 C. B. [N. S.] 152; 30 L. J. M C 183; 9 W. R. 36; 3 L. T. [N. S.] 408; 22 J. P. 807), 27, 961, 965, 1708.
- Harris v. Livingston (28 Ala. 577), 77, 395, 431, 432, 1192.
- Harris v. People (21 Colo. 95; 39 Pac. 1084), 1125.
- Harris v. People (1 Colo. App. 289; 28 Pac. 1133), 509, 1120, 1123, 1728.
- Harris v. Runnels (12 How. 79, 83, 84; 13 L. Ed. 901, 903), 1794.
- Harris v. Sheffield (128 Ga. 299; 57 S. E. 305; 59 S. E. 771), 923.
- Harris v. State (61 Miss. 304), 2246, 2247, 2252.
- Harris v. State ([Miss.] 12 So. 904), 1280, 1464, 1468, 1513.
- Harris v. State (50 Ala. 127), 1112, 1478, 1535, 1752.
- Harris v. State (114 Ga. 436; 40 S. E. 315), 229.
- Harris v. State (4 Tex. App. 131), 198.
- Harris v. State (47 Tex. Cr. App. 588; 85 S. W. 284, 1198), 949, 950, 1380, 1381.
- Harris v. State ([Tex. Cr. App.] 86 S. W. 763), 1697.
- Harris v. State (49 Tex. Cr. App. 233; 91 S. W. 590), 1379.
- Harris v. State (50 Tex. Cr. App. 411; 97 S. W. 704), 1613, 1689, 1722, 1723.
- Harris v. State ([Tex. Cr. App.] 98 S. W. 842), 1606, 1694, 1695, 1705.
- Harris v. State ([Tex. Cr. App.] 100 S. W. 920), 1609.

[References are to pages.]

- Harris v. United States (8 App. D. C. 20; 36 L. R. A. 465), 2042, 2044.
- Harrison v. Berkeley (1 Strobh. [S. C.] 525; 47 Am. Dec. 578), 1838, 1893.
- Harrison v. Dickinson ([Tex. Civ. App.] 113 S. W. 776), 653.
- Harrison v. Ely (120 Ill. 83; 11 N. E. 334), 66, 1254.
- Harrison, etc., v. Holland (3 Grat. [Va.] 247), 394.
- Harrison v. Lockhart (25 Ind. 112), 101, 144, 1808.
- Harrison v. Mayer, etc. (1 Gill [Md.] 264), 96.
- Harrison v. Nichols (31 Vt. 709), 1777.
- Harrison v. People (195 Ill. 466; 63 N. E. 191; reversing 91 Ill. App. 421), 535, 577, 650.
- Harrison v. People (222 Ill. 150; 78 N. E. 52), 594, 631.
- Harrison v. People (124 Ill. App. 519), 720, 727.
- Harrison v. State (91 Ala. 62; 10 So. 30), 308.
- Harrison v. State (96 Tenn. 548; 35 S. W. 559), 1279.
- Harryman v. State (53 Tex. Cr. App. 474; 110 S. W. 926), 913, 959, 1682, 1684.
- Hart v. Corlett (4 Ohio Dec. 181; 1 Clev. Law Rep. 92), 2012.
- Hart v. De Missisgroni (3 Quebec L. R. 170), 168.
- Hart v. Duddleson (20 Ill. App. 618), 1869.
- Hart v. State (87 Miss. 171; 39 So. 523), 111, 234, 953.
- Hart v. Thompson (15 La. 88), 2136, 2148.
- Harten v. State (32 Kan. 637; 5 Pac. 212), 226.
- Hartford v. Palmer (16 Johns. 143), 2259.
- Hartgraves v. State ([Tex. Cr. App.] 43 S. W. 331), 1086, 1698.
- Hartig v. Seattle ([Wash.] 102 Pac. 408), 558.
- Hartley, *In re* (25 Up. Can. 12), 894, 914, 975.
- Hartsel v. State ([Tex. Cr. App.] 68 S. W. 285), 1471.
- Harvey v. Olney (42 Ill. 336), 811.
- Harvey v. Peacock (11 M. & W. 740), 1020.
- Harvey v. Peck (1 Munf. 518), 2102, 2126, 2130.
- Harvey v. State (65 Ga. 568), 1119, 1125.
- Harvey v. State (80 Ind. 142), 1176, 1224, 1248, 1565, 1621, 1633.
- Harvey v. State (8 Lea, 113), 1578.
- Hartwell v. Alabama, etc., Ins. Co. (33 La. Ann. 1353; 39 Am. Rep. 294), 2221, 728.
- Hash v. Ely (45 Tex. Civ. App. 259; 100 S. W. 980), 898, 899, 923.
- Haskell v. Haskell (54 Cal. 262; 17 Abb. N. C. 231), 2154, 2164.
- Haskell v. New Bedford (108 Mass. 208), 280.
- Haskill v. Commonwealth (3 B. Mon. 342), 1499, 1642, 1643.
- Haskins v. Spiller (1 Dana [Ky.] 172), 1906.
- Haslem v. Schnarr (30 Ont. 89), 652, 715.
- Hastings, *In re* ([Neb.] 119 N. W. 27), 558.
- Hasting v. People (22 N. Y. 95), 929.
- Hastings Brewing Co., *In re* ([Neb.] 119 N. W. 27), 538.
- Hatcher v. Commonwealth (106 Va. 827; 55 S. E. 677), 1652.
- Hatcher v. State (80 Tenn. [12 Lea] 368), 135.
- Hatfield v. Commonwealth (120 Pa. St. 395; 14 Atl. 151), 27, 82, 291, 967.



[References are to pages.]

- Hatfield v. State (9 Ind. App. 296; 36 N. E. 664), 1166, 1560, 1561, 1566.
- Hatten's Will, *In re* (3 N. Y. St. Rep. 213), 2136, 2138, 2142, 2147.
- Hatzen's League, *Ex parte* (5 Quebec Q. B. 160), 619, 620, 647.
- Hauck, *In re* (70 Mich. 396; 38 N. W. 269), 244, 291, 436.
- Haug v. Gillett (14 Kan. 140), 512, 521, 1288.
- Hauk v. Great Northern R. Co. (8 N. D. 23; 77 N. W. 97; 42 L. R. A. 669), 2205, 2212, 2214.
- Hausberg v. People (120 Ill. 21; 8 N. E. 857), 43, 83.
- Hauselman v. Kegel (60 Mich. 540; 27 N. W. 558), 1027.
- Haven v. State (17 Ind. 455), 1500.
- Haviland v. Chase (116 Mich. 214; 74 N. W. 477; 72 Am. St. Rep. 519), 1985.
- Hawaiian Trust Co. v. High Sheriff (16 Hawaii, 689), 1774.
- Hawesville v. Board (99 Ky. 292; 35 S. W. 1034), 808.
- Hawk v. People (44 Tex. Cr. App. 560; 72 S. W. 842), 844.
- Hawke v. Dunn ([1897] 1 Q. B. 579; 61 J. P. 292; 66 L. J. Q. B. 364; 76 L. T. 355; 45 W. R. 359; 13 T. L. R. 281), 380.
- Hawke v. Plymouth Breweries, Limited, (Bodmin Assizes [June 27, 1906], not reported), 1820.
- Hawkins, *Ex parte* (61 Ark. 321; 30 L. R. A. 736; 33 S. W. 106), 2261.
- Hawkins, *In re* (165 N. Y. 168; 58 N. E. 884; reversing 28 N. Y. Misc. Rep. 383; 59 N. Y. Supp. 888; 60 N. Y. Supp. 1141; 66 N. Y. Supp. 1132), 580, 581, 730.
- Hawkins v. Bone (4 F. & F. 311), 2098.
- Hawkins v. Bridgewater ([1900] 2 Q. B. 382; 69 L. J. Q. B. 663; 64 J. P. 631; 48 W. R. 587; 82 L. T. 847; 16 T. L. R. 404), 680.
- Hawkins v. Common Council ([Mich.] 79 N. W. 570), 649, 650.
- Hawkins v. Commonwealth (76 Pa. St. 151), 394.
- Hawkins v. Litchfield (120 Mich. 390; 79 N. W. 570), 759, 763.
- Hawkins v. State (51 Tex. Cr. App. 37; 100 S. W. 956), 1181, 1206.
- Hawkins v. State ([Tex. Cr. App.] 114 S. W. 813), 836.
- Hawkins v. State ([Tex.] 122 Pac. 22), 1601.
- Hawks v. Fellows (108 Iowa, 133; 78 N. W. 812), 992.
- Hawk's Nest v. Fayette Co. (55 W. Va. 689; 48 S. E. 205), 658.
- Haworth v. Minns (56 L. T. 316; 51 J. P. 7), 44, 85, 87, 1708.
- Hawthorne v. State (39 Tex. Civ. App. 122; 87 S. W. 839), 783, 784.
- Hay v. Parker (55 Me. 355), 1774.
- Hay v. Tower Division (59 L. J. M. C. 79; 24 Q. B. Div. 561; 62 L. T. 290; 38 W. R. 414; 54 J. P. 500), 535.
- Hayes, *Ex parte* (98 Cal. 555; 33 Pac. 337; 20 L. R. A. 701), 432.
- Hayes v. Board (6 Cal. App. 520; 92 Pac. 492), 566, 659, 665.
- Hayes v. Hyde Park (153 Mass. 514-516; 27 N. E. 522; 12 L. R. A. 249), 1795, 1796.
- Hayes v. State ([Tex. Cr. App.] 39 S. W. 106), 890.
- Hayes v. State of Missouri (120 U. S. 68; 7 Sup. Ct. 350), 238.

[References are to pages.]

- Hayes v. Thompson** (9 B. C. Rep. 249), 432, 452.
- Hayes v. Waite** (36 Ill. App. 397), 1887.
- Haynes v. Cass County** ([Mo.] 115 S. W. 1084), 868, 925.
- Haynes v. State** ([Miss.] 23 So. 182), 1763.
- Haynes v. State** (118 Tenn. 709; 105 S. W. 251; 13 L. R. A. [N. S.] 559), 1185.
- Haynes v. State** ([Tex. Cr. App.] 83 S. W. 16), 1605.
- Haynie v. State** (32 Miss. 400), 827.
- Hays v. State** (47 Tex. Cr. App. 150; 83 S. W. 201), 1211.
- Hays v. State** (49 Tex. Cr. App. 369; 91 S. W. 585), 1694.
- Hays v. State** (13 Mo. 246), 513, 1372, 1626.
- Hazell v. Middleton** (45 J. P. 548), 709.
- Hazeltine v. McGroorty** (6 Kulp. 533), 815.
- Hazen v. Commonwealth** (23 Pa. St. 355), 1220, 1305, 1311.
- Head v. Doehlman** (148 Ind. 145; 46 N. E. 585), 663, 608, 609, 662, 671, 857.
- Head Money Cases** (112 U. S. 580; 5 Sup. Ct. 247), 100.
- Headington v. Smith** (113 Iowa, 107; 84 N. W. 982), 770.
- Healy v. New York** (3 Hun, 708), 2171, 2186, 2198.
- Health Department v. Trinity Church** (145 N. Y. 32), 215.
- Hearn v. Brogan** (64 Miss. 334), 488, 490, 561, 564, 928, 932.
- Hearsey v. Broadway** (9 Mass. 95), 1058.
- Heart v. East Tennessee Brewing Co.** ([Tenn.] 113 S. W. 364), 1811.
- Heath v. Intoxicating Liquors** (53 Me. 172), 1059.
- Heath v. State** (105 Ind. 342; 4 N. E. 901), 511, 514, 694.
- Hebert v. Winn** (24 La. Ann. 385), 2136, 2137, 2148, 2149.
- Heblick v. Hancock Co. Ct.** ([Ky.] 10 S. W. 465), 636, 648.
- Heck v. State** (44 Ohio St. 536; 9 N. E. 305), 119, 125, 133, 185, 247, 248, 596, 1278.
- Hederick v. State** (101 Ind. 564; 1 N. E. 47; 51 Am. Rep. 768), 91, 96, 105, 144, 165, 217, 311, 456, 1303, 1314, 1316.
- Hedges v. Metcalfe Co.** (116 Ky. 524; 76 S. W. 381; 25 Ky. L. Rep. 772), 666.
- Hedges v. Titus** (47 Ind. 145), 488, 494.
- Hedgreen, *In re*** ([Neb.] 111 N. W. 786), 568.
- Hedland v. Geyer** (234 Ill. 589; 85 N. E. 203), 1928.
- Hedman, *Ex parte*** ([Tex. Cr. App.] 78 S. W. 349), 245.
- Heff, *In re*** (197 U. S. 488; 25 Sup. Ct. 506; 49 L. Ed. 848), 1260, 1263.
- Hegard v. California Ins. Co.** ([Cal.] 11 Pac. 594), 75.
- Hegeman v. Western R. Co.** (13 N. Y. 9), 99.
- Heide, *Ex parte*** (18 Juta, 479), 695, 698.
- Heidelberg Garden Co. v. People** (124 Ill. App. 331; affirming 233 Ill. 290; 84 N. E. 230), 537, 683.
- Hein v. Smith** (13 W. Va. 358), 663.
- Heinesen v. State** (14 Colo. 228; 23 Pac. 995), 1308.
- Heinrich Bros. Brewing Co. v. Kit-sap Co.** (45 Wash. 454; 88 Pac. 838), 814.
- Heintz v. Le Page** (100 Me. 542; 62 Atl. 605), 965, 969, 1779, 1790, 1800.
- Heise v. Columbia** (6 Rich. [S. C. Law] 404), 244, 291, 404.
- Heisembrittle v. Charleston** (2 Mc-Mul. 233), 413.

[References are to pages.]

- Heinz v. Stahl ([Kan.] 99 Pac. 273), 1772.
- Helfrick v. Commonwealth (29 Gratt. 844 [Va.]), 202, 203.
- Helling, *In re* (2 Pa. Co. Ct. Rep. 76), 639.
- Helmuth v. Bell (150 Ill. 263; 37 N. E. 230; affirming 49 Ill. App. 626), 1935.
- Hemhall v. Ludington (33 Wis. 107), 1840.
- Heming, *In re* ([N. Y.] 117 N. Y. Supp. 747), 595.
- Hemmens v. Bentley (32 Mich. 89), 1915, 1955, 1962.
- Hemmer v. Bonson (139 Iowa, 210; 117 N. W. 257, 260), 983, 985.
- Hempton v. State (111 Wis. 127; 86 N. W. 596), 2039, 2068, 2069.
- Henberger, License, *In re* (8 Pa. Super. Ct. 625), 705.
- Heneke v. McCord (55 Ia. 378), 396, 1025.
- Heneke v. Standiford (66 Ark. 535; 52 S. A. 1), 798, 799, 802.
- Henderson, *In re* (14 Manitoba, 535), 939, 940.
- Henderson v. Commonwealth ([Ky.] 72 S. W. 781; 24 Ky. L. Rep. 1985), 2068, 2085.
- Henderson v. Galveston ([Tex.] 114 S. W. 108), 132.
- Henderson v. Heywood (109 Ga. 373; 34 S. E. 590), 452.
- Henderson v. Mayor (92 U. S. 259), 116, 316.
- Henderson v. Price (96 N. C. 423; 2 S. E. 155), 688.
- Henderson v. State (60 Ind. 296), 1520, 1522.
- Henderson v. State (37 Tex. Cr. App. 79; 38 S. W. 617), 1237.
- Henderson v. State ([Tex. Cr. App.] 39 S. W. 116), 1730.
- Henderson v. State (49 Tex. Cr. App. 269; 91 S. W. 569), 965, 1704, 1735.
- Henderson v. State ([Tex. Cr. App.] 93 S. W. 551), 1705.
- Henderson v. State (50 Tex. Cr. App. 413; 98 S. W. 1055), 1167.
- Henderson v. State (50 Tex. Cr. App. 604; 101 S. W. 208), 1606.
- Henderson v. State (52 Tex. Cr. App. 514; 107 S. W. 820), 1695.
- Henderson v. Waggoner (2 Lea, 133), 1801.
- Hendersonville v. Price (96 N. C. 423; 2 S. E. 155), 526, 780.
- Hendrick v. State (47 Tex. Cr. App. 371; 83 S. W. 711), 972, 1703.
- Hendrickson v. Commonwealth (15 Ky. L. Rep. [abstract] 542), 1715.
- Hendrickson v. Hendrickson (51 Iowa, 68), 2126.
- Hendrey v. Rolleston (22 N. Y. 821), 1316.
- Heney v. State ([Tex.] 16 S. W. 342), 1680.
- Heninbvrq v. State (151 Ala. 26; 43 So. 959), 2068, 2070.
- Hening, *In re* ([N. Y.] 117 N. Y. Supp. 747), 582.
- Henke v. McCord (55 Iowa, 378; 7 N. W. 623), 442.
- Henkel v. Hoy (4 N. J. L. 56; 64 Atl. 960), 698.
- Hennepin Co. v. Robinson (16 Minn. 381), 566, 627, 645, 807.
- Hennessey v. Woulfe (49 La. Ann. 1376; 22 So. 394), 2136, 2147.
- Henno v. Fayetteville ([Ark.] 119 S. W. 287), 1696.
- Henry, *In re* (124 Iowa, 358; 100 N. W. 43), 69, 533, 536, 635, 663.
- Henry v. Barton (107 Cal. 535; 40 Pac. 798), 627, 634.
- Henry v. Fulton (8 N. J. L. R. 551), 1367, 1368.

[References are to pages.]

- Henry v. Ritenour (31 Ind. 136), 2092, 2093.  
 Henry v. State (26 Ark. 523), 139, 787, 791.  
 Henry v. State (64 Ark. 662; 43 S. W. 499), 1213, 1281.  
 Henry v. State (71 Ark. 574; 76 S. W. 1071), 1715.  
 Henry v. State (77 Ark. 453; 92 S. W. 405), 1101, 1108, 1651.  
 Henry v. State (33 Ga. 441), 2041.  
 Henry v. State (113 Ind. 304; 15 N. E. 593), 1197, 1508, 1567.  
 Henry v. State ([Tex.] 116 S. W. 1162), 514.  
 Hensley v. Metcalfe Co. (115 Ky. 810; 74 S. W. 1054; 25 Ky. L. Rep. 204), 639, 663.  
 Hensley v. State (6 Ark. 252), 1548.  
 Hensley v. State (1 Eng. [Ark.] 252), 1541.  
 Hensly v. State (52 Ala. 10), 1613.  
 Henslie v. State (3 Heisk. 202), 2079.  
 Hensoldt v. Petersburg (63 Ill. 111), 1762.  
 Heny v. State (26 Ark. 523), 703.  
 Hepler v. State (58 Wis. 46; 16 N. W. 42), 1645, 1764.  
 Hepworth v. Pickles ([1900] 1 Ch. 108; 69 L. J. Ch. 55; 48 W. R. 184; 81 L. T. 818), 1814.  
 Herald v. State (36 Me. 62), 929.  
 Herbert, *Ex parte* (34 N. B. 455), 1755.  
 Hercrow v. State (2 Tex. App. 511), 370.  
 Herine v. Commonwealth (13 Bush, 295), 1457, 1542, 1545.  
 Hering, *In re* ([N. Y.] 117 N. Y. Supp. 747), 103, 560.  
 Hering v. Ervin (48 Ill. App. 369), 1861.  
 Herlock v. Riser (1 McCord, 481), 1805.  
 Herman Goepper & Co. v. Phoenix Brewing Co. (115 Ky. 708; 74 S. W. 726; 25 Ky. L. Rep. 84), 1170.  
 Hernandez v. State (32 Tex. Crim. Rep. 271; 22 S. W. 972), 2074.  
 Herod v. State (41 Tex. Cr. App. 597; 56 S. W. 59), 1727.  
 Herrick v. Morrill (37 Minn. 250; 33 N. W. 849; 5 Am. St. Rep. 841), 605.  
 Herring v. Wilmington, etc., R. Co. (10 Ired. L. 402; 51 Am. Dec. 395), 2178, 2180.  
 Herron v. State (51 Ark. 133; 10 S. W. 25), 137, 1281, 1288.  
 Herron v. State (17 Ind. App. 161; 46 N. E. 540), 1444, 1502.  
 Herschenback v. State (34 Tex. Cr. Rep. 122; 29 S. W. 470), 1233.  
 Herschey v. Mill Creek Tp. ([Pa.] 8 Cent. Rep. 252), 2187.  
 Hershoff v. Beverly (45 N. J. L. [16 Vroom] 288), 410, 413.  
 Hertel v. People (78 Ill. App. 109), 968.  
 Hertzler v. Geigley (196 Pa. St. 419; 46 Atl. 366), 123, 1380, 1381.  
 Hess v. Pegg (7 Nev. 23), 394.  
 Hestand v. Commonwealth ([Ky.] 92 S. W. 12; 28 Ky. L. Rep. 1315), 1665.  
 Hettenbach v. Isley (7 Viet. L. R. 104), 1368.  
 Hetzer v. People (4 Colo. 45), 522.  
 Hetzer v. Wheelan (21 Ga. 461), 401.  
 Hevren v. Reed (126 Cal. 219; 58 P. 536), 490, 715, 716.  
 Hewitt, Appeal of (76 Conn. 685; 58 Atl. 231), 597, 645.  
 Hewitt's Will, *In re* (31 N. Y. Misc. Rep. 81; 64 N. Y. Supp. 571), 2136, 2138, 2141.

[References are to pages.]

- Hewitt v. Invercargill (12 N. Y. L. R. 631), 644.
- Hewitt v. Jervis (68 J. P. 54), 690, 1273.
- Hewitt v. People (186 Ill. 336; 57 N. E. 1077; affirming 87 Ill. App. 367), 11, 73, 964, 968, 1195, 1196.
- Hexom v. Knights of Maccabees of the World ([Iowa] 117 N. W. 19), 2240, 2242.
- Heyman, *Ex parte* (45 Tex. Cr. App. 532; 78 S. W. 349), 234, 245, 863.
- Heyman v. Southern Ry. Co. (203 U. S. 270; 27 Sup. Ct. 104; 51 L. Ed. 178 [reversing 122 Ga. 608; 50 S. E. 342]), 324, 328, 330, 1429.
- Heyman v. State (64 Ga. 437), 1515.
- Hibbard v. Clark (56 N. H. 155), 276.
- Hibbard v. People (4 Mich. 125), 254, 1008, 1013, 1016.
- Hickcox v. State ([Tex. Cr. App.] 85 S. W. 1198), 298, 307, 1214, 1280.
- Hickey v. Hay (65 J. P. 232; 17 T. L. R. 52), 380.
- Hickman v. Glazebrook (18 Ind. 210), 2124.
- Hicks v. State ([Ga.] 32 S. E. 665), 1523.
- Hicks v. Trustees (151 Mich. 88; 114 N. W. 682; 14 Detroit L. N. 812), 762, 764.
- Hierholzer v. State (47 Tex. Cr. Rep. 199; 83 S. W. 836), 2090.
- Hiers v. State ([Fla.] 41 So. 881), 1379.
- Higbee v. Guardian Mut. L. Ins. Co. (66 Barb. 462), 2220, 2224, 2235.
- Higgenbotham v. State (19 Fla. 557), 929.
- Higgins v. Kavanaugh (52 Iowa, 368; 3 N. W. 409), 1966.
- Higgins v. People (69 Ill. 11), 1552.
- Higgins v. Rinker (47 Tex. 393), 27, 555.
- Higgins v. State (64 Md. 419; 1 Atl. 876), 938, 939.
- Higgins v. Talty (157 Mo. 280; 57 S. W. 724), 659.
- High v. State ([Okla.] 101 Pac. 115), 323, 325, 329, 385.
- Hight v. Fleming (74 Ga. 592), 800, 802.
- Hight v. Wilson (1 Dall. 94; 1 L. Ed. 51), 2139.
- Hill v. Commissioners (22 Ga. 203), 432.
- Hill v. Dalton (72 Ga. 314), 270, 449, 1505.
- Hill v. Decatur (22 Ga. 203), 432.
- Hill v. Dunn ([Iowa] 93 N. W. 705), 981.
- Hill v. Gleisner (112 Iowa, 397; 84 N. W. 511), 943.
- Hill v. Howth ([Tex.] 111 S. W. 649), 864.
- Hill v. Howth ([Tex. Civ. App.] 112 S. W. 707), 864, 892.
- Hill v. Manning (12 N. Z. L. R. 153), 1597.
- Hill v. People (20 N. Y. 363), 2026.
- Hill v. Perry (82 Ind. 28), 532.
- Hill v. Roach (26 Tex. Civ. App. 75; 62 S. W. 959), 921, 925.
- Hill v. Sheridan (128 Mo. App. 415; 107 S. W. 426), 706.
- Hill v. Spear (50 N. H. 253; 9 Am. Rep. 205), 1785, 1786, 1795, 1796, 1798, 1799, 1801.
- Hill v. State (62 Ala. 168), 1223, 1240, 1241, 1253.
- Hill v. State (37 Ark. 395), 1233, 1598.
- Hill v. State (42 Neb. 503; 60 N. W. 916), 2051, 2061, 2072.
- Hillard v. Fitzpatrick (27 Viet. L. R. 380; 23 Austr. L. T. 1; 7 Austr. L. R. 223), 360.



[References are to pages.]

- Hillard v. Giese (25 N. Y. App. Div. 222; 49 N. Y. Sup. 286), 491, 736.
- Hillard v. State (48 Tex. Cr. App. 314; 87 S. W. 821), 915, 1208.
- Hildreth v. Crawford (65 Iowa, 339; 21 N. W. 667), 185, 471, 827.
- Hilleman, *In re* (11 Pa. Super. Ct. 567), 646.
- Hillman v. Mayher (38 Tex. Civ. App. 377; 85 S. W. 818), 761.
- Hillman v. Gallagher ([Tex.] 120 S. W. 505), 1924, 1932, 1941.
- Hillsboro v. Smith (110 N. C. 417; 14 S. E. 972), 382, 596, 628, 629, 674.
- Hilterbrand v. State (49 Tex. Cr. App. 342; 91 S. W. 587), 1212.
- Hilts v. Chicago, etc., R. Co. (55 Mich. 437; 21 N. W. 878), 2198, 2199, 2201.
- Hilverstine v. Yantes (88 Ky. 695; 21 S. W. 811), 289.
- Hinan v. Lott (8 Wall. 148), 316.
- Hinchman v. Stoepel (54 N. J. L. 486; 24 Atl. 401), 616, 617.
- Hinckley v. German Fire Ins. Co. (140 Mass. 38; 54 Am. Rep. 445; 1 N. E. 737), 1779.
- Hine v. Belden (27 Conn. 384), 1015.
- Hines v. Stahl ([Kan.] 93 Pac. 273), 1023.
- Hines v. State (26 Ga. 614), 1245.
- Hingle v. State (22 Ind. 462), 1307.
- Hingle v. State (24 Ind. 28), 237, 1304, 1307, 1308.
- Hinkle, *Ex parte* (104 Mo. App. 104; 78 S. A. 317), 413, 417, 796.
- Hinkle v. Commonwealth ([Ky.] 66 S. W. 1020; 23 Ky. L. Rep. 1979), 1180, 1204, 1462.
- Hinkle v. Smith (90 Iowa, 761; 57 N. W. 891), 1002.
- Hinson v. Lott (40 Ala. 123), 316.
- Hinson v. Lott (8 Wall. 148), 154, 156.
- Hintermeister v. State (1 Iowa, 101), 1489.
- Hinton v. Commonwealth (7 Dana, 216), 1096.
- Hinton v. State (132 Ala. 29; 31 So. 563), 1185, 1698, 1703.
- Hipes v. State (18 Ind. App. 426; 48 N. E. 12), 1507, 1535.
- Hipp v. State (5 Blackf. [Ind.] 149), 1240, 1351, 1352, 1353.
- Hippen v. Ford (129 Cal. 315; 61 Pac. 929), 652.
- Hirn v. State (1 Ohio St. 15 [overruling Curtis v. State, 5 Ohio 324]), 72, 508, 714, 716, 1510, 1521.
- Hirsch v. State (50 Tex. Cr. App. 1; 96 S. W. 40), 949, 950, 1280.
- Hirschburg v. People (6 Colo. 145), 929.
- Hitchner v. Ehlers (44 Iowa, 40), 1915.
- Hitchens v. People (39 N. Y. 454), 369.
- Hite v. Commonwealth (96 Va. 489; 31 S. E. 895), 2038.
- H. Koehler & Co. v. Clemont ([N. Y.] 111 N. Y. Supp. 151), 723, 752.
- Hoagland v. Canfield (160 F. 146), 84, 2260.
- Hoard v. Peck (56 Barb. [N. Y.] 202), 1838.
- Hoard v. State (15 Lea, 318), 2055.
- Hoare & Co. Limited v. Lewisham Borough Council ([1902] 87 L. T. 281; 17 T. L. R. 72), 1834.
- Hoare v. Metropolitan Board of Works ([1874] L. R. 9 Q. B. 296; 38 J. P. 535), 1834.
- Hobart v. Butte Co. (17 Cal. 23), 233.

[References are to pages.]

- Hoboken v. Goodman (68 N. J. L. 217; 51 Atl. 1032), 148, 365, 413, 416, 464, 714.
- Hockett v. Wilson (12 Ore. 25; 6 Pac. 652), 479.
- Hochfield v. Sutherland (15 Juta, 101), 567.
- Hochstadler v. State (73 Ala. 24), 509, 691, 1267.
- Hockings v. Powell (59 J. P. 358), 680.
- Hodge v. Commonwealth (3 Ky. L. Rep. [abstract] 822), 1466.
- Hodge v. Commonwealth (4 Ky. Law Rep. 341), 1467.
- Hodge v. State (116 Ga. 852; 43 S. E. 255), 80, 1159.
- Hodge v. State ([Tex. Cr. App.] 43 S. W. 994), 1201, 1210.
- Hodges v. Metcalfe Co. (116 Ky. 524; 75 S. W. 381; 25 Ky. L. Rep. 772), 627.
- Hodges v. Metcalfe Co. ([Ky.] 76 S. W. 381; 25 Ky. L. Rep. 772, 1706; 78 S. W. 460), 666.
- Hodges v. Metcalf Co. Ct. (117 Ky. 619; 78 S. W. 177, 460; 25 Ky. L. Rep. 1553, 1706), 619, 800.
- Hodgman v. People (4 Denio, 235), 1556, 1608.
- Hodgson v. New Orleans (21 La. Ann. 301), 198.
- Hodgson v. Temple (5 Taunt. 181), 1790, 1794, 1795.
- Hoefling v. San Antonio (85 Tex. 228; 20 S. W. 85; 16 L. R. A. 608), 483.
- Hoff, *In re* (197 U. S. 488, 505; 25 Sup. Ct. 506; 49 L. Ed. 848), 147.
- Hoffer, *Ex parte* (27 N. B. 496), 1723.
- Hofheintz v. State (45 Tex. Cr. App. 117; 74 S. W. 310), 1130, 1451.
- Hofner v. State (94 Ind. 84), 1353, 1616.
- Hogan, *In re* (16 R. I. 542; 18 Atl. 279), 1065.
- Hogan v. Dewell (24 Ark. 216), 1027.
- Hogg v. Davidson (3 F. [Just. Cas.] 49), 1352, 1355.
- Hogg v. People (15 Ill. App. 288), 1343.
- Hogins v. Supreme Council (76 Cal. 109; 9 Am. St. 173), 2231, 2232.
- Hoglan v. Commonwealth (3 Bush, 147), 196, 635, 664.
- Hoitt v. Moulton (1 Fost. [N. H.] 586), 2259.
- Holberg v. Macon (55 Miss. 112), 202, 793.
- Holcomb v. People (49 Ill. App. 73), 11, 56, 968.
- Holden v. Brooks (68 N. H. 184; 20 Atl. 247), 1800.
- Holden v. State (41 Tex. Cr. App. 411; 55 S. W. 337), 1478.
- Holland v. Barnes (53 Ala. 83; 25 Am. Rep. 595), 2104, 2123.
- Holland v. Commonwealth (7 Ky. L. Rep. [abstract] 223), 11, 36.
- Holland v. Holland (4 Leg. Gaz. 372), 2154, 2167.
- Holland v. Seagrove (11 Gray, 207), 1048.
- Holland v. State ([Fla.] 47 So. 963), 648, 653.
- Holland v. State (51 Tex. Cr. App. 147, 157; 101 S. W. 1002, 1004), 941, 1684.
- Holland v. State (51 Tex. Cr. App. 142; 101 S. W. 1005), 1611.
- Holland v. State (51 Tex. Cr. App. 547; 103 S. W. 631), 957.
- Holland v. West End St. R. Co. (155 Mass. 387; 29 N. E. 622), 2196.
- Holleman v. Harward (119 N. C. 150; 25 S. E. 972), 1837, 1838.
- Hollenbeck v. Drake (37 Neb. 680; 56 N. W. 296), 616, 645, 646.

[References are to pages.]

- Hollender, Appeal of (11 Pa. Super. Ct. 23), 664.
- Hollender v. Magone (149 U. S. 586; 37 L. Ed. 860; 13 Sup. Ct. Rep. 932), 5.
- Hollender v. Magone (38 Fed. 912), 442.
- Holler v. State ([Tex. Cr. App.] 73 S. W. 961), 1472, 1689.
- Holley v. State (14 Tex. App. 505), 235, 289, 1176.
- Holley v. State (46 Tex. Cr. App. 324; 81 S. W. 957), 871, 1380, 1381, 1682, 1683.
- Hollinquist, *Ex parte* (27 Pac. 1099), 195.
- Hollingsworth v. Atlanta (79 Ga. 503; 5 S. E. 37), 1089, 1658.
- Hollis v. Davis (56 N. H. 74), 1894.
- Holloway v. State (45 Tex. Cr. Rep. 303; 77 S. W. 14), 2090.
- Holloway v. State (53 Tex. Cr. App. 246; 110 S. W. 745), 911, 912, 913, 1472, 1612.
- Holloway v. State (54 Tex. Cr. App. 115; 111 S. W. 937, 939), 1612, 1689.
- Holly & Co. v. Simmons (38 Tex. Civ. App. 124; 85 S. W. 325), 771, 1231.
- Holly v. Simmons ([Tex. Civ. App.] 89 S. W. 776), 771.
- Holman v. Jackson (1 Cowp. 341), 1794.
- Holman v. Johnson (Cowper, 241), 1031.
- Holman v. State ([Tex. Cr. App.] 89 S. W. 977), 1207.
- Holmes, *Ex parte* ([1906] 32 T. L. R. 41), 1830.
- Holmes v. Hunt (122 Mass. 505; 23 Am. Rep. 381), 264, 1585.
- Holmes v. Morgan (52 Ark. 99; 12 S. W. 201), 879.
- Holmes v. Oregon, etc., R. Co. (5 Fed. 528), 2177, 2179, 2191, 2192, 2202, 2203.
- Holmes v. Robertson Co. ([Ky.] 89 S. W. 106; 28 Ky. L. Rep. 283), 666.
- Holmes v. State (88 Ind. 145), 1226, 1240.
- Holmes v. State (52 Tex. Cr. App. 353; 106 S. W. 1160), 1603.
- Holpa v. Aberdeen (34 Wash. 554; 76 Pac. 79), 745, 748.
- Holsky v. State ([Tex.] 36 S. W. 443), 1227.
- Holt v. Collyer ([1881] 16 Ch. D. 718; 45 J. P. 456; 44 L. T. 214), 1814.
- Holt v. Commissioners (31 How. Pr. 334, note), 183, 186.
- Holt v. O'Brien (15 Gray, 311), 1782.
- Holt v. State (62 Neb. 134; 86 N. W. 1073), 549, 833, 842, 1524, 1526.
- Holteroff v. Mutual, etc., Ins. Co. (3 Am. L. Rec. 272), 2229, 2230, 2231, 2234.
- Holton v. Bimrod (8 Kan. App. 265; 55 Pac. 505), 434, 954.
- Holton v. Haist (8 Kan. App. 856; 55 Pac. 468), 1742.
- Holtun v. Germania Life Ins. Co. (139 Cal. 645; 73 Pac. 591), 2234.
- Holy Trinity Church v. United State (143 U. S. 457, 464), 214, 1419, 1421.
- Home v. Stewart (40 Vt. 145), 1031.
- Home Ins. Co. v. Augusta (50 Ga. 530), 483, 788.
- Homer v. Brown (117 La. Ann. 425; 41 So. 711), 433.
- Homire v. Halfman (156 Ind. 470; 60 N. E. 154), 1844, 1863, 1879.
- Honesty v. Commonwealth (81 Va. 283), 2071.
- Honey v. Guilaume ([Ind.] 88 N. E. 937), 604, 607, 612.
- Hood v. Von Glahm (88 Ga. 405), 215, 271, 273, 402, 432.

[References are to pages.]

- Hooker v. Mueller ([Mich.] 123 N. W. 24), 1811.
- Hookset v. Amoskeag, etc., Co. (44 N. H. 105), 470.
- Hoop v. Affleck (162 Ind. 564; 70 N. E. 978), 197, 206, 209, 611, 835.
- Hooper v. Commonwealth (11 Ky. L. Rep. [abstract] 369), 519, 543.
- Hoover, *In re* (30 Fed. 51), 102, 110, 149, 195, 208, 239, 400.
- Hooper v. State (56 Ind. 153), 821, 1491, 1566.
- Hoover v. Thomas (35 Tex. Civ. App. 535; 80 S. W. 859), 233, 896, 902.
- Hoorman v. Climax Cycle Co. (9 App. Div. 579, 585; 41 N. Y. S. 710), 990.
- Hopcroft, *Ex parte* ([1868] 14 W. R. 168), 1834.
- Hopcraft v. Flabell ([1868] 14 W. R. 168), 1817.
- Hope v. Warburton ([1892] 2 Q. B. 134; 56 J. P. 328; 61 L. J. M. C. 147; 66 L. T. 589; 40 W. R. 510), 359, 2058.
- Hopkins v. Knapp, etc., Co. (92 Iowa, 212; 60 N. W. 620), 2254.
- Hopkins v. Lewis (84 Iowa, 690; 51 N. W. 255; 15 L. R. A. 397), 310.
- Hopson, Appeal of (63 Conn. 140; 31 Atl. 531), 635.
- Hopt v. People (104 U. S. 631; 26 L. Ed. 873), 2061, 2065, 2067.
- Horan v. Travis Co. (27 Tex. 226), 509, 767.
- Horgan's Liquors, *In re* (16 R. I. 542; 18 Atl. 279), 253, 1008, 1049.
- Hornaday v. State (43 Ind. 306), 529, 683.
- Hornberger v. Case (9 Ohio Dec. 434; 13 Wkly. L. Bull. 437), 813.
- Hornberger v. State (47 Neb. 40; 66 N. W. 23), 1505, 1507, 1558, 1641, 1643.
- Horne v. Horne (1 Tenn. Ch. 259), 2159, 2160.
- Horning v. Bailey (50 Conn. 40), 1040, 1055.
- Horning v. Wendell (57 Ind. 171), 223, 489, 509, 1840, 1842.
- Hornsby v. Raggett ([1892] 1 Q. B. 20; 66 L. T. 21; 40 W. R. 111; 55 J. P. 508), 378.
- Horst v. Lewis (71 Neb. 365; 98 N. W. 1046; 103 N. W. 460), 1912, 1922, 1973.
- Horton v. Carrington (1 How. Pr. [N. S.] 124), 1601.
- Horton v. Central Falls [R. I.] 35 Atl. 962), 532.
- Horton v. Equitable, etc., Soc. (2 Bigelow L. & Acc. Ins. Rep. 108), 2226.
- Horton v. Equitable, etc., Soc. (2 Abb. L. Jr. 255), 2221, 2229, 2233.
- Hosea v. State (47 Ind. 280), 1109, 1742.
- Hoskey v. State (9 Tex. App. 202), 1539, 1569.
- Hoskins v. Commonwealth ([Ky.] 102 S. W. 276; 31 Ky. L. Rep. 309), 1173, 1176.
- Hotcher v. Andrews (5 Bush, 561), 1808, 1809.
- Hotchins v. Hindmarsh ([1891] 2 Q. B. 181; 55 J. P. 775; 65 L. T. 159), 1383.
- Hotchkiss v. Finan (105 Mass. 86), 1790, 1798, 1799.
- Hotchkiss v. Fortson (7 Yerg. 67), 2109, 2128, 2130.
- Hotel Cambridge License, *In re* (20 Pa. Co. Ct. Rep. 229), 705.
- Hoatham v. Phillips (23 N. B. 126), 1790.
- Hotson v. Commonwealth ([Ky.] 105 S. W. 955; 32 Ky. L. Rep. 392), 188.

[References are to pages.]

- Holtendorf v. State (89 Ind. 282), 821, 827.
- Houck v. Ashland (40 Ore. 117; 66 Pac. 697), 417, 463, 473.
- Houghton v. Austin (47 Cal. 646), 231.
- Houldsworth v. Fairhall (25 N. Z. 1), 1249.
- Houma v. Houma, etc., Co. (121 La. 21; 46 So. 42), 403, 413, 416.
- Houman v. Schulster (60 N. J. L. 35; 36 Atl. 776), 675, 676.
- House, *In re* (23 Colo. 87; 46 Pac. 117; 33 L. R. A. 832), 2022.
- House v. State (41 Miss. 737), 573, 576.
- Houser v. State (18 Ind. 106), 5, 500, 505, 1586.
- Houster v. Leightner (42 Phila. Leg. Ind. 289), 2135, 2136.
- Houston v. Gran (38 Neb. 687; 57 N. W. 403), 1862, 1959, 1994, 1997.
- Houston v. Graw (45 Neb. 813; 64 N. W. 245), 1865.
- Houston v. Moore (5 Wheat. [U. S.] 27), 1070.
- Houston v. State (26 Tex. App. 657; 14 S. W. 352), 2090.
- Houston, etc., R. Co. v. Reason (61 Tex. 613), 2172, 2177.
- Houston, etc., R. Co. v. Smith (52 Tex. 178), 2180, 2185, 2195.
- Houston, etc., R. Co. v. Sympkins (54 Tex. 615; 38 Am. Rep. 632), 2180, 2183, 2184, 2197.
- Houston, etc., R. Co. v. Tierney (72 Tex. 312; 12 S. W. 586), 2098.
- Houston, etc., R. Co. v. Waller (56 Tex. 331), 2191.
- Houtsch v. Jersey City (29 N. J. L. [5 Dutch] 316), 215, 1135, 1303.
- Houtz v. People (123 Ill. App. 445), 1183, 1702.
- Hovey v. Harmon (49 Me. 269), 2016.
- Howard, *Ex parte* (25 N. B. 191), 1085, 1115, 1531.
- Howard v. Commonwealth ([Ky.] 33 S. W. 1115), 1521.
- Howard v. Commonwealth ([Ky.] 89 S. W. 256; 28 Ky. L. Rep. 239), 1196.
- Howard v. Haines (25 Ind. 541), 232.
- Howard v. Harris (8 Allen, 297), 1165, 1166, 1783.
- Howard v. Moot (64 N. Y. 262), 264, 1585.
- Howard v. Smith (26 Sol. J. 533), 2169.
- Howard v. State (5 Ind. 516), 1589, 1635, 1754.
- Howard v. State (6 Ind. 447), 978, 1102, 1481, 1550, 1760.
- Howard v. State ([Fla.] 47 So. 963), 598.
- Howard v. State (65 S. E. 1076), 35.
- Howard v. State (37 Tex. Cr. App. 494; 36 S. W. 475), 2078.
- Howard v. Stenfil ([Ky.] 102 S. W. 831; 31 Ky. L. Rep. 207), 923.
- Howarth v. Minns (51 J. P. 7; 56 L. T. 316), 961.
- Howe v. Jolly (68 Miss. 323; 8 So. 513), 1771.
- Howe v. Plainfield (37 N. J. L. 145), 216, 271, 275.
- Howe v. State (10 Ind. 423), 1516.
- Howe v. Stewart (40 Vt. 145, 1772, 1777.
- Howell v. Jackson (6 C. & P. 725), 362, 2028.
- Howell v. State (71 Ga. 224; 51 Am. Rep. 259), 21, 52, 132, 134.
- Howell v. State (124 Ga. 698; 52 S. E. 649), 964, 1501.
- Howell v. State (4 Ind. App. 148; 30 N. E. 714), 1518.
- Howell v. State (53 Tex. Cr. App. 536; 110 S. W. 914), 1217, 1613.



[References are to pages.]

- Howes v. Inland Revenue (1 Exch. Div. 385; 41 J. P. 423; 46 L. J. M. C. 15; 35 L. T. 584; 24 W. R. 897), 1296.
- Howes v. Maxwell (157 Mass. 333; 32 N. E. 152), 223, 755, 762, 1840.
- Hoxie, *In re* (15 R. I. 241; 3 Atl. 1), 1035, 1044.
- Hoyniak License, *In re* (9 Kulp. [Pa.] 368), 560, 732.
- Hoyt v. State ([Tex. Cr. App.] 89 S. W. 1082), 952.
- Hubbard, *In re* (6 J. J. Marsh, 58), 2136.
- Hubbard's Will, *In re* (6 J. J. Marsh, 58), 2143, 2147, 2148.
- Hubbard v. Commonwealth (10 Ky. L. Rep. [abstract] 683), 875, 898, 910, 1764.
- Hubbard v. Lancaster (127 Ala. 157; 28 So. 796), 382.
- Hubbard v. Mason City (60 Iowa, 400; 14 N. W. 772), 2190, 2191, 2193, 2194.
- Hubbard v. State (11 Ind. 554), 1497, 1501.
- Hubbell v. Ebrit (8 Ohio Com. Pl. 116), 835, 839.
- Hubbell v. Flint (13 Gray, 277, 279), 1796.
- Hubbell v. Polk Co. (106 Iowa, 618; 76 N. W. 854), 790.
- Huber v. Baugh (43 Ia. 291), 471, 714.
- Huber v. Commonwealth ([Ky.] 112 S. W. 583; 33 Ky. L. Rep. 1031), 388, 521, 566, 1099.
- Huber v. People (87 Ill. App. 120), 1230.
- Hubman v. State (61 Ark. 482; 33 S. W. 843), 479.
- Huby v. State (111 Ga. 842; 36 S. E. 310), 1167.
- Huckless v. Childrey (135 U. S. 622; 10 Sup. Ct. 972; 34 L. Ed. 304), 149.
- Hudgins v. State (145 Ala. 499; 39 So. 717), 241.
- Hudson, *In re* (19 Ont. App. 343), 883.
- Hudson v. Geary (4 R. I. 485), 215, 216, 457, 1121, 1134.
- Hudson v. Hudson (3 Swab. & T. 314; 33 L. J. Mat. [N. S.] 5; 9 Jur. [N. S.] 1302; 9 L. T. [N. S.] 579; 12 W. R. 216), 2164.
- Hudson v. Lynn, etc., R. Co. (178 Mass. 64; 59 N. E. 647), 2206, 2208.
- Hudson v. State (73 Miss. 784; 19 So. 965), 1558.
- Hudson v. State ([Okla.] 101 Pac. 275), 317, 325, 327, 329.
- Hudspeth v. Cooper (114 Ind. 12), 1849.
- Huell v. Ball (20 Iowa, 282), 107.
- Huff v. Aultman (69 Iowa, 71; 28 N. W. 440; 58 Am. Rep. 213), 1886, 1971, 1972, 1998, 2002.
- Huff v. Dyer (4 Ohio Cir. Ct. R. 595), 2261.
- Huff v. State (51 Tex. Cr. App. 441; 102 S. W. 1144), 857, 874, 909, 917, 958, 1684.
- Huff v. State (51 Tex. Cr. App. 550; 103 S. W. 629), 1600, 1604, 1696.
- Huffman v. Walterhouse (19 Ont. Rep. 186), 1373, 1375, 1593.
- Huffsmith v. People (8 Colo. 175), 395.
- Huffstater v. Hayes (64 Barb. 573), 1779, 1783.
- Huffstater v. State (5 Hun, 23), 1638.
- Hugg v. People (15 Ill. App. 288), 1215.
- Hughes v. Hughes (19 Ala. 307), 2167.
- Hughes v. State (35 Ala. 351), 1652, 1746, 1747.
- Hugill v. Merrifield (12 C. P. [Can.] 269), 1352, 1354, 1762, 1907.

[References are to pages]

- Hugonin v. Adams ([Miss.] 33 So. 497), 528.
- Hull v. Miller (4 Neb. 503), 228.
- Hulsman v. State (42 Ind. 500), 1516.
- Hulton v. Waterloo, etc., Co. (1 F. & F. 735), 2225.
- Humboldt County v. Churchill County, etc. (6 Nev. 30), 106.
- Humphreys v. State (34 Tex. Cr. Rep. 434; 30 S. W. 1066), 369.
- Humphries v. Commonwealth (6 Ky. L. R. [abstract] 594), 1352.
- Humphries v. Johnson (20 Ind. 190), 1989.
- Humpler v. People (92 Ill. 400), 1173, 1253, 1255, 1621.
- Hundland v. Hardy (74 Mo. App. 614), 434.
- Hunt v. New York (47 N. Y. App. 295; 62 N. Y. Supp. 184), 807.
- Hunter, *In re* (34 Misc. Rep. 389; 69 N. Y. S. 908, affirmed 59 App. Div. 626; 69 N. Y. S. 1139), 5, 990, 994.
- Hunter, *In re* (24 Ont. 522; reversing 24 Ont. 153), 575, 646.
- Hunter v. Lisso (35 La. Ann. 230), 802.
- Hunter v. Senn (61 S. C. 44; 39 S. E. 235), 852, 898, 910.
- Hunter v. State (79 Ga. 365), 497, 550.
- Hunter v. State (101 Ind. 241), 1224, 1240, 1628.
- Hunter v. State (18 Tex. App. 444; 51 Am. Rep. 319), 1627, 2090.
- Hunter v. State (55 Tex. Cr. App. 269; 116 S. W. 604), 1181.
- Hunter v. Tolberd (47 W. Va. 258; 34 S. E. 737), 2094, 2108, 2117.
- Huntingaon v. Moir (20 Rev. Leg. 684), 434.
- Huntington v. State (36 Ala. 236), 1188.
- Huntington, etc., R. Co. v. Decker (84 Pa. 419), 2192, 2194, 2198, 2199, 2200, 2201.
- Huntsville, *In re* (25 Ohio Cir. Ct. Rep. 535), 865, 867, 872.
- Hunzinger v. State (39 Neb. 653; 58 N. W. 194), 110, 168, 170, 407, 502.
- Hurber v. Baugh (43 Iowa, 514), 727.
- Hurdland v. Hardy (74 Mo. App. 614), 419, 824.
- Hurl, *Ex parte* (49 Cal. 557), 139, 170, 187, 191, 428, 443, 444, 791, 795.
- Hurlburt v. Sleeth (27 Nov. Sco. 375; 25 S. C. C. [Nov. Sco.] 620), 1076.
- Hurney v. State (49 Ind. 203), 1223.
- Huson, *In re* (19 Ont. App. 343), 870.
- Hussey, *Ex parte* (48 Ore. 621; 85 Pac. 332), 869.
- Hussey v. State (69 Ga. 54), 1119, 1120, 1122.
- Hustead v. Commonwealth (5 Leigh, 724), 1627.
- Huston v. Vail (51 Ind. 299), 2250.
- Hutcher v. State (80 Tenn. [12 Lea] 368), 134.
- Hutchinson v. Brown (1 Clarke Ch. 408), 2093, 2094, 2105.
- Hutchinson v. Hubbard (21 Neb. 33; 31 N. W. 245), 1864.
- Hutchinson v. State (62 Ind. 556), 1485.
- Hutchinson v. State (5 Humph. 142), 2024.
- Hutchinson v. State ([Tex. Cr. App.] 90 S. W. 178), 1207.
- Hutchinson v. Tindall (2 Green. [N. J. Eq.] 357), 2093, 2094, 2099, 2107, 2108, 2115.
- Hutson v. Commonwealth ([Ky.] 105 S. W. 955; 32 Ky. L. Rep. 392), 839.

[References are to pages]

H. W. Metcalfe Co. v. Orange County ([Fla.] 47 So. 363), 898, 901, 902, 921, 925.  
 Hyman v. Moore (3 Jones L. [N. C.] 416), 2093, 2109.  
 Hyman v. State (87 Tenn. 109; 9 S. W. 272), 292.  
 Hynum v. State (74 Miss. 829; 21 So. 971), 1654.  
 Hyser v. Commonwealth (116 Ky. 410; 25 Ky. L. Rep. 608; 76 S. W. 174), 261, 262, 951, 1571.

I

I. A. West & Co. v. Board (14 Idaho, 353; 94 Pac. 445), 635, 648.  
 Ihenger v. State (53 Ind. 251), 1242, 1627, 1751.  
 Ikard v. State ([Tex. Cr. App.] 79 S. W. 32), 1512.  
 Illinois, etc., R. Co. v. Cragin (71 Ill. 177), 2171, 2172, 2173, 2177, 2191, 2193.  
 Illinois R. Co. v. Hutchinson (47 Ill. 408), 2180.  
 Illinois Cent. R. Co. v. Hutchinson (47 Minn. 357; 4 N. W. 605), 2184.  
 Illinois Cent. R. Co. v. Jewell (46 Ill. 99; 92 Am. Dec. 240), 2199.  
 Illinois Cent. R. Co. v. Proctor (122 Ky. 92; 89 S. W. 714; 28 Ky. L. Rep. 598), 2191, 2217.  
 Imhoff v. Witmer (31 Pa. 243), 2109, 2114, 2119.  
 Inain v. Russell (8 Hun, 319), 1847.  
 Independence v. Noland (21 Mo. 394), 448, 521.  
 Indiana County Licenses, *In re* (2 Pa. Dist. Rep. 358), 439.  
 Indiana Co., *In re* (6 Pa. Dist. Rep. 358), 626.

Indianapolis v. Bieler (138 Ind. 30; 36 N. E. 857), 144, 157, 187, 198, 294, 321, 332, 427, 796.  
 Indianapolis v. Fairchild (1 Ind. 315), 503, 1160.  
 Indianapolis, etc., R. Co. v. Galbreath (63 Ill. 436), 2179, 2185.  
 Indianapolis v. Higgins (141 Ind. 1; 40 N. E. 671), 643.  
 Indianapolis v. Nevin (151 Ind. 139; 47 N. E. 525; 50 N. E. 80), 238.  
 Indianapolis, etc., R. Co. v. Pitzer (109 Ind. 186; 63 N. E. 310; 10 N. E. 70; 58 Am. Rep. 387), 2212.  
 Ingalls v. State (48 Wis. 647; 4 N. W. 785), 2048, 2080.  
 Ingersoll v. Skinner (1 Denio, 540), 138, 333.  
 Ingram v. State (39 Ala. 247; 84 Am. Dec. 792), 120.  
 Ingram v. State (49 Tex. Cr. App. 117; 90 S. W. 1098), 1288, 1378.  
 Insurance Co. v. Foley (105 U. S. 350), 65, 1633.  
 Intoxicating Liquors, *In re* (129 Iowa, 434; 105 N. W. 702), 670.  
 Intoxicating Liquor Cases, *In re* (25 Kan. 751; 37 Am. Rep. 284), 9, 10, 11, 12, 15, 18, 20, 33, 51, 53, 55, 56, 57, 59, 79, 86, 110, 139, 190, 557, 970.  
 Intoxicating Liquors (15 R. I. 608; 10 Atl. 659), 255.  
 Intreimer v. State ([Ala.] 41 So. 170), 1612.  
 Iowa v. McFarland (110 U. S. 471; 4 Sup. Ct. 210; 28 L. Ed. 198), 1161.  
 Iowa City v. McInnery (114 Iowa, 586; 87 N. W. 498), 453.  
 Ipswitch v. Fernandez (84 Cal. 639; 24 Pac. 298), 2253, 2254.  
 Irby v. State (91 Miss. 542; 44 So. 801), 959.

[References are to pages.]

- Ireland, *In re* (41 N. Y. Misc. Rep. 425; 84 N. Y. Supp. 1100), 580, 584.
- Irion v. Lewis (56 Ala. 190), 659.
- Irish v. State ([Tex.] 25 S. W. 633), 837, 857.
- Irish v. State (34 Tex. Cr. Rep. 130; 29 S. W. 778), 908, 1588.
- Irwin v. Maloney (6 Can. L. Jr. 285), 2095.
- Irwin v. Martinsville (9 Ohio Dec. 31; 10 Wkly. L. Bull. 76), 1096.
- Irwin v. Pankyty (20 Viet. L. R. 282; 16 Austr. L. T. 18), 1314.
- Isaacs v. Stansfield & Co., Limited ([November 1, 1907] [not reported]), 1829.
- Isan v. Griffin (98 Ga. 623; 25 S. E. 611), 715.
- Isbell v. New York, etc., R. Co. (27 Conn. 393; 71 Am. Dec. 78), 2212, 2214, 2215.
- Isitt v. Taylor (10 N. Z. L. R. 646), 685.
- Islett v. Quill (11 N. Z. L. R. 224), 685.
- Isley v. State (8 Blackf. 403), 1625.
- Isley v. Stubbs (5 Mass. 280), 1027.
- Isom v. State (49 Tex. Cr. App. 610; 95 S. W. 518), 1179, 1599.
- Ivey v. State (112 Ga. 175; 37 S. E. 398), 426, 1702.
- J**
- J. B. Lyon Co. v. McDonough (76 App. Div. 257; 78 N. Y. S. 462), 990.
- J. D. Iler Brewing Co. v. Campbell (66 Kan. 361; 71 Pac. 825), 1022.
- J. I. Case, etc., Co. v. Meyers (78 Neb. 685; 111 N. W. 602; 9 L. R. A. [N. S.] 970), 2095.
- J. & J. Eager Co. v. Burke (74 Conn. 534; 51 Atl. 544), 1785, 1787, 1790, 1799.
- J. P. Bollin Liquor Co. v. Brandonburg ([Iowa] 106 N. W. 497), 1798.
- J. W. Kelly & Co. v. Conner ([Tenn.] 123 S. W. 622), 91, 153.
- Jack, *In re* (11 Australia L. R. 372; 2 C. L. Rep. 684), 695, 701.
- Jackson v. Boyd (53 Iowa, 536; 5 N. W. 734), 439.
- Jackson v. Brookline (5 Hun, 530), 1876, 1893, 1897, 1927, 1988.
- Jackson v. Camden (48 N. J. L. 89; 2 Atl. 668), 1643.
- Jackson v. Noble (54 Iowa, 641; 7 N. W. 88), 1964.
- Jackson v. Seeber (50 N. Y. Misc. Rep. 479; 100 N. Y. Supp. 563), 853.
- Jackson v. State (19 Ind. 312), 6, 12, 27, 82, 1714.
- Jackson v. State ([Tex. Cr. App.] 24 S. W. 902), 1743.
- Jackson v. State (16 Tex. App. 373), 1575.
- Jackson v. State (49 Tex. Cr. App. 248; 91 S. W. 574), 948, 952.
- Jackson v. State ([Tex. Cr. App.] 123 S. W. 142), 1598.
- Jacobs, *Ex parte* (13 Idaho, 720; 92 Pac. 1003), 164, 193, 215, 287.
- Jacobs, Appeal of (73 N. E. 1122; 181 N. Y. 529), 745.
- Jacobs v. Hogan (73 Conn. 740; 49 Atl. 202), 776, 781.
- Jacobs v. Holgenson (70 Conn. 68; 38 Atl. 914), 766, 767, 779, 781.
- Jacobs v. Reilly (80 Conn. 275; 63 Atl. 251), 753.
- Jacobs v. Stokes (12 Mich. 381), 1782, 1802, 1804.
- Jacobs' Pharmacy Co. v. Atlanta (89 Fed. 244), 103, 434, 826.

[References are to pages.]

- Jacobson v. Queen (1 Juta, 33), 694.
- Jacoby v. Dallis (115 Ga. 272; 41 S. E. 611), 894, 906.
- Jacoby v. Shoemaker (26 Fla. 502; 7 So. 855), 982.
- Jakes v. State (43 Ind. 473), 821.
- Jalageas v. Winton (119 Ill. App. 139), 1812.
- James v. Commonwealth (102 Ky. 108; 42 S. W. 1107; 19 Ky. L. Rep. 1045), 1280.
- James v. Commonwealth (16 Ky. L. Rep. [abstract] 445), 518.
- James v. James (58 N. H. 266), 2168.
- James v. Helm (129 Ky. 323; 111 S. W. 335), 1839.
- James v. Nervington J. J. (64 J. P. 489), 711.
- James v. State (133 Ala. 208; 32 So. 237), 371.
- James v. State (124 Ga. 72; 52 S. E. 295), 287.
- James v. State (21 Tex. App. 189; 17 S. W. 143), 886, 888.
- James v. State (21 Tex. App. 353; 17 S. W. 422), 6, 20, 52, 58, 59, 885, 886, 888, 911, 971.
- James v. State (45 Tex. Cr. App. 592; 78 S. W. 951), 949, 950, 1209.
- James v. State (49 Tex. Civ. App. 334; 91 S. W. 227), 4, 10, 13, 14.
- James' Law Petition, *In re* (30 Ohio Cir. Ct. Rep. 697), 854, 876.
- Jamieson v. Blaine (38 N. B. 508), 644.
- Jamieson v. Indiana, etc., Co. (128 Ind. 555; 28 N. E. 76), 106.
- Jamison v. Burton (43 Iowa, 282), 1237, 1461.
- Jamison v. People (145 Ill. 357; 34 N. E. 486), 2056.
- Jane v. Alley (64 Miss. 446; 1 So. 497), 674.
- Janks v. State (29 Tex. App. 233; 15 S. W. 815), 1125, 1319, 1375, 1377, 1539, 1569.
- Jaro v. Holstein (73 S. C. 111; 52 S. E. 870), 1021, 1046.
- Jaroszewski v. Allen (117 Iowa, 632; 91 N. W. 942), 1949, 1999.
- Jarvis v. Conn. Mut. L. Ins. Co. 5 Ins. L. Jr. 507), 2236.
- Jassey v. Speer (10. Ga. 828; 33 S. E. 718), 896.
- Jayes v. Harris (99 La. T. 56; 72 J. P. 364), 380.
- Jefferson v. People (101 N. Y. 19; 3 N. E. 797), 1516, 1517, 1643, 1752.
- Jefferson v. Richardson (35 J. P. 470), 1137.
- Jefferson City v. Conture (9 Mo. 683), 270.
- Jeffersonville, etc., R. Co. (112 Ind. 93; 13 N. E. 403), 467.
- Jeffrey v. Weaver ([1899] 2 Q. B. 449; 63 J. P. 663; 68 L. J. Q. B. 817; 81 L. T. 193; 47 W. R. 638; 15 T. L. R. 422), 1139.
- Jeffries v. State (9 Tex. App. 598), 2039, 2074.
- Jelinek v. State (115 S. W. 508), 1111.
- Jelly v. Dils (27 W. Va. 267), 395.
- Jenkins v. Danville (79 Ill. App. 339), 753, 775.
- Jenkins v. Mapes (53 Ohio St. 110; 41 N. E. 137), 1166.
- Jenkins v. Price ([1907] 24 T. L. R. 70), 1827.
- Jenkins v. State (93 Ga. 1; 18 S. E. 992), 2041, 2041, 2078, 2079.
- Jenkins v. State (4 Ga. App. 859), 62 S. E. 574), 1092.
- Jenkins v. State (82 Miss. 500; 34 So. 217), 1237, 1564, 1600.
- Jenkins v. Thomasville (35 Ga. 145), 270.
- Jenkins v. Waldron (11 Johns. 114), 660.



[References are to pages.]

- Jenks v. Lima Tp. (17 Ind. 326), 811.
- Jenks v. Turpin (13 Q. B. Div. 505, 524; 48 J. P. 489; 49 J. P. 20; 53 L. J. M. C. 161; 50 L. T. 808), 369, 374.
- Jenners v. Howard (6 Blackf. 240), 2092, 2103, 2116.
- Jennett v. Owens (63 Tex. 264), 925.
- Jenney, *In re* (19 N. Y. Misc. Rep. 244; 44 N. Y. Supp. 84), 704.
- Jennings v. Russell (92 Ala. 603; 9 So. 421), 1278.
- Jennings v. State (3 Head, 520), 1246.
- Jensen v. State (60 Wis. 577; 90 N. W. 374), 1308, 1567.
- Jerseyville v. Becker (117 Ill. App. 86), 1169.
- Jerue v. State ([Tex. Cr. App.] 123 S. W. 414), 926.
- Jervey v. Carolina (66 Fed. 1013), 179, 323.
- Jessen v. Wilhite (74 Neb. 608; 104 N. W. 1064), 1979, 1992, 1995, 2003.
- Jett v. Commonwealth ([Ky.] 49 S. W. 786; 20 Ky. L. Rep. 1619), 935, 1742.
- Jewell v. Lynch (117 Mich. 65; 75 N. W. 283), 1892.
- Jewett v. Waushara (43 Iowa, 574), 1888, 1914.
- Jockers v. Borgman (29 Kan. 109; 44 Am. Rep. 625), 1890, 1993.
- Joest v. Williams (42 Ind. 565; 13 Am. Rep. 377), 2093, 2116, 2123.
- Joffe, *Ex parte* (46 Mo. App. 360), 574.
- John, *In re* (55 Kan. 694; 41 Pac. 956), 221.
- John Hancock Mut. L. Ins. Co. v. Daly (65 Ind. 6), 2226.
- Johns v. Fritchey (39 Md. 258), 2093, 2098, 2122.
- Johns v. State (78 Ind. 332), 215.
- Johns v. State (159 Ind. 413; 65 N. E. 287), 1443.
- Johns v. State (78 Miss. 662; 29 So. 401), 1757.
- Johnson, *In re* (57 Cal. 529), 2045, 2135, 2138, 2151.
- Johnson, *Ex parte* (6 Cal. App. 734; 93 Pac. 199), 1447, 1448.
- Johnson, Appeal of (73 N. E. 1122; 181 N. Y. 528), 745.
- Johnson, *In re* (7 N. Y. Misc. Rep. 220; 27 N. Y. Supp. 649), 2134, 2135, 2145.
- Johnson, *In re* (15 N. Y. Misc. Rep. 220; 27 N. Y. Supp. 649), 2136.
- Johnson, *In re* (18 Misc. Rep. 498; 42 N. Y. Supp. 1074), 729.
- Johnson, *In re* (78 N. Y. Misc. Rep. 498; 42 N. Y. Supp. 1074), 818.
- Johnson, *In re* ([Neb.] 118 N. W. 91), 761.
- Johnson, *In re* (165 Pa. 315; 31 Atl. 203), 638, 648.
- Johnson, *In re* (1 Dauph. Co. Rep. 40; 20 Pa. Cr. Ct. Rep. 464; 7 Pa. Dist. Rep. 248), 542.
- Johnson, *In re* (13 Pa. Co. Ct. Rep. 584), 638.
- Johnson, *In re* (40 Upp. Can. 297), 894, 907.
- Johnson v. Atkins (44 Fla. 185; 32 So. 879), 813.
- Johnson v. Atlanta (79 Ga. 507; 4 S. E. 673), 1594.
- Johnson v. Bessemere (143 Mich. 313; 106 N. W. 852; 12 Detroit Leg. N. 981), 423, 425, 470.
- Johnson v. Carlson ([Neb.] 95 N. W. 788), 1844.
- Johnson v. Chattanooga (97 Tenn. 247; 36 S. W. 1092), 454, 1122.
- Johnson v. Chicago, etc., R. Co. 58 Iowa, 348; 12 N. W. 339), 2207, 2214.

[References are to pages.]

- Johnson v. Commonwealth (111 Ky. 630; 64 S. W. 467; 23 Ky. L. Rep. 856), 2262.
- Johnson v. Commonwealth (12 Gratt. 714), 1246.
- Johnson v. Drummond (16 Ill. App. [16 Bradw.] 641), 1866.
- Johnson v. Fayette (148 Ala. 497; 42 So. 621), 445.
- Johnson v. Gram (72 Ill. App. 676), 1882.
- Johnson v. Grimminger (83 Iowa, 10; 48 N. W. 1052), 1928.
- Johnson v. Harmon (94 U. S. 371; 24 L. Ed. 271), 2098.
- Johnson v. Higgins (3 Met. [Ky.] 566), 106.
- Johnson v. Johnson (100 Mich. 326; 58 N. W. 1115), 1918.
- Johnson v. Johnson (35 Phila. Leg. Int. 70), 2153.
- Johnson v. Johnson ([1900] p. 19), 2169.
- Johnson v. Louisville, etc., R. Co. (104 Ala. 246; 16 So. 76; 53 Am. St. 39), 63, 2192, 2194, 2197, 2206, 2207.
- Johnson v. McCann (61 Ill. App. 110), 1892.
- Johnson v. Medlicott (3 P. Wms. 131), 2103, 2129.
- Johnson v. People (Breese [Ill.] 276), 1759, 1764.
- Johnson v. People (83 Ill. 431), 1219, 1237, 1371, 1374, 1459, 1764.
- Johnson v. People (44 Ill. App. 642), 1546.
- Johnson v. Phifer (6 Neb. 401), 2093, 2098, 2130.
- Johnson v. Philadelphia (60 Pa. St. 491), 200, 426.
- Johnson v. Railroad Co. (23 Ill. 202), 227.
- Johnson v. Rich (10 N. Y. Leg. Obs. 33), 233.
- Johnson v. Roberts ([Iowa] 101 N. W. 1131), 1000, 1001, 1003, 1004.
- Johnson v. Schultz (74 Mich. 75; 41 N. W. 865), 1966.
- Johnson v. State (19 Ala. 527; 74 Ala. 537), 370, 371.
- Johnson v. State (44 Ala. 414), 1532.
- Johnson v. State (152 Ala. 61; 44 So. 555), 691.
- Johnson v. State (37 Ark. 98), 515, 1349, 1371.
- Johnson v. State (40 Ark. 453), 1505.
- Johnson v. State (60 Ga. 634), 497, 1521.
- Johnson v. State (83 Ga. 553; 10 S. E. 207), 1354; 1359, 1555.
- Johnson v. State ([Ga.] 66 S. E. 148), 1527.
- Johnson v. State (1 Ga. App. 195; 58 S. E. 265), 2025.
- Johnson v. Vuthrick (7 Ind. 137), 1989.
- Johnson v. State (74 Ind. 197), 1516, 1560.
- Johnson v. State ([Iowa] 10 N. W. 1131), 1318.
- Johnson v. State (63 Miss. 228), 1191, 1230, 1615.
- Johnson v. State (23 Ohio St. 556), 10, 11.
- Johnson v. State ([Tex. Cr. App.] 21 S. W. 371), 1110, 1458, 1574.
- Johnson v. State (34 Tex. Cr. App. 106; 29 S. W. 472), 1743.
- Johnson v. State ([Tex. Cr. App.] 44 S. W. 834), 1213, 1694.
- Johnson v. State ([Tex. Cr. App.] 55 S. W. 968), 958.
- Johnson v. State ([Tex. Cr. App.] 66 S. W. 552), 1708.
- Johnson v. State ([Tex. Cr. App.] 77 S. W. 225), 1209.
- Johnson v. State ([Tex. Cr. App.] 89 S. W. 834), 914.
- Johnson v. State (52 Tex. Cr. App. 554; 107 S. W. 816), 1598.

[References are to pages.]

- Johnson v. State (52 Tex. Cr. Rep. 624; 108 S. W. 683), 914, 1682, 1686.
- Johnson v. State (53 Tex. Cr. App. 339; 109 S. W. 936), 940.
- Johnson v. State (4 Tex. Cr. App. 419; 66 S. W. 554), 59.
- Johnson v. Union, etc., Ins. Co. (127 Mass. 555), 1779.
- Johnson v. Williams (48 Vt. 565), 1068.
- Johnston's License, *In re* (37 Pa. Super. 438), 1589.
- Johnston v. Brown (2 Shaw & D. 437), 2109, 2114.
- Johnston v. State (74 Ind. 197), 1240.
- Johnston v. State (23 Ohio St. 556), 11, 47, 82, 962.
- Jokers v. Borgman (39 Kan. 109; 44 Am. Rep. 625), 1863, 1991, 2004.
- Jolie v. Cardinal (35 Wis. 118), 2187.
- Joliff v. State (50 Tex. Cr. App. 61; 109 S. W. 176), 247, 1110.
- Joliff v. State (53 Tex. Cr. App. 61; 109 S. W. 176), 139, 288, 1110, 1677.
- Jolly v. State (8 Sm. & M. 145), 1246.
- Jolly v. State (53 Tex. Cr. App. 484; 110 S. W. 749), 949.
- Jones, *In re* (78 Ala. 419), 431.
- Jones, *Ex parte* (31 N. B. 78), 1098.
- Jones, *Ex parte* (23 N. S. W. 93; 6 S. R. [N. S. W.] 313), 1225, 1228.
- Jones v. Alexander (167 Ind. 395; 79 N. E. 368), 612, 614, 618.
- Jones v. Bates (26 Neb. 693; 42 N. W. 751), 1848, 1849, 1885, 1910, 1912, 1936.
- Jones v. Bone ([1870] L. R. 9 Eq. 674; 39 L. J. Ch. 405; 23 L. T. 304; 18 W. R. 489; 34 J. P. 468), 1813.
- Jones v. Brown (54 Iowa, 74; 37 Am. Rep. 185), 660.
- Jones v. Chanute (63 Kan. 243; 65 Pac. 243), 986.
- Jones v. Byington (128 Iowa, 397; 104 N. W. 473), 341, 348, 991.
- Jones v. Commonwealth ([Ky.] 47 S. W. 328), 1446.
- Jones v. Commonwealth (75 Pa. 403), 2040, 2067, 2070, 2072.
- Jones v. Commonwealth (106 Va. 833; 55 S. E. 697), 1652.
- Jones v. Fletcher (33 Me. 564), 1038.
- Jones v. Fletcher (41 Me. 255), 1031, 1047, 1048, 1051, 1776.
- Jones v. Grady (25 La. Ann. 586), 795.
- Jones v. Hard (32 Vt. 481), 313.
- Jones v. Hilliard (69 Ala. 300), 109, 574.
- Jones' Law Petition, *In re* (30 Ohio Cir. Ct. Rep. 705), 854, 876.
- Jones v. McLeod, 103 Mass. 58), 1805.
- Jones v. Moore Co. (106 N. C. 436; 11 S. E. 514), 558, 635, 648.
- Jones v. Mould (138 Iowa, 683; 116 N. W. 733), 348, 977.
- Jones v. National Mut. Ass'n ([Ky.] 2 S. W. 447; 8 Ky. L. Rep. 599), 2232.
- Jones v. New Orleans, etc., R. Co. (122 La. 354; 47 So. 679), 2184.
- Jones v. Nugent (31 Ind. App. 697; 67 N. E. 195), 605.
- Jones v. Paducah ([Ky.] 115 S. W. 801), 1363.
- Jones v. People (6 Colo. 452; 45 Am. Rep. 526), 2247.
- Jones v. People (14 Ill. 196), 101, 109.
- Jones v. Robbins (74 Mass. [8 Gray] 329), 270, 1748.
- Jones v. Root (6 Gray, 435), 254, 1011, 1059, 1076, 2035.

[References are to pages.]

- Jones v. Sanborn (68 N. H. 602; 40 Atl. 393), 1799, 1807.  
 Jones v. Shervington ([1908] 2 K. B. 539; 77 L. R. K. B. 771; 99 L. T. 57; 72 J. P. 381; 24 T. L. R. 693), 354.  
 Jones v. State (100 Ala. 88; 14 So. 772), 1633.  
 Jones v. State (136 Ala. 118; 34 So. 236), 1443, 1604.  
 Jones v. State (29 Ga. 594), 2061, 2062, 2067.  
 Jones v. State (100 Ga. 579; 28 S. E. 396), 1379.  
 Jones v. State (1 Kan. 273), 882.  
 Jones v. State (67 Md. 256; 10 Atl. 216), 938, 939, 1465, 1469, 1473.  
 Jones v. State (67 Miss. 11; 7 So. 220), 1756.  
 Jones v. State (13 Tex. 168), 2247, 2250, 2251.  
 Jones v. State (21 Tex. App. 353; 17 S. W. 422), 895, 897, 908.  
 Jones v. State (32 Tex. Cr. Rep. 110; 22 S. W. 149), 1235, 1236, 1628, 1646.  
 Jones v. State (32 Tex. Cr. App. 533; 25 S. W. 124), 1125, 1320.  
 Jones v. State (38 Tex. Cr. App. 533; 43 S. W. 981), 1686.  
 Jones v. State (46 Tex. Cr. App. 517; 81 S. W. 49), 759, 760, 765, 1232, 1461.  
 Jones v. State ([Tex. Civ. App.] 81 S. W. 1010), 759, 760, 765.  
 Jones v. State (52 Tex. Cr. App. 519; 107 S. W. 849, 850), 1465, 1473.  
 Jones v. Surprise (64 N. H. 243; 9 Atl. 384), 8, 13, 25, 27, 122, 334, 967, 1780, 1799, 1800.  
 Jones v. Thro (2 Mo. App. 1303), 564.  
 Jones v. U. S. Mut. Acc. Ass'n (92 Iowa, 652; 61 N. W. 485), 2239.  
 Jones v. Walters (62 J. P. 374; 78 L. T. 167; 14 T. L. R. 265), 380.  
 Jones v. Ward (77 N. Car. 337), 1027.  
 Jones v. Yokum ([S. D.] 123 N. W. 272), 110, 331, 1806.  
 Jones Co. v. Sales (25 Ind. 25), 780.  
 Joplin v. Jacobs (119 Mo. App. 134; 96 S. W. 219), 219.  
 Jorce v. Parkhurst (150 Mass. 243; 22 N. E. 899), 2258.  
 Jordan, *In re* (49 Fed. 238), 321, 451, 523, 525.  
 Jordan v. Bepole (8 Minn. 441; 90 N. W. 1052), 415.  
 Jordan v. District Court (74 Iowa, 762; 38 N. W. 430), 110.  
 Jordan v. Evansville (163 Ind. 512; 72 N. E. 544; 67 L. R. A. 613), 91, 96, 98, 99, 144, 148, 168, 191.  
 Jordan v. Nicolin (84 Minn. 367; 87 N. W. 915), 452, 460, 1131, 1449, 1538.  
 Jordan v. State (22 Fla. 528), 1505.  
 Jordan v. State (2 Tex. App. 425), 167.  
 Jordan v. State (37 Tex. Cr. App. 222; 38 S. W. 780; 39 S. W. 110), 869, 959, 1210, 1213, 1554.  
 Jordan v. State (40 Tex. Cr. App. 189; 49 S. W. 371), 1764.  
 Jordan v. Wappello County (69 Iowa, 177; 28 N. W. 548), 1000.  
 Jorgensen, *In re* (75 Neb. 401; 106 N. W. 462), 626, 666.  
 Joseph v. State ([Tex. Cr. App.] 86 S. W. 326), 949.  
 Joseph Schlitz Brewing Co. v. Superior (117 Wis. 297; 93 N. W. 1120), 415.  
 Josephdaffer v. State (32 Ind. 402), 1586, 1649.  
 Jossey v. Speer (107 Ga. 828; 33 S. E. 718), 921, 922.

[References are to pages.]

- Josey v. State* ([Ark.] 114 S. W. 216), 1643.  
*Jowell v. State* (44 Tex. Cr. App. 328; 71 S. W. 286), 2049.  
*Joyce, In re* ([1909] 16 App. Ont. L. R. 380), 889.  
*Joyner v. Cush.* (567), 811.  
*Joynt, Ex parte* (38 J. P. 390), 1145.  
*Judd v. Robinson* (41 Colo. 222; 92 Pac. 724), 1809, 1810.  
*Judefind v. State* (78 Md. 510; 28 A. 405; 23 L. R. A. 721), 454.  
*Judge v. Flourney* (74 Iowa, 164; 37 N. W. 130), 1940.  
*Judge v. Jordon* (81 Iowa, 519; 46 N. W. 1077), 1845, 1950, 1960.  
*Judge v. Kribs* (71 Iowa, 183; 32 N. W. 324), 981, 985.  
*Judge v. O'Conner* (74 Iowa, 166; 37 N. W. 131), 1940.  
*Judkins, In re* (126 N. Y. App. Div. 524; 110 N. Y. Supp. 587), 741.  
*Jugenheimer, In re* (81 Neb. 836; 116 N. W. 966), 644.  
*Julius Kessler & Co. v. E. F. Perilloux & Co.* (127 Fed. 1011), 333.  
*Julius Winkelmeyer Brewing Ass'n v. Nipp* (6 Kan. App. 730; 50 Pac. 956), 1805.  
*Julke v. Adam* (1 Redf. 454), 2139, 2145.  
*Jull v. Tressnor* (14 N. Y. L. R. 513), 1351.  
*Junction City v. Keffe* (40 Kan. 275; 19 P. 735), 258.  
*Junction City v. Webb* (44 Kan. 71; 23 Pac. 1073), 1505.  
*Jung Brewing Co. v. Commonwealth* (123 Ky. 507; 96 S. W. 595; 29 Ky. L. Rep. 939), 979.  
*Jung Brewing Co. v. Commonwealth* ([Ky.] 98 S. W. 307; 30 Ky. L. Rep. 267), 159, 298, 537, 540.  
*Jung Brewing Co. v. Frankfort* (100 Ky. 409; 38 S. W. 710), 159, 552.  
*Jung Brewing Co. v. Talbot* (59 Ohio St. 511; 53 N. E. 51), 790, 1269.  
*Jungenheimer v. State Journal Co.* (81 Neb. 830; 116 N. W. 964), 631.  
*Jury v. Ogden* (56 Ill. App. 100), 1905.  
*Justin, In re* (2 Pa. Co. Ct. Rep. 22), 602, 639, 646.  
*Justice v. Commonwealth* (81 Va. 209), 182.  
*Justice v. Lowe* (26 Ohio St. 372) 1812.

## K

- Kadgihn v. Bloomington* (58 Ill. 229), 503, 504, 503, 1159.  
*Kadgin v. Miller* (13 Ill. App. 474), 1983.  
*Kaffsmith v. People* (8 Colo. 175), 488.  
*Kahlbunner v. State* (67 Miss. 368; 7 So. 288), 932.  
*Kaliski v. Gray* (25 La. Ann. 576), 202, 792.  
*Kalloch v. Newbert* ([Me.] 72 Atl. 736), 337, 1023, 1062.  
*Kammon v. People* (124 Ill. 481; 16 N. E. 661; affirming 24 Ill. App. 388), 67, 1254, 1631.  
*Kammon v. People* (24 Ill. App. 388; affirmed 124 Ill. 481; 16 N. E. 661), 67, 1754.  
*Kammann v. People* (26 Ill. App. 48; affirmed 124 Ill. 181; 16 N. E. 661), 1631, 1711.  
*Kamp v. State* (120 Ga. 157; 47 S. E. 548), 1446.  
*Kanamura, In re* (10 B. C. Rep. 354), 534.  
*Kane v. Grady* (123 Iowa 260; 98 N. W. 711), 578.  
*Kane v. Commonwealth* (89 Pa. 522; 33 Am. Rep. 787), 1125, 1319.



[References are to pages.]

- Kannon v. State (10 Lea, 386), 1746.
- Kansas v. Bradley (26 Red. 289), 149.
- Kansas City v. Cork (38 Mo. App. 666), 409.
- Kansas City, etc., Ry. Co. v. Davis (83 Ark. 217; 103 S. W. 603), 2191.
- Kansas City v. Grash (151 Mo. 128), 426.
- Kansas City v. Flanders (71 Mo. 281), 504, 1159.
- Kansas City v. Muhlbeck (68 Mo. 638), 1111.
- Kansas City v. Smith (57 Kan. 434; 46 Pac. 710), 1479.
- Kansas, etc., R. Co. v. State (3 Kan. 164), 271.
- Kapps v. State (55 Ohio Cir. Ct. Rep. 723), 1738.
- Karan v. Pease (45 Ill. App. 382), 1965.
- Karcher v. State ([Kan.] 104 Pac. 568), 1769.
- Karswich v. Atlanta (44 Ga. 204), 215.
- Kaufman v. Dostal (73 Iowa 691), 119, 125, 990, 997.
- Kaufmann v. Hillsboro (45 Ohio St. 700; 17 N. E. 557), 1192.
- Kawailani, The (128 Fed. 879; 63 C. C. A. 347), 1697.
- Kay v. Oves Darwen (52 L. J. M. C. 90; 10 Q. B. Div. 213; 47 L. T. 411; 31 W. R. 273; 47 J. P. 388), 629.
- Keady v. People (32 Colo. 57; 74 Pac. 892), 2085.
- Kean v. Baltimore, etc., R. Co. (61 Md. 154), 2174, 2178, 2180.
- Kean v. Detroit, etc., Mills (66 Mich. 277; 33 N. W. 395), 2198, 2199.
- Kear v. Garrison (13 Ohio Cir. Ct. 447), 1983, 1991.
- Kearly v. Tyler (56 J. P. 72; 65 L. T. 261; 60 L. J. M. C. 159), 1383.
- Kearns v. Commonwealth (15 Ky. L. Rep. [abstract] 332), 949.
- Kearny v. Fitzgerald (43 Iowa 580), 1882, 1889, 1892, 1912, 1964, 1982.
- Keating, *In re* (25 Pittsb. Leg. J. [N. S.] 454), 700.
- Keating's Appeal (19 Pitts. L. Jr. [N. S.] 283), 2139.
- Keaton v. State (36 Tex. Cr. App. 259; 38 S. W. 522), 1162, 1167, 1197.
- Kee v. McSweeney (15 Abb. N. C. 229), 1456.
- Kee v. State (28 Ark. 155), 2246, 2248.
- Keedy v. Howe (72 Ill. 133), 1350, 1847, 1907, 1908, 1987, 1994.
- Keefe v. Clarke (10 N. S. W. L. R. 19), 682.
- Keefe v. Hillsdale (70 Mich. 413; 38 N. W. 277), 650, 764.
- Keefe v. Hillsdale County (109 Mich. 645; 67 N. W. 981), 868, 877.
- Keeler, *Ex parte* (45 S. C. 537; 23 S. E. 865; 55 Am. St. 785; 31 L. R. A. 678), 259, 1003.
- Keenan v. Commonwealth (44 Pa. 66; 84 Am. Dec. 414), 2040, 2060, 2067, 2071.
- Keesohn v. Elgin, etc., Co. (229 Ill. 533; 82 N. E. 360; affirming 132 Ill. App. 416), 2174.
- Keeton v. Commonwealth (92 Ky. 522; 18 S. W. 359), 2078, 2079.
- Kehoe v. State ([Tex. Cr. App.] 89 S. W. 270), 958.
- Kehr v. Columbia ([Mo.] 116 S. W. 428), 920, 925.
- Kehr v. Commonwealth ([Ky.] 26 Ky. L. Rep. 1234; 88 S. W. 633), 260.
- Kehrig v. Peters (41 Mich. 475; 2 N. W. 801), 1350, 1838, 1907, 1985.
- Keifer License, *In re* (21 Pa. Co. Ct. Rep. 512), 696.

[References are to pages.]

- Keiser v. Lines (57 Ind. 431), 462, 598, 599.  
 Keiser v. State (58 Ind. 379), 510, 511, 516, 518, 539, 1364.  
 Keiser v. State (78 Ind. 206), 497.  
 Keiser v. State (78 Ind. 430), 498, 500, 507, 526, 672.  
 Keiser v. State (82 Ind. 379), 1176, 1754.  
 Keiser v. State (84 Ind. 229), 1637.  
 Keith, *Ex parte* (47 Tex. Cr. App. 283; 83 S. W. 683), 888.  
 Keith v. State (91 Ala. 2; 8 So. 353; 10 L. R. A. 430), 308, 309.  
 Keith v. State (38 Tex. Cr. Rep. 678; 44 S. W. 847, 849), 1320, 1321, 1486, 1538.  
 Kellar, *In re* (17 Lane. Law Rev. 96; 16 Montg. Co. Law. Rep. 24; 7 North Co. Rep. 129; 23 Pa. Co. Ct. Rep. 251; 9 Pa. Dist. Rep. 340; 13 York Leg. Rec. 155), 705.  
 Kellar v. Leonard ([Mo.] 116 S. W. 14), 560.  
 Keller v. Lincoln (67 Ill. App. 404), 1892, 1919.  
 Kellerman v. Arnold (71 Ill. 632), 1847.  
 Keller v. State 11 Md. 525; 69 Am. Dec. 226), 138, 139, 192, 333, 540, 549, 787, 1194.  
 Keller v. State (23 Tex. App. 359; 4 S. W. 886), 215, 1176, 1304, 1622.  
 Keller v. State (46 Tex. Cr. App. 588; 81 S. W. 1214), 890, 1680, 1683.  
 Keller v. State ([Tex.] 87 S. W. 669), 245.  
 Kelleway v. Macdougall (45 J. R. 207), 1297.  
 Kelley v. Home Ins. Co. (97 Mass. 288), 1778.  
 Kelley v. State (3 Sm. & M. 518), 2040, 2061.  
 Kelley v. State (31 Tex. Crim. Rep. 216; 20 S. W. 357), 2040, 2051, 2052, 2090.  
 Kelley Drug Co. v. Truett ([Tex.] 75 S. W. 536), 9.  
 Kelling v. Palmer ([Neb.] 120 N. W. 155), 1879, 1978.  
 Kellogg v. German Amer. Ins. Co. (133 Mo. App. 391; 113 S. W. 663), 1090, 1777, 1778.  
 Kelly, *Ex parte* (32 N. B. 261), 1377.  
 Kelly v. Burke (132 Ala. 235; 31 So. 512), 210, 1793.  
 Kelly v. Commissioners (54 How. Pr. 327), 72.  
 Kelly v. Commonwealth ([Ky.] 83 S. W. 99; 26 Ky. L. Rep. 1038), 1211.  
 Kelly v. Commonwealth (1 Gr. Cas. [Pa.] 484), 2040, 2071.  
 Kelly v. Dwyer (7 Lea, 180), 520.  
 Kelly v. Earl (26 C. P. [Can.] 477), 1792, 1805.  
 Kelly v. Faribault (83 Minn. 9; 85 N. W. 720), 446.  
 Kelly v. State (36 Tex. Cr. App. 480; 38 S. W. 779), 895, 959.  
 Kelly v. State (37 Tex. Cr. App. 220; 38 S. W. 779; 39 S. W. 111), 869, 873.  
 Kelly v. Worcester, etc., Ins. Co. 97 Mass. 285), 1779.  
 Kelminski, *In re* (164 Pa. 231; 30 Atl. 301; 35 W. N. C. 309), 632.  
 Kelly v. State (61 N. J. L. 407; 39 Atl. 711), 1479.  
 Kemp v. Bird ([1877] 5 Ch. D. 974; 46 L. J. Ch. 828; 42 J. P. 36; 25 W. R. 838), 1813.  
 Kemp v. State (120 Ga. 157; 47 S. E. 548), 288, 945, 1503, 1512, 1555.  
 Kemp v. State ([Tex. Cr. App.] 38 S. W. 987), 963.  
 Kemper v. Commonwealth (85 Ky. 219), 216.  
 Kempf v. Kempf (34 Mo. 211), 2158, 2164.

[References are to pages.]

- Kennedy, *Ex parte* (23 Tex. App. 77), 232, 243, 884, 905.
- Kennedy v. Favor (80 Mass. [14 Gray] 200), 1076, 1077, 1079.
- Kennedy v. Garrigan ([S. D.] 121 N. W. 183), 194, 223, 1896, 1915.
- Kennedy v. Saunders (142 Mass. 9; 6 N. E. 734), 1850, 1851, 1852, 1853.
- Kennedy v. Sullivan (34 Ill. App. 46; affirmed in 136 Ill. 94; 26 N. E. 382), 1908, 1983, 1984.
- Kennedy v. Sullivan (34 Ill. App. 46), 1976.
- Kennedy v. Warner (100 N. Y. Supp. 616; 51 N. Y. Misc. 362), 234, 282, 853.
- Kennedy v. Welsh (196 Mass. 592; 83 N. E. 11), 694.
- Kenney v. People (27 How. Pr. 202), 2040, 2071.
- Kenney v. Rhineland (28 N. Y. App. Div. 246; 50 N. Y. Supp. 1088), 63.
- Kennon v. Blackburn (127 Ky. 39; 104 S. W. 968; 31 Ky. L. Rep. 1256), 932, 934).
- Kenny v. Harwell (42 Ga. 416), 198.
- Kenny v. People (31 N. Y. 330), 2040, 2070, 2071.
- Kent v. Willey (11 Gray 368), 1033, 1076, 1077, 1079.
- Kenton v. State (36 Tex. Cr. App. 259; 38 S. W. 522), 1166.
- Kentucky, etc., Club (92 Ky. 309), 1333.
- Keokuk v. Dressell (47 Iowa 597), 402, 412, 414, 435, 443.
- Keough v. Foreman (33 La. Ann. 1434), 2099, 2105.
- Kerkow v. Bauer (15 Neb. 155; 18 N. W. 27), 43, 83, 962, 1873, 1951, 1968.
- Kern's Appeal, *In re* (38 Wkly. N. C. 438), 621.
- Kern v. State (7 Ohio St. 411), 1543.
- Kernon v. Blackburn (127 Ky. 39; 104 S. W. 968; 31 Ky. L. Rep. 1256), 652.
- Kerr v. Harker (7 N. J. L. 349), 1483.
- Kerr v. State (63 Neb. 115; 88 N. W. 240), 963, 1698.
- Kerwhacker v. Cleveland, etc., R. Co. (3 Ohio St. 172; 62 Am. Dec. 246), 2214.
- Kerwisch v. Atlanta (44 Ga. 204), 456.
- Kessack v. Smith (7 F. [Just. Cas.] 75), 360, 2028, 2029.
- Kessler, *In re* (163 N. Y. 205; 57 N. E. 402; reversing 60 N. Y. Supp. 1141), 731.
- Kessler, *In re* (28 N. Y. Misc. Rep. 336; 59 N. Y. Supp. 888; affirmed 60 N. Y. Supp. 1141; reversed 163 N. Y. 205; 57 N. E. 402), 580, 581, 730, 736.
- Ketchum v. Fox (5 N. Y. Supp. 272; 52 Hun, 284), 1927, 1988.
- Kettering v. Jacksonville (50 Ill. 39), 91, 109, 966.
- Key v. Holloway (7 Baxt. 576), 2134.
- Key v. State (37 Tex. Cr. App. 77; 38 S. W. 773), 842, 1471, 1472.
- Kicker v. State (133 Ala. 193; 32 So. 253), 370.
- Kidd, *In re* (5 Cal. App. 159; 89 Pac. 987), 172.
- Kidd v. Pearson (128 U. S. 1; 9 S. Ct. 8; 32 L. Ed. 346), 109, 119, 120, 125, 126, 148, 160, 161, 211, 315.
- Kidd v. Truett (28 Tex. Civ. App. 618; 68 S. W. 310), 921, 940.
- Kidder v. Knox (48 Me. 551), 383, 1792.
- Kidder v. Norris (18 N. H. 532), 1805.
- Kiefer v. State (87 Md. 562; 40 Atl. 377), 1497, 1510.

[References are to pages.]

- Kiel v. Chicago (176 Ill. 137; 52 N. E. 29; reversing 69 Ill. App. 685), 441.
- Kiff v. Old Colony, etc., R. Co. (117 Mass. 591; 19 Am. Rep. 429), 1772.
- Kilburn v. State (9 Conn. 560), 1449, 1497.
- Kilburn v. Coe (48 How. Pr. 144), 1933.
- Kilcoyne v. Hitchens (30 Ohio Cir. Ct. Rep. 545), 864, 865.
- Kilgore, *In re* (13 Pa. Super. Ct. 543), 664.
- Kilgore v. Commonwealth (94 Pa. 495), 809.
- Kilgore v. State (52 Tex. Cr. App. 447; 108 S. W. 662), 1216.
- Kilip v. McKay (13 N. Y. St. Rep. 5), 43, 82, 84.
- Killick v. Graham ([1896] 2 Q. B. 196; 60 J. P. 534; 65 L. J. M. C. 180; 75 L. T. 29; 44 W. R. 669; 12 T. L. R. 428), 1275
- Killin v. Swatton (61 J. P. 150; 76 L. T. 55; 45 W. R. 235; 13 T. L. R. 121; 18 Cox C. C. 477), 551.
- Killman v. State (53 Tex. Cr. App. 570; 112 S. W. 92), 1187, 1474, 1611.
- Kilman v. State ([Tex. Cr. App.] 102 S. W. 404), 1465, 1473.
- Kimball v. Cunningham (4 Mass. 502; 3 Am. Dec. 230), 2127.
- Kimball v. People (20 Ill. 348), 1171, 1598.
- Kimmell, *In re* (41 Fed. Rep. 775), 157.
- Kincaid v. State (49 Tex. Cr. App. 303; 92 S. W. 415), 969.
- King, *In re* (23 W. N. C. 152; 16 Atl. 487), 632.
- King, *In re* ([Neb.] 10 N. W. 242), 645.
- King, *In re* ([Pa.] 16 Atl. 487; 23 W. N. C. 152), 648.
- King, *Ex parte* (52 Tex. Civ. App. 383; 107 S. W. 549), 169, 245.
- King v. Batson (12 Can. Cr. Cas. 62), 1724.
- King v. Bigelow (9 Can. Cr. Cas. 322), 1285, 1723.
- King v. Breen (7 Can. Cr. Cas. 146), 1739.
- King v. Bryant (2 Hayw. [N. C.] 394), 2104.
- King v. Cappellar (42 Ohio St. 218), 120, 121, 147.
- King v. Chicoyne (8 Can. Cr. Cas. 507), 842, 844.
- King v. Commonwealth (4 Ky. L. Rep. [abstract] 623), 24, 26, 43, 44.
- King v. Conrad (5 Can. Cr. Cas. 414), 1358.
- King v. Conrad (35 Nov. Sco. 79), 1367.
- King v. Dedham (15 Mass. 454), 1014.
- King v. Gardner (25 Nova Scotia 48), 255.
- King v. Gunn (10 Can. Cr. Cas. 148), 1202.
- King v. Haley (96 Ill. 106), 1854, 1855, 1865, 1884.
- King v. Iyves ([1687] 2 Showers [K. B.] \*468), 104, 485, 1106.
- King v. Jacksonville (2 Seam. 305), 139; 470.
- King v. Laird (7 Can. Cr. Cas. 318), 369, 372, 375.
- King v. Law Kin (7 Hawaii 489), 220.
- King v. Lewis (10 Can. Cr. Cas. 104), 347.
- King v. Lightburne (4 Can. Cr. Cas. 358), 1331, 1342, 1636.
- King v. McEvoy (4 Allen 110), 310, 314, 1789.
- King v. McMullan (38 Nova Scotia 129), 938.
- King v. McNutt (11 Can. Cr. Cas. 26; 38 N. S. 339), 1085, 1662.
- King v. Marriot ([1693] 4 Mod. \*144), 104, 485, 1106.

[References are to pages.]

- King v. Niederstalt (10 Can. Cr. Cas. 292), 1194.  
 King v. Nugent (9 Can. Cr. Cas. 1), 1084, 1659.  
 King v. Ohio, etc., R. Co. (22 Fed. 413), 2216.  
 King v. Orland (8 Cr. Can. Cas. 208), 352.  
 King v. Randall ([1695] Salk. \*27), 104, 485, 1106.  
 King v. Rogers (11 Can. Cr. Cas. 257), 1118, 1360.  
 King v. State (81 Ala. 92; 8 So. 159), 32.  
 King v. State (90 Ala. 612; 8 So. 856), 2063, 2069.  
 King v. State (77 Ga. 734), 1578.  
 King v. State (58 Miss. 737; 38 Am. Rep. 344), 21, 51, 59, 1753.  
 King v. State (66 Miss. 502; 6 So. 188), 822, 829, 1482, 1608, 1609, 1758.  
 King v. State (33 Tex. Cr. Rep. 547; 28 S. W. 201), 893, 894.  
 King v. State (50 Tex. Cr. App. 321; 97 S. W. 488), 1602.  
 King v. State ([Tex. Cr. App.] 100 S. W. 224), 1464, 1472.  
 King v. State (52 Tex. Cr. App. 101; 109 S. W. 182), 782, 1692.  
 King v. Stevens (8 Can. Cr. Cas. 76), 1449.  
 King v. Tomlinson (18 East. Dist. Ct. Rep. 253), 1204.  
 King v. Vavischi (8 Can. Cr. Cas. 78), 1086, 1342, 1346.  
 King v. Verdon (8 Can. Cr. Cas. 352), 1762.  
 King v. Vipon (1 Menz. 551), 1623.  
 King v. Walsh (6 Can. Cr. Cas. 452), 233.  
 King v. W. H. Townsend (No. 2 39 Nov. Sco. 189), 1059.  
 Kingsley v. N. E. Mut. F. Ins. Co. (8 Cush. 573), 2230.  
 Kingston v. Ft. Wayne, etc. R. Co. (112 Mich. 40; 70 N. W. 315; 40 L. R. A. 131), 2177, 2191, 2193.  
 Kingston v. Osterhondt (33 Hun, [N. Y.] 66), 498, 500.  
 Kinmish v. Ball (129 U. S. 217; 9 Sup. Ct. 277), 315.  
 Kinmundy v. Mahan (72 Ill. 462), 405, 420.  
 Kinnebrew, *Ex parte* (35 Fed. 52), 158, 159.  
 Kinnebrew v. State (80 Ga. 232; 5 S. E. 56), 59, 86, 1349, 1353.  
 Kinser v. State (9 Ind. 543), 1510, 1521.  
 Kinze, *In re* (28 Misc. Rep. 622; 59 N. Y. 682), 744.  
 Kinzell, *In re* (28 N. Y. Misc. Rep. 622; 59 N. Y. Supp. 682), 1183.  
 Kiowa County v. Dunn (21 Colo. 185), 426.  
 Kipp v. Patterson (2 Dutch [N. J.] 298), 403.  
 Kirby v. State (46 Tex. Cr. App. 584; 59 S. W. 1007), 1216.  
 Kirchner v. Myers (35 Ohio St. 85), 1918.  
 Kirkland v. Ferry (45 Wash. 663; 88 Pac. 1123), 990.  
 Kirkland v. State (72 Ark. 171; 78 S. W. 770), 1017, 2257.  
 Kirkow v. Bauer (15 Neb. 561; 20 N. W. 29), 1882, 1904.  
 Kirkpatrick v. Commonwealth (95 Ky. 326; 25 S. W. 113), 932.  
 Kirkwood v. Autenreith (11 Mo. App. 515), 1616.  
 Kissam v. Kissam (21 N. Y. App. Div. 112; 47 N. Y. Supp. 270), 2158.  
 Kissel v. Lewis (156 Ind. 233; 59 N. S. 478), 984, 997, 1108.  
 Kissinger v. Hinkhouse (27 Fed. 883), 125.  
 Kitchens v. State (44 Tex. Cr. App. 216; 70 S. W. 82), 1130.



[References are to pages.]

- Kitson v. Ann Arbor (26 Mich. 325), 69, 168, 278, 418, 444, 481, 908.
- Kittredge v. Allemania Society (3 Ohio N. P. 312), 1811.
- Kittrell v. State (89 Miss. 666; 42 So. 609), 268, 1352, 1354, 1615, 1652.
- Kizer v. Randleman (50 N. C. 428), 4, 5, 30, 55, 355.
- Klamm, *In re* ([Neb.] 117 N. W. 991), 575, 622, 623, 636, 663, 671.
- Klare v. State (43 Ind. 483), 11, 25, 26, 83, 1586, 1592.
- Klein v. Livingston Club (177 Pa. 224; 35 Atl. 606; 34 L. R. A. 94; 55 Am. St. Rep. 717), 1330, 1332, 1336, 1338.
- Klein v. State (76 Ind. 333), 1191, 1637.
- Kleppe v. Gard ([Minn.] 123 N. W. 665), 849.
- Klepper v. State (121 Ind. 491; 23 N. E. 287), 1656, 1665.
- Kleveshall, *In re* (30 N. Y. Misc. Rep. 361; 63 N. Y. Supp. 741), 580.
- Klimert v. Corcoran ([Neb.] 70 N. W. 910), 1890, 1887, 1955.
- Kline v. Baker (99 Mass. 253), 1280.
- Kline v. Kline (50 Mich. 438; 15 N. W. 581), 2162.
- Kling v. Fries (33 Mich. 275), 1786, 1805.
- Klohs v. Klohs (61 Pa. 245), 2121.
- Klug v. State (77 Ga. 734), 1119, 1123, 1124, 1126, 1302, 1728.
- Knapp v. Franklin (24 N. Y. Misc. Rep. 756; 74 N. Y. Supp. 458), 820.
- Knarr, *In re* (127 Pa. 554; 18 Atl. 639), 653, 648.
- Knecht v. Mut. L. Ins. Co. (90 Pa. St. 118; 35 Am. Rep. 641; 8 Ins. L. Jr. 639), 2230.
- Knekamp v. Hidding (31 Wis. 503), 2100.
- Knickerbocker L. Ins. Co. v. Foley (105 U. S. 350), 2223, 2224.
- Knight v. Goss (59 Vt. 266), 1727.
- Knight v. Mutual Life Ins. Co. (14 Phila. 187; 9 W. N. C. 501), 2229.
- Knight v. State (88 Ga. 590; 15 S. E. 457), 931, 1281, 1283, 1727.
- Kniper v. Louisville (7 Bush, 599), 444.
- Knoblauch's License, *In re* (28 Pa. Super. Ct. 323), 546, 565, 666.
- Knopf v. State (84 Ind. 31), 1444.
- Knott v. Miller (12 N. Z. L. R. 397), 1313.
- Knott v. Peterson (125 Iowa 404; 101 N. W. 173), 778, 876, 1883, 2004.
- Knott v. Tidyman (86 Wis. 164; 56 N. W. 632), 2100, 2112.
- Knowles v. State (80 Ala. 9), 86, 1704.
- Knox v. Rainbow (111 Cal. 539; 44 Pac. 175), 674.
- Knox v. State ([Tex. Cr. App.] 77 S. W. 13), 1130, 1727.
- Knox City v. Whiteaker (27 Mo. App. 468), 832.
- Knudson v. Great Council ([S. D.] 63 N. W. 611), 2221.
- Kolan v. State (407 Ark. 72; 81 S. W. 235), 1195.
- Kober v. State (10 Ohio St. 44), 1197, 1754.
- Koblenslag v. State (23 Tex. Cr. App. 264; 4 S. W. 888), 1233.
- Koch v. Commonwealth (119 Ky. 476; 84 S. W. 533; 27 Ky. L. Rep. 122), 449.
- Koch v. State (48 Tex. Cr. App. 346; 88 S. W. 809), 873.
- Koch v. State (32 Ohio St. 353), 1653.
- Koche v. Owens (23 N. S. W. 102), 1147.

[References are to pages.]

- Koegel v. Egner (54 N. J. Eq. 623; 35 Atl. 394), 2141, 2146, 2149.
- Koehler v. Olsen (68 Hun. 62; 22 N. Y. Supp. 677), 701.
- Koenig v. State (33 Tex. Cr. Rep. 367; 26 S. W. 835; 47 Am. St. 35), 1330, 1338.
- Koerner v. Oberly (56 Ind. 284; 26 Am. Rep. 34), 1982, 1989.
- Koester v. State (36 Kan. 27; 12 Pac. 339), 190, 389.
- Kohl v. Schober (35 N. J. Eq. 461), 2136.
- Kohler, *Ex parte* (74 Cal. 38; 15 Pac. 436), 1382.
- Kohn v. Melcher (29 Fed. 433), 109, 150, 156, 191, 208, 311, 312, 331, 335, 1792, 1797, 1799, 1803.
- Kojan, Appeal of (73 N. E. 1122; 181 N. Y. 528), 745.
- Kolling v. Bennett (18 Ohio Cir. Ct. R. 425; 10 C. C. D. 81), 1850, 1852, 1974.
- Kolman v. State (2 Ga. App. 648; 58 S. E. 1070), 1128, 1589, 1616, 1620, 1621, 1728.
- Koop v. People (47 Ill. 327), 71, 1117, 1127, 1634.
- Koopman v. State (61 Ala. 70), 1516.
- Korman v. Henry (32 Kan. 49; 3 Pac. 764), 1774.
- Korn v. Chesapeake (125 Fed. 597; 63 L. R. A. 372), 2215.
- Korndorfer, *In re* ([N. Y.] 49 N. Y. Supp. 559), 591.
- Kornman, *In re* (13 Pa. Co. Ct. Rep. 147; 23 Pittsb. Leg. J. [N. S.] 476), 518, 1364.
- Koster, Appeal of (73 N. E. 1122; 181 N. Y. 529), 745.
- Krach v. Heilman (53 Ind. 517), 1870.
- Kramer, *Ex parte* (19 Tex. App. 233), 886.
- Kramer v. Marks (64 Pa. St. 151), 138, 248, 592.
- Kramer v. State (106 Ind. 192; 6 N. E. 341), 1240, 1561.
- Kraut v. State (47 Ind. 519), 510, 531.
- Kravek v. State (38 Tex. Cr. App. 44; 41 S. W. 612), 1167.
- Kray, Appeal of (73 N. E. 1122; 181 N. Y. 527-530), 745.
- Kreamer v. State (106 Ind. 192; 6 N. E. 341), 1446.
- Kreiss v. Seligman (8 Barb. 439), 1790, 1801.
- Kreitor v. Nichols (28 Mich. 496), 223, 224, 1350, 1771, 1840, 1907, 1908, 1984, 1985.
- Kress v. State (65 Ind. 106), 659, 660.
- Kresser v. Lyman (74 Fed. 765), 97, 183, 184, 490.
- Kretzmann v. Dunne (228 Ill. 31; 81 N. E. 790; affirming 130 Ill. App. 469), 594.
- Krick v. Dow ([Tex. Civ. App.] 84 S. W. 245), 772, 773, 1242.
- Krieger, *In re* (59 N. Y. App. 346; 69 N. Y. Supp. 851), 879, 881.
- Kriel v. Commonwealth (5 Bush 363), 2061, 2062.
- Krigler v. Shepler ([Kan.] 101 Pac. 619), 1784.
- Krnavek v. State (38 Tex. Cr. Rep. 44; 41 S. W. 612), 1339, 1342, 1346, 1567.
- Kroer v. People (78 Ill. 294), 1118, 1122, 1125, 1127, 1134, 1538, 1567, 1761, 1764.
- Kroft v. Keokuk (14 Iowa 86), 811.
- Krueger v. Colville (49 Wash. 295; 95 Pac. 81), 186, 259, 714, 715, 720, 752.
- Krug, *In re* (72 Neb. 576; 101 N. W. 242), 535, 645.
- Kruger v. Spachek (22 Tex. App. 307; 54 S. W. 295), 1969.

[References are to pages.]

Krulevitz v. Eastern R. Co. (143 Mass. 228; 9 N. E. 613), 2033.

Krumbholz, *In re* (60 N. Y. Misc. Rep. 534; 113 N. Y. Supp. 1060), 579.

Krummel v. Kidd ([1905] Vict. L. R. 193; 26 Austr. L. T. 131; 10 Austr. L. R. 264), 1257.

Kruse v. Williams (80 Pac. 648), 250, 1558.

Krzykeva v. Croninger (200 Pa. 359; 49 Atl. 979), 808.

Kuhlman ([Neb.] 98 N. W. 419), 1948.

Kuhlman v. Wieben (129 Iowa 188; 105 N. W. 445; 2 L. R. A. [N. S.] 555), 1251, 1631, 1735, 2095.

Kuhn v. Bauer (15 Neb. 150; 18 N. W. 27), 1884.

Kuhn v. Board, etc. (4 W. Va. 499), 394.

Kuhn v. Common Council (79 Mich. 534; 38 N. W. 470), 194.

Kuhn v. State (34 Tex. Cr. Rep. 85; 29 S. W. 272), 1646.

Kunkel v. Abell (170 Ind. 305; 84 N. E. 503), 572.

Kunkle v. Abel (167 Ind. 434; 79 N. E. 753), 612, 614, 615, 624.

Kurth v. State (86 Tenn. 134; 5 S. W. 593), 198, 201, 540, 542, 790.

Kurtz v. People (83 Mich. 279), 215, 1119.

Kusta v. Kimberly (10 Ohio Dec. 789; 2 Wkly. L. Bull. 379), 797.

Kurz v. State (79 Ind. 488), 11, 82, 1220, 1230, 1586, 1592, 1621, 1694, 1845.

Kwong Wo, *In re* (2 B. C. 336), 23.

Kyle v. State (18 Ind. App. 136; 47 N. E. 647), 832, 837, 838.

## L

Labaree v. Klosterman (33 Neb. 150; 49 N. W. 1102), 1162, 1166.

Laboyleaux, *Ex parte* (65 Ind. 545), 530.

Lacey v. Palmer (93 Va. 159; 24 S. E. 930), 324.

Lackey v. Cunningham (56 Pa. 370), 2151.

Lackman v. Walker (52 Fla. 297; 42 So. 461), 445.

La Croix v. Fairfield Co. (49 Conn. 591), 488, 743.

La Croix v. Fairfield Co. (50 Conn. 321; 47 Am. Rep. 648), 182, 183, 184, 185, 490, 715, 718, 720, 743.

Lacy v. Garrard (2 Ham [Ohio] 7), 2093, 2099, 2109.

Lacy v. Garrard (2 Ohio 7) 2100.

Lacy v. Mann (59 Kan. 777; 53 Pac. 754), 2099, 2128.

Lacy v. State (32 Tex. 227), 76, 1637.

Ladd v. Dillingham (34 Me. 316), 1782.

Ladd v. Moore (3 Sandf. 589), 2127.

Ladson v. State ([Fla.] 47 So. 517), 4, 1495.

Ladwig v. State (40 Tex. Cr. App. 585; 51 S. W. 390), 958, 1681.

Lafayette, *In re* (45 N. Y. Misc. 141; 91 N. Y. Supp. 970; order affirmed, 93 N. Y. Supp. 534; 105 N. Y. App. Div. 25), 880, 881, 884, 889.

Lafferty v. Huffman (99 Ky. 80; 35 S. W. 123; 32 L. R. A. 203), 932, 1286.

Laffey v. Magarian (22 N. Z. 577), 1251.

Lafler v. Fisher (121 Mich. 60; 79 N. W. 934), 62, 1250, 2008.

La Fitte v. Ft. Collins (42 Colo. 293; 95 Pac. 927), 127.

[References are to pages.]

- La France v. Krayner (42 Iowa, 143), 1915, 1927.
- Lagagianmis v. Cruikshank (1 Vict. L. R. 97), 643.
- Lahey v. Crist (130 Ill. App. 152), 1862.
- Laid v. State (104 Ga. 726; 30 S. E. 949), 82, 695.
- Laing v. State (9 Tex. Civ. App. 136; 28 S. W. 1040), 1227.
- Lake, *In re* (26 C. P. [Can.] 173), 889.
- Lake v. Linton (6 La. Ann. 262), 2153.
- Lake v. Stahl ([Kan.] 93 Pac. 275), 1023.
- Lake v. Stahl (79 Kan. 854; 99 Pac. 275), 1772.
- Lake Erie, etc. R. Co. v. Zoffinger (107 Ill. 199), 2191, 2194.
- Lake Shore, etc. R. Co. v. Miller (25 Mich. 274), 2179, 2180, 2182.
- Laliberte v. Fortin (2 Que. L. R. 573, reversing 3 Que. C. R. 385), 1441.
- Lally, *In re* (85 Iowa 49; 51 N. W. 1155; 16 L. R. A. 681), 2163.
- Lambe v. Jobin (12 L. N. [Can.] 407), 1372.
- Lambert, *Ex parte* (22 N. W. [N. S. W.] 130), 371.
- Lambert v. Rahway (58 N. J. L. 578; 34 Atl. 5), 727, 734, 740, 1760.
- Lambert v. State (8 Mo. 492), 509.
- Lambert v. State (37 Tex. Cr. App. 232; 39 S. W. 299), 849, 854, 869, 916.
- Lambert v. Stevens (29 Neb. 283; 45 N. W. 263), 568.
- Lambie v. State (151 Ala. 86; 44 So. 51), 83, 967, 1349, 1556, 1643, 1701.
- Lammert v. Lidwell (62 Mo. 188), 240.
- L' Amoureux v. Crosby (2 Paige 422; 22 Am. Dec. 655), 2119, 2120.
- Lanahan v. Bailey ([S. C.] 31 S. E. 332; 42 L. R. A. 297), 772.
- Lanar v. Wiedeman (57 Mo. App. 507), 408.
- Lancaster v. State (2 Lea 575), 2072, 2074.
- Lancaster, etc. Bank v. Moore (78 Pa. St. 407), 2123.
- Lanekton v. United States (18 App. D. C. 348), 2038.
- Land v. State (5 Ga. App. 98; 62 S. E. 665), 1092.
- Lander & Bagley's Contract, *In re* ([1892] 3 Ch. 41), 1826.
- Landt v. Remley (130 Iowa 227; 85 N. W. 783), 1002.
- Lane v. Lane ([1890] p. 133; 60 J. P. 345; 65 L. J. P. 63; 74 L. T. 558), 2168.
- Lane v. Missouri Pac. R. Co. (132 Mo. 4; 33 S. W. 645; 1128), 2191, 2193.
- Lane v. State (37 Ark. 273), 515, 1349, 1371.
- Lane v. State (49 Tex. Cr. App. 335; 92 S. W. 839), 1212, 1611, 1666.
- Lane v. State ([Tex. Cr. App.] 82 S. W. 1034), 1651.
- Lane v. Tippy (52 Ill. App. 532), 1883, 1912.
- Lane Co. v. Oregon (7 Wall. [U. S.] 71), 276.
- Lanergan v. People (50 Barb. 266; 34 How. Pr. 390; 6 Park. Cr. Rep. 209), 2039, 2040, 2051, 2052, 2053, 2061, 2071, 2085.
- Lang's Est., *In re* (65 Cal. 19; 2 Pac. 491), 2136.
- Lang v. Ingalls Zinc Co. ([Tenn Ch. App.] 49 S. W. 288), 2094, 2122.
- Langan v. People (32 Colo. 414; 76 Pac. 1048), 1505, 1523, 1738.

[References are to pages.]

- Langel v. Bushnell (197 Ill. 20; 63 N. E. 1086, affirming 96 Ill. App. 618), 469, 967, 978, 1089, 1098, 1698.
- Langen v. Wood River (77 Neb. 444; 109 N. W. 748), 472.
- Langford, *In re* (57 Fed. 570), 1017, 1021.
- Langrish v. Archer (10 Q. B. Div. 44; 47 J. P. 295; 52 L. J. M. C. 47; 31 W. R. 183; 47 L. T. 548), 2025.
- Langworthy v. Dubuque (16 Iowa 271), 393.
- Langton v. Hughes (1 Maul. & S. 593), 1796.
- Lanham v. Wood (167 Ind. 398; 79 N. E. 376), 663, 668, 669.
- Laning v. Laning (21 N. J. Eq. 248), 2156, 2166, 2168.
- Laning v. New York Cent. R. Co. 49 N. Y. 521; 10 Am. Rep. 417), 2197, 2198, 2199, 2200, 2201.
- Lanning v. Board ([N. J. L.] 68 Atl. 1083), 591.
- La Norris v. State (13 Tex. App. 33; 44 Am. Rep. 699), 549, 1372, 1373.
- Lantz v. Hightstown (46 N. J. L. 102), 716, 727, 743.
- Laper, *In re* (165 N. Y. 618; 59 N. E. 1125; 53 N. Y. Div. 576; 66 N. Y. Supp. 13), 580, 581.
- Lapiere v. Briere (10 Leg. News 387), 1781.
- Laranger v. Jardine (56 Mich. 518; 23 N. W. 203), 1780.
- Laranne Co. v. New Albany Co. 92 U. S. 307), 393.
- Largin v. State (37 Tex. Cr. App. 574; 40 S. W. 280), 1607.
- Larimer v. Kelly (13 Kan. 78), 2253.
- Larkin v. Simmons ([Ala.] 46 So. 451), 889.
- Larner, *In re* (79 N. Y. Supp. 1039; 12 N. Y. Ann. Cas. 362), 2019.
- La Roche v. Brewer (1 Ohio C. D. 432), 2011, 2013.
- Larr v. State (45 Ind. 364), 660.
- Larson v. Chistensen (14 N. D. 476; 106 N. W. 51), 1768.
- Lartz v. Gibson (13 Bradw. [Ill.] 487), 1869, 1962.
- Larzelere v. Kerchessner (73 Mich. 276; 41 N. W. 488), 1949, 1960, 1966, 1983, 1985, 2005.
- Lashus v. State (79 Me. 504; 11 Atl. 180), 1729.
- Laswell v. State (21 Tenn. [2 Humph.] 402), 31.
- Latham v. State ([Tex. Cr. App.] 72 S. W. 182), 1203.
- Lathrope v. State (51 Ind. 192), 1248, 1353, 1357, 1359, 1565, 1633.
- Lathrope v. State (50 Ind. 555), 1586, 1592.
- Latimer v. Birmingham, J. J. (60 J. P. 660n.) 623.
- Lauer v. District of Columbia (11 App. D. L. 453), 1313, 1544.
- Lauer v. State (24 Ind. 131), 356, 1352, 1356, 1359, 1360, 1615, 1616, 1619.
- Lauk's Appeal, *In re* (2 Super. Ct' 53; 39 W. N. C. 42), 553.
- Lauder v. Chicago (111 Ill. 291), 472.
- Laundrum v. Flanigan (60 Kan. 436; 56 P. 753), 1895.
- Laundry License Case (22 Fed. 201), 411, 412, 786, 789.
- Lauten v. Rowan (58 N. H. 215), 1790.
- Lauter v. Allenstown (58 N. H. 289), 477.
- Lautznester v. State (19 Tex. App. 320), 1563.
- Lavette v. Sage (29 Conn. 577), 2099, 2102, 2103.



[References are to pages.]

- Law and Order Society, *In re* 185 Pa. 572; 40 Atl. 92), 608.
- Lawrence, *In re* (69 Ala. 608; 11 Pac. 217), 521.
- Lawrence, *In re* (69 Cal. 608; 11 Pac. 217), 444, 448, 449, 800.
- Lawrence v. Gray (11 Johns. 179), 493, 500, 687.
- Lawrence v. Monroe (44 Kan. 607; 24 Pac. 1113), 439.
- Lawrence v. National Ins. Co. (127 Mass. 557, *note.*) 1779.
- Lawrence v. State (7 Tex. App. 192), 1125, 1319.
- Lawrenceburg v. Wuest (16 Ind. 337), 397, 413, 418.
- Laws v. State (144 Ala. 118; 42 So. 40), 2038.
- Lawson, *In re* (109 N. Y. App. Div. 195; 96 N. Y. Supp. 33), 745.
- Lawson v. Commonwealth ([Ky.] 66 S. W. 1010; 23 Ky. L. Rep. 1983), 931.
- Lawson v. Edminson (78 L. J. K. B. 36 [1908]; 2 K. B. 952; 72 J. P. 79; 25 T. L. R. 11), 2028.
- Lawson v. Eggleston (59 N. E. 1124; 164 N. Y. 600; affirming 52 N. Y. Supp. 181), 1873, 1954, 1975.
- Lawson v. State (55 Ala. 118), 1111, 1665, 1666.
- Lawson v. State (151 Ala. 95; 44 So. 50), 1554.
- Lawton v. Allentown (58 N. H. 289), 384.
- Lawton v. Sun Mut. Ins. Co. (2 Cush. 500), 2041.
- Layton v. Deck (63 Ill. App. 553), 1908.
- Layton v. State (49 Ind. 229), 1567.
- Lazare v. State (19 Ohio St. 43), 226.
- Lazell v. Pinnick (1 Tyler [Vt.] 247; 4 Am. Dec. 722), 2128, 2131.
- Lea v. State (64 Miss. 201; 1 So. 51), 1446, 1504.
- Lea v. State (78 Tenn. [10 Lea] 35), 247.
- Lea v. Whittaker ([1872] L. R. 8 C. P. 70; 37 J. P. 183; 27 L. T. 676; 21 W. R. 230), 1832.
- Leach v. State (99 Tenn. 584; 42 S. W. 195), 1583.
- Leach v. State (35 Tex. Rep. 449; 34 S. W. 129), 1463.
- Leach v. State ([Tex. Cr. App.] 53 S. W. 630), 1182.
- Leader v. Yell (33 L. J. M. C. p. 233), 598.
- League v. Erskine (120 Iowa, 464; 94 N. W. 938), 1736, 1861, 1950, 1972.
- Leah v. Minns (47 J. P. 198), 961.
- Leak v. Commonwealth ([Ky.] 64 S. W. 521; 23 Ky. L. Rep. 932), 1380, 1381.
- Leake, *In re* (26 C. P. [Can.] 173), 894, 907.
- Leake v. Linton (6 La. Ann. 262), 2166.
- Leaky, *In re* (14 Pa. Co. Ct. Rep. 430; 3 Pa. Dist. 472), 696.
- Leary v. State (39 Ind. 544), 1109, 1491.
- Leavenworth v. Booth (15 Kan. 628), 791.
- Leavitt v. Morris (105 Minn. 170; 117 N. W. 393), 2017, 2023.
- Le Blanc, *Ex parte* (1 Can. Cr. Cas. 12; 33 N. B. 90), 1571.
- Lebkovitz v. State (113 Ind. 26; 14 N. E. 363), 1746.
- Lebolt, *In re* (77 Fed. 587), 331.
- Leckey v. Cunningham (56 Pa. 370), 2137.
- Ledbetter v. State (143 Ala. 52; 38 So. 836), 1181.
- Lederer v. State (11 Ohio Dec. 31), 1120.

[References are to pages.]

- Lederer v. State (24 Wkly. L. Bull. 153), 1460.
- Lee, *In re* 46 N. J. Eq. 193; 18 Atl. 525), 2122, 2134, 2137, 2149.
- Lee v. Lee (3 Wash. 236), 2165, 2167.
- Lee v. Roberts (3 Okla. 106; 41 Pac. 595), 798.
- Lee v. Schull ([Ind.] 88 N. E. 521), 601, 607, 612.
- Lee v. State (143 Ala. 93; 39 So. 720), 174.
- Lee v. Ware (1 Hill L. [S. C.] 313), 2004, 2008.
- Leech v. Leech (Clark [Pa.] 86; 1 Phila. 244; 4 Am. L. Jr. 174), 2135.
- Lee County v. Hooper (128 Ga. 99; 56 N. E. 997), 986.
- Leeds Corporation v. Ryder ([1907] A. C. 420; 71 J. P. 484; 76 L. J. K. B. 1032; 87 L. T. 261), 547, 656, 659, 678.
- Leesburg v. Putnam (103 Ga. 110; 29 S. E. 602; 68 Am. St. 80), 69, 70, 75, 475.
- Leeson v. Board (19 Ont. 67), 648, 652, 715.
- Leforce v. Commonwealth (5 Ky. L. Rep. [abstract] 608), 1464.
- Leftinch v. State ([Tex. Cr. App.] 55 S. W. 571), 934, 1690, 1692, 1715.
- Leftwiche's Case (5 Rand. [Va.] 657), 929.
- Legal Tender Cases (12 Wall. [U. S.] 561), 106.
- Leger v. Rice (Fed. Cas. No. 8210), 233.
- Legeyt v. O'Brien (Milw. Eccl. Rep. 325), 2109, 2114, 2115.
- Legg v. Anderson (116 Ga. 401; 42 S. E. 720), 976, 986, 1108.
- Legori v. State (8 S. & M. 697), 1481.
- Lehman v. District of Columbia (19 App. D. C. 217), 1130, 1311, 1312, 1363, 1511, 1589.
- Lehman v. Porter (73 Miss. 216; 18 So. 920), 894, 897, 906.
- Lehritter v. State (42 Ind. 383), 495, 1516, 1634.
- Leibeknecht, *In re* (14 Pa. Co. Ct. Rep. 571; 3 Pa. Dist. Rep. 474), 696.
- Leigh v. Westervelt (2 Duer. 618), 636, 658.
- Leight v. Milton (2 N. Z. L. R. 214), 372.
- Leightfoot v. Heron (3 Yonge & Coll. 586), 2099.
- Leighton v. Maury (76 Va. 865), 607, 608, 627, 631, 632, 662, 665.
- Leighton v. Sargent (31 N. H. 119; 64 Am. Dec. 323), 2254.
- Leister, Appeal of (20 W. N. C. 224), 675.
- Leister's Appeal ([Pa.] 11 Atl. 387), 626, 628, 664.
- Leister, *In re* (20 W. N. C. 224), 638.
- Leisy v. Hardin (135 U. S. 100; 10 Sup. Ct. 681; 34 L. Ed. 128), 156, 210, 299, 305, 309, 313, 315, 318, 1426, 1478, 1433, 1800.
- Lemerise, *In re* (73 Vt. 304; 50 Atl. 1062), 1806.
- Lemington v. Blodgett (37 Vt. 210; 37 Vt. 215), 384, 385.
- Lemly v. State (70 Miss. 241; 12 So. 22; 20 L. R. A. 645), 965, 967.
- Lemon v. Peyton (64 Miss. 161; 8 So. 235), 231, 232, 235, 862, 875.
- Lemon v. State (50 Ala. 130), 1113, 1666, 1765.
- Lemon v. State (4 Ind. 603), 1521.
- Lemont v. Washington, etc., R. Co. (1 Mackey, 180), 2206.
- Lemore v. Commonwealth (127 Ky. 480; 105 S. W. 930; 32 Ky. L. Rep. 387), 949.
- Lemp v. Fullerton (83 Iowa, 192; 48 N. W. 1034; 13 L. R. 408), 111, 327, 1828.

[References are to pages.]

- Leney & Sons, Limited, v. Callingham & Thompson ([1907] 24 T. L. R. 55), 1829.  
 Lenthall v. Crow (16 N. S. W. L. R. 111), 1183.  
 Lenthall v. Smith (15 N. S. W. L. R. 277), 1384.\*  
 Leo Ebert Brewing Co. v. State (25 Ohio Cir. Ct. Rep. 601), 1169, 1170, 1177.  
 Leonard v. Canton (35 Miss. 189), 412, 414.  
 Leonard v. Saline Co. Court (32 Mo. App. 633), 883, 885, 887.  
 Leon Mercantile Co. v. Anderson ([Tex.] 121 S. W. 868), 715, 720, 1769.  
 Leothall v. Smith (15 N. S. W. L. R. 277), 1507.  
 Leppert v. State (7 Ind. 300), 1589.  
 Lerec v. State ([Tex. Cr. App.] 97 S. W. 1049), 1693.  
 Lerderer v. State (24 Wkly. L. Bull. 153; affirmed, 5 Ohio Cir. Ct. Rep. 623; 3 Ohio C. D. 303), 1115, 1122, 1128.  
 Leroy v. State ([Ala.] 25 So. 247), 2038, 2060.  
 Lervery v. State ([Tex. Cr. App.] 34 S. W. 956), 1471.  
 Leslie v. Clarke (22 N. Z. 967), 1313.  
 Leslie v. Commonwealth (107 Mass. 215), 1074.  
 Lessman v. Territory (3 Wash. Ter. 453), 231.  
 Lester, *Ex parte* (77 Va. 663), 627, 662, 663.  
 Lester v. Miller (76 Miss. 309; 24 So. 193), 869.  
 Lester v. Price (83 Va. 648; 3 S. E. 529), 195, 608, 662, 668, 669, 696, 706.  
 Lester v. State (32 Ark. 727), 1583.  
 Lester v. State ([Tex. Cr. App.] 86 S. W. 326), 949.  
 Lester v. Torrens (2 Q. B. Div. 404; 41 J. P. 821; 25 W. R. 691; 46 L. J. M. C. 280), 361, 2030.  
 Leveille, *Ex parte* (Stephen's Canadian Digest [1877-1881] p. 474, § 155), 518.  
 Levering v. State ([Tex. Cr. App.] 33 S. W. 976), 1712.  
 Levi v. Rex ([1906] East. Dist. Ct. Rep. 272), 1182, 1720.  
 Levis' Estate (140 Pa. 179; 21 Atl. 242), 2148.  
 Levi v. Louisville (96 Ky. 394; 30 S. W. 973; 28 L. R. A. 480), 788.  
 Levi v. State (4 Baxt. 289), 1382.  
 Levine v. State (35 Tex. Cr. Rep. 647; 34 S. W. 969), 1125, 1613.  
 Levy, *Ex parte* (43 Ark. 42; 51 Am. Rep. 550), 627, 628, 662.  
 Levy v. State, (133 Ala. 190; 31 So. 805), 953, 1600.  
 Levy v. State (6 Ind. 281), 216.  
 Levy v. State (161 Ind. 251; 68 N. E. 172), 789.  
 Levy v. State (89 Miss. 394; 42 So. 875), 1098.  
 Lewadag v. State (4 Ind. 611), 523.  
 Lewis, *In re* (26 N. Y. Misc. Rep. 532; 57 N. Y. Supp. 676), 592, 595.  
 Lewis v. Brennan ([Iowa] 117 N. W. 279), 998, 1000, 1001.  
 Lewis v. City Na. Bank (72 Ill. 543), 1843.  
 Lewis v. Commonwealth ([Ky.] 121 S. W. 643), 718, 720, 721.  
 Lewis v. Commonwealth (90 Va. 843; 20 S. E. 777), 1111, 1452.  
 Lewis v. Foster (1 N. H. 61), 929.  
 Lewis v. Hogan (91 Iowa, 734; 59 N. W. 290), 988.  
 Lewis v. Jones (50 Barb. 645), 2137, 2151.  
 Lewis v. Lewis (75 Iowa, 200; 39 N. W. 271), 2161.

[References are to pages.]

- Lewis v. State (21 Ark. 209), 270, 1348.  
 Lewis v. State ([Ga.] 64 S. E. 701), 1664.  
 Lewis v. State ([Tex. Cr. App.] 47 S. W. 988; 39 S. W. 570), 1743.  
 Lewis v. State ([Tex. Cr. App.] 49 S. W. 603), 1687.  
 Lewis v. United States (1 Morris [Ia.] 199), 694.  
 Lewis v. Welch (14 N. H. 294), 1780.  
 Lewiston v. Fitch (130 Ill. App. 170), 463.  
 Lexington v. Sargent (64 Miss. 621; 1 So. 903), 675.  
 Lexington Brewing Co. v. Commonwealth (124 Ky. 476; 99 S. W. 618; 30 Ky. L. Rep. 758), 948.  
 Lexper v. State (29 Tex. App. 63; 14 S. W. 398), 2056.  
 Leyden v. State (78 Ga. 105), 1124.  
 Leyner v. State (8 Ind. 490), 1741.  
 Liberty v. Moran (121 Mo. App. 682; 97 S. W. 948), 1615, 1654.  
 License Cases (5 How. 504; 12 L. Ed. 256), 91, 100, 105, 107, 139, 154, 181, 239, 302, 311, 313, 398, 404, 418, 525, 790, 1010.  
 License Commissioners v. O'Conner (17 R. I. 40; 19 Atl. 1080), 744, 749.  
 License Commissioners v. Norfolk (14 Ont. 749), 262.  
 License Tax Cases (5 Wall. 462; 18 L. Ed. 497), 141, 451.  
 Liddell v. Lofthouse ([1896] 1 Q. B. 498; 60 J. P. 264; 12 T. L. R. 204), 380.  
 Liebler v. Carrel (155 Mich. 196; 118 N. W. 975; 15 Det. L. N. 976), 997, 1862, 1883, 1962, 1969.  
 Liebold v. People (86 Ill. 33), 1303.  
 Lienpe v. State (28 Tex. App. 179; 12 S. W. 588), 1583.  
 Life Association v. Foster (11 Sc. Sess. Cas. [3d Ser.] 351), 2221.  
 Liggett v. People (26 Colo. 364; 58 Pac. 144), 824, 1645.  
 Ligonier v. Ackerman (46 Ind. 552; 15 Am. Rep. 323), 811, 816.  
 Lightfoot v. Heron (3 Younge & C. Exch. 586), 2094, 2122.  
 Lightner v. Casey (31 Pa. 341), 774.  
 Lightner v. Commonwealth (31 Pa. St. 341), 766.  
 Liles v. State (88 Ala. 139; 7 So. 196), 1230.  
 Liles v. State (43 Ark. 95), 1598.  
 Lillienfeld v. Commonwealth (92 Va. 118; 23 S. E. 882), 740, 1613.  
 Lillensteine v. State (46 Ala. 498), 1112, 1192.  
 Lilly v. City of Indianapolis (149 Ind. 648; 49 N. E. 887), 106.  
 Lincoln v. Smith (27 Vt. 328), 91, 110, 125, 253, 255, 1007, 1008, 1040, 1043, 1072, 1088, 1530, 1659.  
 Lincoln Center v. Bailey (64 Kan. 885; 67 Pac. 455), 1614.  
 Lincoln Center v. Linker (5 Kan. App. 242; 47 Pac. 174), 47, 1505, 1707, 1712.  
 Lincoln Center v. Linker (6 Kan. App. 369; 51 Pac. 807), 467, 1455, 1556.  
 Lincoln Center v. Linker (7 Kan. App. 282; 53 Pac. 787), 39, 48, 434, 1493, 1706.  
 Lincoln Parish v. Harper (42 La. Ann. 776; 7 So. 716), 432.  
 Lincolnton v. McCarter (Busb. L. [N. C.] 429), 1124, 1127.  
 Lindell v. Rokes (60 Mo. 294; 21 Am. Rep. 395), 1785.  
 Lindenmiller v. People (3 Barb. [N. Y.] 548), 215.

[References are to pages.]

- Linder v. Prior ([1838] 8 C. & P. 518), 1820.
- Linder v. State (93 Ind. 254), 1560.
- Lindley v. State ([Ark.] 120 S. W. 987), 127, 336, 947.
- Lindsay v. Commonwealth (99 Ky. 164; 35 S. W. 269), 1692.
- Lindsay v. State (19 Ala. 560), 1246, 1514.
- Lindsey v. Stone (123 Mass. 332), 1798, 1800.
- Lingelbach v. Hobson ([Iowa] 107 N. W. 168), 346, 1132.
- Linkenhelt v. Garrett (118 Ind. 599; 20 N. E. 708), 190, 280, 414, 430, 466.
- Lipari v. State (19 Tex. App. 431), 912.
- Liquor Dealers, *In re* (6 Pa. Dist. Rep. 723; 28 Pittsb. L. J. [N. S.] 16), 1320.
- Liquor Dealers, *In re* (19 Pa. Co. Ct. Rep. 329), 1320.
- Liquor License, *In re* (1 B. & C. [N. S.] 257), 560.
- Liquors, *In re* (15 R. I. 243; 3 Atl. 3), 1065.
- Liquor Locations, *In re* (13 R. I. 733), 130, 247, 592.
- Liquor Tax Certificate *In re* (23 N. Y. Misc. Rep. 446; 51 N. Y. Supp. 281), 591, 592.
- Lissing v. Beach (99 Mich. 431; 58 N. W. 366), 1983.
- List v. Padget (96 Ind. 126), 431, 601, 608, 854.
- Litch v. People ([Colo. App.] 75 Pac. 1079), 1178.
- Little, *Ex parte* (19 W. N. [N. S. W.] 268), 369, 372, 375.
- Little v. Barksdale ([S. C.] 63 S. E. 308), 381.
- Little v. State (123 Ga. 503; 51 S. E. 501), 452, 1082.
- Little v. State (42 Tex. Cr. Rep. 551; 61 S. W. 483), 2090.
- Little v. Thompson (24 Ind. 146), 608.
- Little Chute v. Van Camp (136 Wis. 526; 117 N. W. 1012), 459.
- Littlefield v. Peckham (1 R. I. 500), 1748.
- Littlejohn v. Stells (123 Ga. 427; 51 S. E. 390), 169, 216, 1761.
- Little Rock, etc., R. Co. v. Parkhurst (36 Ark. 371), 2178, 2180.
- Little Rock, etc., R. Co. v. Haynes (47 Ark. 297), 2178.
- Littleton, *In re* (113 N. Y. App. Div. 471; 99 N. Y. Supp. 417), 647.
- Littleton v. Burgess (13 Wyo. 261; 82 Pac. 864), 185.
- Littleton v. Fritz (65 Iowa, 488; 22 N. W. 641; 54 Am. St. 19), 256, 259, 981, 985.
- Littleton v. Harris (73 Iowa, 167; 34 N. W. 800), 990, 992.
- Lively v. State ([Tex. Cr. App.] 73 S. W. 1048), 914, 915, 1680, 1681.
- Livery Stables v. State (16 Mo. App. 131), 437.
- Livingston, *In re* (24 N. Y. App. Div. 51; 48 N. Y. Supp. 989), 491, 714, 743.
- Livingston, *In re* (62 N. Y. Misc. Rep. 334; 115 N. Y. Supp. 269), 891.
- Livingston, *In re* (115 N. Y. Supp. 269), 853.
- Livingston v. Corey (33 Neb. 366; 50 N. W. 263), 576, 600, 637, 638.
- Livingston v. Wolf (136 Pa. St. 519; 20 Atl. 551), 408.
- Livingstone, *In re* (6 Prac. [Can.] Rep. 17), 2024.
- Livingstone, *Ex parte* (20 Nev. 282; 21 Pac. 322), 70.
- Llewellyn v. Rutherford ([1875] L. R. 10 C. P. 456; 44 L. J. C. P. 281; 32 L. T. 610), 1831, 1832.



## TABLE OF CASES.

CXC1

[References are to pages.]

- Lloyd v. Albemarle, etc., R. Co.  
(118 N. C. 1010; 24 S. E.  
805), 2178, 2179.
- Lloyd v. Burnett (64 J. P. 708;  
82 L. T. 804), 1139.
- Lloyd v. Canon City ([Colo.] 103  
Pac. 288 [Elks' Club]), 1325.
- Lloyd v. Dollison (23 Ohio Cir.  
Ct. Rep. 571), 148, 151, 230,  
240, 554, 1683.
- Lloyd v. Kelly (48 Ill. App. 554),  
1970, 1972.
- Loan v. Etzel (62 Iowa, 424; 17  
N. W. 611), 2011.
- Loan v. Hiney (53 Iowa, 89; 4 N.  
W. 865), 1927, 1931, 2013.
- Lochheim v. Gill (17 Ind. 139),  
2094, 2116.
- Locke's Appeal, 72 Pa. St. 491;  
13 Am. Rep. 716), 228, 231,  
235.
- Locke v. Commonwealth ([Ky.]  
63 S. W. 795; 23 Ky. 740),  
1493.
- Locke v. Commonwealth (113 Ky.  
864; 69 S. W. 763; 24 K. L.  
Rep. 654), 1357, 1358, 1467.
- Locke v. Commonwealth ([Ky.]  
74 S. W. 654; 25 Ky. L. Rep.  
76), 84, 935, 963, 1697, 1699.
- Locke v. Garnett ([Ky.] 42 S. W.  
918; 19 Ky. L. Rep. 1059),  
908, 920, 922.
- Lockridge v. Lockridge (3 Dana,  
28; 28 Am. Dec. 52), 2165.
- Lockwood v. Cooper ([1903] 2  
K. B. 428; 72 L. J. K. B.  
690; 89 L. T. 306; 52 W. R.  
48; 67 J. P. 307; 20 Cox C. C.  
539), 372, 373, 374.
- Loeb, *Ex parte* (72 Fed. 657), 307.
- Loeb v. City of Attica (82 Ind.  
175), 394, 432.
- Loeb v. Duncan (63 Miss. 89),  
574, 674.
- Loeb v. State (75 Ga. 258), 1357,  
1358, 1460, 1560.
- Lodamo v. State (25 Ala. 64),  
109, 210, 215.
- Loeffler v. District of Columbia  
(15 App. D. C. 329), 1235.
- Loewer v. Sedalia (77 Mo. 431),  
2171, 2190.
- Lofland, *In re* ([Del.] 66 Atl.  
361), 563.
- Lofton v. Collins (117 Ga. 434;  
43 S. E. 708; 61 L. R. A.  
150), 475, 979, 985.
- Loftus v. Commonwealth (13  
Gratt. 631), 1651.
- Loftus v. Hamilton (105 Ill. App.  
72, 75), 1879.
- Loftus v. Maloney (89 Vt. 576;  
16 S. E. 749), 2094.
- Logan, *In re* (22 Austr. L. T. 109;  
6 Austr. L. R. 253), 626, 712.
- Logan v. Buck (3 Utah, 301),  
216.
- Logan v. State (24 Ala. 182),  
372.
- Long v. State (27 Ala. 32), 426,  
518, 539, 573.
- Long v. State (27 Ala. 164; 426.  
Logan v. State ([Okla.] 115 S.  
W. 1192), 1454.
- Logan City v. Buck (3 Utah, 307;  
5 Pac. 564), 271, 432.
- Loid v. State (104 Ga. 726; 30  
S. E. 961), 1714.
- Lonchheim v. Gill (17 Ind. 139),  
2108.
- London County Council, *In re*  
([1898] 1 Q. B. 387; 61 J.  
P. 808; 67 L. J. Q. B. 382;  
77 L. T. 436; 46 W. R. 172;  
14 T. L. R. 69), 1834.
- London & Suburban Co. v. Field  
([1881] 16 Ch. D. 645; 38 L.  
J. Ch. 549; 44 L. T. 444),  
1814.
- London & Northwestern Rail Co.  
v. Garnett ([1869] L. R. 9  
Eq. 26; 39 L. J. Ch. 25; 21  
L. T. 352; 18 W. R. 246),  
1813.
- Londry, Appeal of (79 Conn. 1;  
63 Atl. 293), 666, 740.

[References are to pages.]

- Long v. A. L. Green & Co. ([Tex. Civ. App.] 95 S. W. 79), 755, 778.
- Long v. Commonwealth (5 Ky. L. Rep. [abstract] 428), 1545.
- Long v. Ingalls Zinc Co. ([Tenn. Ch. App.] 49 S. W. 288), 2108.
- Long v. Joder (139 Iowa, 471; 116 N. W. 1063), 835, 979.
- Long v. Lynch (38 Fed. 489; 4 L. R. A. 831), 335, 1799.
- Long v. State (103 Ala. 55; 15 So. 565), 1278.
- Long v. State (127 Ga. 285; 56 S. E. 424), 1320.
- Long v. State (56 Ind. 206), 1714, 1746.
- Longfellow v. Quimby (29 Me. 196), 1014.
- Longhead v. B. F. Coombs & Co. (64 Mo. App. 559; 2 Mo. App. Rep'r, 1017), 2093, 2097.
- Longley v. Commonwealth (99 Va. 807; 37 S. E. 339; 2 Va. Sup. Ct. Rep. 660), 2039, 2056.
- Longville v. State (4 Tex. App. 312), 198, 199.
- Lonsdale Co. v. Cumberland (18 R. I. 5; 25 Atl. 655), 603, 608, 675.
- Looney v. State (43 Ark. 389), 1196, 1197.
- Loop v. Williams (47 Vt. 407), 1029, 1068.
- Lord, *In re* (32 N. Y. Misc. 223; 66 N. Y. Supp. 252), 577.
- Lord v. Chadbourne (42 Me. 429; 66 Am. Dec. 290), 1028, 1031, 1776.
- Lord v. State (104 Ga. 726; 30 S. E. 949), 30.
- Lorey v. Kelley ([Neb.] 90 N. W. 554), 1912.
- Loring v. Brackett (3 Pick. 403), 610.
- Losan v. Etzel (62 Iowa, 429; 17 N. W. 611), 1931.
- Lossman v. Fidelia Knights (89 Ill. App. 437), 1859.
- Lossman v. Knights (77 Ill. App. 670), 1903.
- Lottery Cases (188 U. S. 321; 47 L. Ed. 492; 23 Sup. Ct. 321), 298.
- Louhridge v. State ([Miss.] 3 So. 667), 1464, 1468, 1478.
- Louisiana v. Anderson ([Mo. App.] 73 S. W. 875), 1443.
- Louisiana, etc., Ry. Co. v. McDonald ([Tex. Civ. App.] 52 S. W. 649), 2184.
- Louisville v. Cain ([Ky.] 119 S. W. 763), 758, 820.
- Louisville v. Gagen ([Ky.] 116 S. W. 745; 118 S. W. 947), 634, 667.
- Louisville v. Hendricks ([Ky.] 116 S. W. 747), 600, 618, 624.
- Louisville v. Kean (18 B. Mon. 9), 403, 627, 632, 634.
- Louisville v. McKean (57 Ky. [18 B. Mon.] 9), 273.
- Louisville v. Worden (11 Ky. L. Rep. [abstract] 402), 470.
- Louisville, etc., Ry. Co. v. Commonwealth (126 Ky. 279; 103 S. W. 349; 31 Ky. L. Rep. 383), 1689, 1726.
- Louisville, etc., R. Co. v. Cummins (111 Ky. 333; 63 S. W. 594; 23 Ky. L. Rep. 681), 2177.
- Louisville, etc., R. Co. v. Davidson (1 Sneed, 637; 62 Am. Dec. 424), 232, 905.
- Louisville, etc., R. Co. v. Ellis (97 Ky. 330; 30 S. W. 979; 17 Ky. L. Rep. 259), 2211, 2212, 2214.
- Louisville, etc., R. Co. v. Johnson (92 Ala. 204), 2203, 2210, 2214.
- Louisville, etc., R. Co. v. Johnson (108 Ala. 62; 19 So. 51; 31 L. R. A. 372), 2174, 2191, 2197, 2203, 2206, 2217, 2218.

[References are to pages.]

- Louisville, etc., R. Co. v. Logan (88 Ky. 232; 3 L. R. A. 80; 10 S. W. 655), 2206, 2208.
- Louisville, etc., R. Co. v. Lewis (14 Ky. L. Rep. 771), 2207.
- Louisville, etc., R. Co. v. McNally ([Ky.] 105 S. W. 124; 35 Ky. L. Rep. 1357), 2202.
- Louisville, etc., R. Co. v. Sullivan (81 Ky. 624; 50 Am. Rep. 186), 2205, 2211, 2214.
- Love v. Porter (93 Ala. 384; 9 S. E. 585), 131, 135, 247, 1278.
- Lovejoy v. Commonwealth (13 Ky. L. Rep. [abstract] 976), 518, 802, 1096, 1117.
- Lovelan v. Briggs (32 Hun [N. Y.] 477, 478), 1958.
- Loveless v. State ([Tex. Cr. App.] 44 S. W. 508), 1650, 1653.
- Loveless v. State (40 Tex. Cr. App. 131; 49 S. W. 98), 866, 908, 1181, 1701.
- Loveless v. State ([Tex. Cr. App.] 49 S. W. 601), 1471.
- Loveless v. State ([Tex. Cr. App.] 50 S. W. 361), 1743.
- Loveless v. State ([Tex. Cr. App.] 49 S. W. 601), 869, 909, 911, 958, 1693, 1740, 1764.
- Loveless v. State (40 Tex. Civ. App. 221; 49 S. W. 892), 80, 958, 1684, 1688.
- Lovette v. Sage (22 Conn. 577), 2130.
- Loving v. State ([Tex. Cr. App.] 100 S. W. 154), 1464, 1472.
- Lovington v. Board (99 Ill. 564), 198, 788.
- Low v. Austin (13 Wall. 29), 316, 1425, 1431.
- Low v. Hutchison (13 N. Z. L. R. 54), 712.
- Low v. Pilotage Commissioners (1 R. M. Charl. 302), 743.
- Lowell v. Oliver (8 Allen [Mass.] 247), 791.
- Lowell v. State (126 Ga. 105; 54 S. E. 916), 1452.
- Lowery v. Briggs ([Tex. Civ. App.] 73 S. W. 1062), 903.
- Lowry v. Commonwealth ([Ky.] 36 S. W. 1117; 18 Ky. L. Rep. 481), 232, 233.
- Lowry v. Grigly (30 Conn. 450), 1019, 1046, 1054.
- Lowery v. State ([Tex. Cr. App.] 34 S. W. 956), 1464, 1474.
- Loza v. State (1 Tex. App. 488), 2078.
- Lucas, *Ex parte* (2 S. R. 191; 19 W. N. [N. S. W.] 98; overruling 18 W. N. [N. S. W.] 287), 682.
- Lucas v. Johnson ([Tex. Civ. App.] 64 S. W. 823), 782, 783, 1938.
- Lucas v. State (92 Ga. 454; 17 S. E. 668), 1124.
- Lucio v. State (35 Tex. Cr. Rep. 320; 33 S. W. 358), 1638, 1643.
- Luck v. State ([Tex. Cr. App.] 97 S. W. 1049), 916, 1470, 1473.
- Lucker v. Commonwealth (4 Bush, 440), 1594.
- Lucker v. Liske, 111 Mich. 683; 70 N. W. 421), 1867, 1953, 1955, 1982.
- Ludwick v. Commonwealth (6 Harris [Pa.] 172), 64, 65, 2030.
- Ludwick v. Commonwealth (18 Pa. St. 172), 65, 2018.
- Ludwig v. Cory (158 Ind. 582; 64 N. E. 14), 606, 855, 859.
- Ludwig v. Sager (84 Ill. 99), 2004, 2005.
- Ludwig v. State (18 Ind. App. 518; 48 N. E. 390), 528, 668, 669, 780.
- Ludwig v. State (40 Tex. Cr. App. 585; 51 S. W. 390), 1182.
- Lueken v. People (3 Ill. App. [3 Bradw.] 375), 1866.
- Luent, *In re* (6 Greel. 412), 111, 139, 189.

[References are to pages.]

- Luff v. Leaper (36 J. P. 773), 373.
- Luker v. Dennis ([1877] 7 Ch. D. 227; 47 L. J. Ch. 174; 37 L. T. 827; 26 W. R. 167), 1815.
- Luminary, The (8 Wheat. [U. S.] 407), 1073.
- Lung v. Michigan (135 U. S. 161; 10 Sup. Ct. 725; 34 L. Ed. 128), 299.
- Lunenberger v. State (74 Miss. 379; 21 So. 134), 1698.
- Lupo v. State (118 Ga. 759; 45 S. E. 602), 1172.
- Lusher v. Seites (4 W. Va. 11), 793.
- Luther v. State (80 Neb. 432; 114 N. W. 411), 1706.
- Lutton v. Palmer (69 Mich. 610; 37 N. W. 701), 553, 806, 1445, 1534, 1555, 1556.
- Lutz v. Crawfordsville (109 Ind. 466; 10 N. E. 411), 98, 168, 402, 403, 405, 406, 411, 414, 448, 450, 457, 458.
- Lydick v. Korner (15 Neb. 500; 20 N. W. 26), 185, 662, 663, 672, 814.
- Lyle v. State (31 Tex. Cr. Rep. 103), 2053, 2087, 2090.
- Lyman, *In re* (163 N. Y. 536; 57 N. E. 745; reversing 51 N. Y. App. Div. 52; 64 N. Y. Supp. 756), 729, 818.
- Lyman, *In re* (23 N. Y. Misc. Rep. 710; 53 N. Y. Supp. 52), 730, 731.
- Lyman, *In re* (24 N. Y. Misc. Rep. 552; 53 N. Y. Supp. 577), 584.
- Lyman, *In re* (25 Misc. Rep. 638; 56 N. Y. S. 359; *Id.* 26 Misc. Rep. 300; 56 N. Y. S. 1020), 743, 1293.
- Lyman, *In re* (26 N. Y. Misc. Rep. 300; 56 N. Y. Supp. 1020), 736, 741.
- Lyman, *In re* (26 N. Y. Supp. 568; 57 N. Y. Supp. 488), 584.
- Lyman, *In re* (27 N. Y. Misc. Rep. 327; 57 N. Y. Supp. 888), 717.
- Lyman, *In re* (28 N. Y. Misc. Rep. 278; 59 N. Y. Supp. 828), 752.
- Lyman, *In re* (28 N. Y. Misc. Rep. 385; 59 N. Y. Supp. 971), 741.
- Lyman, *In re* (28 Misc. Rep. 408; 59 N. Y. Supp. 968; 48 N. Y. App. Div. 275; 62 N. Y. Supp. 846), 746, 751, 1310.
- Lyman, *In re* (28 N. Y. App. Div. 209; 50 N. Y. Supp. 898), 1342, 1344.
- Lyman, *In re* (29 App. Div. 391; 49 N. Y. S. 559; 52 N. Y. S. 1145; 28 Misc. Rep. 385; 59 N. Y. S. 971; 28 Misc. Rep. 278; 59 N. Y. S. 828), 744.
- Lyman, *In re* (29 N. Y. Misc. Rep. 524; 61 N. Y. Supp. 946), 721.
- Lyman, *In re* (32 N. Y. Misc. Rep. 210; 67 N. Y. Supp. 502), 750, 751.
- Lyman, *In re* (34 N. Y. Misc. Rep. 296; 69 N. Y. Supp. 781), 729.
- Lyman, *In re* (34 N. Y. App. 390; 54 N. Y. Supp. 294), 580.
- Lyman v. Gramercy Club (39 N. Y. App. Div. 661; 57 N. Y. Supp. 376), 1344.
- Lyman, *In re* (40 N. Y. App. Div. 46), 69.
- Lyman, *In re* (44 N. Y. App. Div. 507; 60 N. Y. Supp. 805; affirming 27 N. Y. Misc. Rep. 327; 55 N. Y. Supp. 888), 744.
- Lyman, *In re* (48 N. Y. App. Div. 275; 62 N. Y. Supp. 846), 594.

[References are to pages.]

- Lyman, *In re* (53 N. Y. App. Div. 330; 65 N. Y. Supp. 673), 746.  
 Lyman, *In re* (59 N. Y. App. Div. 217; 69 N. Y. Supp. 309; affirming 32 N. Y. Misc. Rep. 210; 67 N. Y. Supp. 48), 521, 697, 739, 745.  
 Lyman, *In re* (62 N. Y. App. Div. 616; 70 N. Y. Supp. 822), 718.  
 Lyman v. Bradsted (26 N. Y. Misc. Rep. 629; 57 N. Y. Supp. 869), 796.  
 Lyman v. Brucker (26 N. Y. Misc. Rep. 594; 56 N. Y. Supp. 767), 755, 768, 775.  
 Lyman v. Cheever (168 N. Y. 43; 60 N. E. 1047; reversing 54 N. Y. App. Div. 618; 66 N. Y. Supp. 1136), 776, 817, 819.  
 Lyman v. City Trust, etc., Co. (166 N. Y. 274; 59 N. E. 903; affirming 62 N. Y. Supp. 1141), 766, 776.  
 Lyman v. Erie Co. (46 N. Y. App. Div. 387; 61 N. Y. Supp. 884; affirmed 161 N. Y. 641; 57 N. E. 1115), 743.  
 Lyman v. Fidelity, etc., Co. (39 N. Y. App. Div. 459; 57 N. Y. Supp. 372), 784.  
 Lyman v. Granmercy Club (28 N. Y. App. Div. 30; 50 N. Y. Supp. 1004), 1742.  
 Lyman v. Gramercy Club (39 N. Y. App. Div. 459; 57 N. Y. Supp. 376), 775.  
 Lyman v. Kane (57 N. Y. App. Div. 549; 67 N. Y. Supp. 1065), 770.  
 Lyman v. McGreivey (159 N. Y. 561; 54 N. E. 1093; affirming 25 N. Y. App. Div. 68; 48 N. Y. Supp. 1035), 796.  
 Lyman v. Malcoln Brewing Co. (160 N. Y. 96; 55 N. E. 577; affirming 40 N. Y. App. Div. 46; 57 N. Y. Supp. 634), 491, 716, 721, 744, 1270.  
 Lyman v. Mead (56 N. Y. App. Div. 582; 67 N. Y. Supp. 254), 783.  
 Lyman v. Murphy (33 N. Y. Misc. Rep. 349; 68 N. Y. Supp. 490), 729.  
 Lyman v. O'Reilly ([1898] 2 Irish Rep. 48), 1346.  
 Lyman v. Oussani (33 N. Y. Misc. Rep. 409; 68 N. Y. Supp. 450), 783, 1188.  
 Lyman v. Perimutter (166 N. Y. 410; 60 N. E. 21; affirming 66 N. Y. App. 866), 777.  
 Lyman v. Schenck ([N. Y.] 55 N. Y. Supp. 770), 768, 777, 778.  
 Lyman v. Schermerhorn (167 N. Y. 113; 60 N. E. 324; affirming 53 N. Y. App. Div. 32; 65 N. Y. Supp. 538), 775.  
 Lyman v. Siebert (31 N. Y. Misc. Rep. 285; 65 N. Y. Supp. 367), 781.  
 Lyman v. Wedmore ([1894] 1 Q. B. 401; 58 J. P. 197; 63 L. J. M. C. 44; 69 L. T. 801; 42 W. R. 301), 678.  
 Lyman v. Young Men's Cosmopolitan Club (28 N. Y. App. Div. 127; 50 N. Y. Supp. 979), 718, 1344.  
 Lynch v. Bates (139 Ind. 206; 39 N. E. 919), 534, 599, 637.  
 Lynch v. Crosby (134 Mass. 313), 1074.  
 Lynch v. O'Donnell (127 Mass. 311), 1281.  
 Lynch v. New York, etc., R. Co. (47 Hun. 524), 2177, 2191, 2192.  
 Lynch v. People (16 Mich. 472), 1129.  
 Lynch v. State (147 Ala. 143; 39 So. 912), 694.  
 Lynde v. Lynde (64 N. J. Eq. 736, 749; 52 A. 694; 58 L. R. A. 471), 2095.  
 Lyng v. Michigan (135 U. S. 161; 10 Sup. Ct. 725), 157, 199.



[References are to pages.]

- Lynn, *Ex parte* (19 Tex. App. 293), 111, 120, 232, 235, 240, 243, 495, 850, 851, 860, 934.
- Lynn v. Allen (145 Ind. 584; 44 N. E. 646), 571.
- Lynn v. State ([Tex. Cr. App.] 22 S. W. 878), 1613.
- Lyon v. Morris (15 Ga. 480), 106.
- Lyon v. Phillips (106 Pa. 57), 2100.
- Lyon v. State (42 Tex. Cr. App. 506; 61 S. W. 125), 940.
- Lyons v. New York, etc., R. Co. (39 Hun, 385), 2198, 2199.
- Lyster v. Lyster (111 Mass. 327), 2154, 2168.
- Lytle v. May (49 Iowa, 224), 233.
- Lytle v. State (31 Ohio St. 196), 2067.
- Mc**
- McAllen v. Rhodes (65 Tex. 348), 925.
- McAllister, *In re* (51 Fed. 282), 1431, 1434.
- McAllister v. Howell (42 Ind. 15), 1808.
- McAllister v. State ([Ala.] 47 So. 161), 111, 190, 192, 284, 1644.
- McArdle, *In re* (126 Fed. 442), 702.
- McArthur v. State (69 Ga. 444), 247, 291.
- McAvoy, *In re* (12 Up. Can. 99), 907.
- McBee v. McBee (22 Ore. 329; 29 Pac. 887; 29 Am. St. 613), 65, 66, 2155, 2157, 2158, 2159.
- McCabe, *In re* (11 Pa. Super. Ct. 560), 696, 697, 705.
- McCabe v. Commonwealth ([Pa.] 8 Atl. 45), 1584.
- McCade v. State ([Neb.] 122 Pac. 893), 1678.
- McCall v. California (136 U. S. 104; 10 Sup. Ct. 881), 157.
- McCalman v. State (96 Ala. 98; 11 So. 408), 369.
- McCam v. Roach (81 Ill. 213), 1973.
- McCampbell v. State (116 Tenn. 98; 93 S. W. 100), 1759.
- McCardle, *Ex parte* (7 Wall. [U. S.] 514), 106.
- McCarl v. State (23 Ind. 127), 1499.
- McCarthy, *Ex parte* (24 N. S. W. 137), 1360.
- McCarthy v. McCarthy (117 Mo. App. 115; 93 S. W. 317), 2154, 2159.
- McCarthy v. Wells (51 Hun, 171; 4 N. Y. Supp. 672), 1951.
- McCarty v. Atlanta (121 Ga. 365; 49 S. E. 287), 1127, 1133.
- McCarty v. Commonwealth (14 Ky. L. Rep. 285), 2041, 2055.
- McCarty v. Gordon (16 Kan. 35), 310, 1787, 1788.
- McCarty v. Justus ([Tex.] 115 S. W. 278), 891.
- McCarty v. McCarty (4 Rich. L. [S. C.] 594), 2256.
- McCarty v. State (162 Ind. 218; 70 N. E. 131), 1873.
- McCarty v. State (4 Tex. App. 461), 2067.
- McCarty v. Wells (51 Hun, 171; 4 N. Y. Supp. 672), 1735, 1864, 1869, 1871.
- McClain, *Ex parte* (61 Cal. 436), 109, 247.
- McClain v. Davis (77 Ind. 419), 2116.
- McClanahan v. Breeding ([Ind.] 88 N. E. 695), 125, 605, 607, 612.
- McClanahan v. McClanahan (104 Tenn. 217; 56 S. W. 858), 64.
- McClandon v. State ([Ark.] 51 S. W. 1062), 2252.
- McClay v. Worrell (18 Neb. 52; 24 N. W. 429), 1876, 1902.
- McCleary v. Barcalow (6 Ohio C. C. 481), 2109, 2114.
- McCleave, *Ex parte* (35 N. B. 100), 1048.

[References are to pages.]

- McCleave v. Moncton (32 Can. S. C. 106), 1026, 1047.
- McClellan v. State (117 Ala. 140; 23 So. 653), 1181, 1741.
- McClelland v. Louisville, etc., R. Co. (94 Ind. 276), 2180, 2205, 2207.
- McClendon v. State ([Ark.] 51 S. W. 1062), 2249.
- McClure v. Braniff (75 Iowa, 38; 39 N. W. 171), 998, 1768.
- McClure v. Krumbholz (9 Pa. Dist. R. 544; 31 Pittsb. L. J. [N. S.] 3; 14 York. Leg. Rec. 31), 546.
- McClure v. Mansell (4 Brewst. 119), 2094, 2108, 2114.
- McClure v. State (148 Ala. 625; 42 So. 813), 1280, 1470, 1471, 1493, 1609.
- McClure v. State (43 Ark. 75), 1598.
- McColl v. Rally (127 Iowa, 633; 103 N. W. 972), 341, 342, 346, 583.
- McCollum v. State (119 Ga. 308; 46 S. W. 413), 1763.
- McComas v. Krug (81 Ind. 327; 42 Am. Rep. 135), 96, 277.
- McConihe v. McMann (27 Vt. 95), 1798.
- McConkie v. District Court (117 Iowa, 334; 90 N. W. 716), 944.
- McConkie v. Remley (119 Iowa, 512; 93 N. W. 505), 714, 722, 738.
- McConnell, *Ex parte* (23 N. S. W. 9; 6 Sup. Rep. 88), 1269.
- McConville v. Mayor, etc. (39 N. J. L. 38), 436.
- McCook v. State (91 Ga. 740; 17 S. E. 1019), 2041, 2047, 2048.
- McCool v. State (23 Ind. 127), 276.
- McCord v. State ([Okla.] 101 Pac. 280), 298, 325, 327, 1771.
- McCormack, *Ex parte* (32 N. W. 272), 1367.
- McCormack v. State (133 Ala. 202; 32 So. 268), 1256, 1632.
- McCormick v. Jester ([Tex.] 115 S. W. 278), 902, 923, 924, 925.
- McCormick v. Pfeiffer (10 N. W. 31), 634, 626, 627.
- McCormick v. State (66 Neb. 337; 92 N. W. 606), 2068, 2082.
- McCowan v. Davidson (43 Ga. 480), 794.
- McCoy, *In re* (104 N. Y. App. Div. 215; 93 N. Y. Supp. 401), 587, 690.
- McCoy v. Clark (104 Iowa, 491; 73 N. W. 1050), 490, 977, 982.
- McCoy v. Clark (109 Iowa, 464; 80 N. W. 538), 994, 998.
- McCoy v. Clark ([Iowa] 81 N. W. 159), 1237, 1239, 1253.
- McCoy v. Zane (65 Mo. 1), 256.
- McCracken v. Markeson (76 Wis. 499; 45 N. W. 323), 2191, 2194, 2197.
- McCracken v. Miller (129 Iowa, 623; 106 N. W. 4), 979, 987, 994, 1084.
- McCracken v. State (71 Md. 150; 17 Atl. 932), 1741.
- McCrary, *In re* (31 Pa. Super. Ct. 192), 643.
- McCraw v. Davis (2 Ired. Eq. [N. C.] 618), 2095, 2107, 2108, 2152.
- McCrea v. Billingslea (89 Md. 767; 43 Atl. 42), 566.
- McCrea v. Washington (10 Ohio Dec. 29; 19 Wkly. L. Bull. 66), 442.
- McCreary v. Commonwealth (8 Ky. L. Rep. [abstract] 437), 884.
- McCreary v. Rhodes (63 Miss. 308), 561, 564.
- McCreary v. State (73 Ala. 480), 156, 158, 294, 1517.
- McCrory, *In re* (31 Pa. Super. Ct. 192), 664.

[References are to pages.]

- McCroy v. Commonwealth (8 Ky. L. Rep. [abstract] 437), 833, 842, 1464, 1682.
- McCue v. Klein (60 Tex. 168), 1939, 2180.
- McCuen v. State (19 Ark. 636), 1500, 1504.
- McCulloch v. State (11 Ind. 424), 106.
- McCullough, *In re* (51 Ark. 159; 10 S. W. 259), 622, 924.
- McCullough's Will (35 Pitts. L. Jr. 169), 2139.
- McCullough v. Blackwell (51 Ark. 159; 10 So. 259), 859, 860.
- McCullough v. Brown (41 S. C. 220; 19 S. E. 458; 23 L. R. A. 410), 111, 149, 174, 307.
- McCullough v. Maryland (4 Wheat. 316; 4 L. Ed. 479), 331.
- McCurdy v. Swift (17 C. R. [Can.] 126), 1855, 1908.
- McCusker, *In re* (47 N. Y. App. Div. 111; 62 N. Y. Supp. 201), 591, 731.
- McCutcheon v. People (69 Ill. 601), 1237, 1238, 1353, 1357.
- McDaniel v. Commonwealth (18 B. Mon. 485), 369.
- McDaniel v. State ([Tex. Cr. App.] 20 S. W. 1108), 1515.
- McDaniel v. State (23 S. W. 989), 925.
- McDaniel v. State ([Tex. Cr. App.] 65 S. W. 1068), 963, 1186.
- McDermott v. Board, etc. (5 Abb. Pr. [N. Y.] 434), 404.
- McDermott v. Commonwealth ([Ky.] 96 S. W. 474; 29 Ky. L. Rep. 750), 949, 951, 1286.
- McDiarmid v. McDiarmid (3 Bligh. N. R. 374), 2144, 2146.
- McDonald, *Ex parte* (20 N. B. 542), 954.
- McDonald v. Casey (84 Mich. 505; 47 N. W. 1104), 1252, 1886, 1888, 1982.
- McDonald v. Chicago, etc., R. Co. 75 Wis. 121; 43 N. W. 744), 2175, 2178.
- McDonald v. Commonwealth (173 Mass. 322; 52 N. E. 814), 259.
- McDonald v. Hughes ([1902] 1 K. B. 94; 66 J. P. 86; 71 L. J. K. B. 43; 50 W. R. 318; 85 L. T. 727; 18 T. L. R. 79; 20 Cox C. C. 131), 900.
- McDonald v. International, etc., R. Co. (86 Tex. 1; 22 S. W. 939, reversing 20 S. W. 847; 21 S. W. 774), 2182.
- McDonald v. State (68 Miss. 728; 10 So. 55), 1464, 1468.
- McDonald v. State ([Tex. Cr. App.] 49 S. W. 589), 1211.
- McDonough, *In re* (49 Fed. 360), 24, 25, 43, 1261.
- McDonough v. Cavanagh (22 W. N. C. [N. S. W.] 151), 1316.
- McDougal v. Giacomini (13 Neb. 431; 14 N. W. 450), 69, 1956, 1974, 1975.
- McDowell v. Preston (26 Ga. 528), 2258, 2259.
- McDuffie v. State (87 Ga. 687; 13 S. E. 596), 1492.
- McElroy v. State (49 Tex. Cr. App. 604; 95 S. W. 539), 1202, 1280, 1286.
- McElwee v. Ferguson (43 Md. 479), 2141.
- McEntee v. Spiehler (12 Daly, 435), 1846.
- McEvoy v. Humphrey (77 Ill. 388), 1864, 1993.
- McFee v. Greenfield (62 Ind. 21), 413.
- McGan v. Pratley (24 Vict. L. R. 840; 5 Austr. L. R. [C. N.] 80), 369.
- McGarvey, *In re* (64 How. Pr. 135), 2120.
- McGarvey v. Puckett (27 Ohio St. 669), 1810.
- McGatrick v. Watson (3 Ohio St. 566), 216.

[References are to pages.]

- McGee v. Beal (63 Miss. 455), 601.
- McGee v. McCann (69 Me. 79), 1924, 1926, 1932, 1940.
- McGee v. State (30 Ohio St. 54), 243.
- McGee v. Wolfenden ([1907] Viet. L. R. 195), 1131.
- McGehee v. State (114 Ga. 833; 40 S. E. 1004), 715, 1161.
- McGill v. License Commissioners (21 Ont. Rep. 665), 453.
- McGill v. McGill (19 Fla. 341), 67, 2155, 2156, 2157, 2162.
- McGingan v. Belmont (89 Wis. 637; 62 N. W. 421), 797.
- McGinley, *In re* (32 Pa. Super. Ct. 324), 739, 742, 747, 750.
- McGinley v. U. S. Life Ins. Co. (8 Daly, 390; 7 Ins. L. Jr. 791; affirmed 77 N. Y. 495), 2223, 2243.
- McGinnis v. Commonwealth (102 Pa. 66), 2040, 2068, 2070.
- McGinnis v. Medway (170 Mass. 67; 57 N. E. 210), 416, 813.
- McGlasson v. Johnson (86 Iowa, 477; 53 N. W. 267), 1002.
- McGlasson v. Scott (112 Iowa, 289; 83 N. W. 974), 1001.
- McGlinchey v. Barrows (41 Me. 74), 1018, 1047, 1048, 1051.
- McGonegal v. McGonegal (46 Mich. 66; 8 N. W. 724), 2161.
- McGonnell's Appeal, *In re* (209 Pa. St. 327; 58 Atl. 615; reversing 24 Sup. Ct. Rep. 642), 230, 233.
- McGonnell, *In re* (24 Pa. Super. Ct. 642), 935.
- McGovern v. State (49 Tex. Cr. App. 35; 90 S. W. 502), 872, 958, 1284, 1349, 1555, 1692.
- McGowan v. Brooks (16 So. 436), 2094, 2108.
- McGrath v. Patton (24 N. Z. 527), 1154.
- McGraw v. McGraw (171 Mass. 146; 50 N. E. 526), 2153.
- McGreivay, *In re* (161 N. Y. 645; 57 N. E. 1116; 37 N. Y. App. Div. 66; 55 N. Y. Supp. 599), 796.
- McGrew v. State ([Tex. Cr. App.] 101 S. W. 1198), 1473.
- McGrimes v. State (30 Ind. 140), 777.
- McGrinley, *In re* (32 Pa. Super. Ct. 324), 736.
- McGruder v. State (83 Ga. 616; 10 S. E. 281), 289, 930, 1176.
- McGuinness v. Bligh (11 R. I. 94), 310, 314, 1779, 1803.
- McGuire, *Ex parte* ([Tex. Cr. App.] 123 S. W. 425), 228, 231.
- McGuire v. Callahan (19 Ind. 128), 2116, 2123.
- McGuire v. Commonwealth ([Ky.] 99 S. W. 612; 30 Ky. L. Rep. 720), 952, 955, 1742.
- McGuire v. Commonwealth (3 Wall. 387; 18 L. Ed. 226), 451, 523, 525.
- McGuire v. Glass ([Tex.] 15 S. W. 127), 194, 224, 777, 1884.
- McGuire v. State (37 Miss. 369), 829.
- McGuire v. State (42 O. St. 530), 158.
- McGuire v. State ([Tex. App.] 15 S. W. 917), 1236, 1241, 1627.
- McGunn v. Hanlin (29 Mich. 476), 1785.
- McGurk v. Metropolitan L. Ins. Co. (56 Conn. 528), 2240, 2241.
- McHam v. Love (39 Tex. Civ. App. 512; 87 S. W. 875), 888, 915.
- McHenry v. Chippewa (65 Mich. 9; 31 N. W. 602), 764.
- McHugh v. Pollard (28 Viet. L. R. 581; 24 Austr. L. T. 149; 9 Austr. L. R. 50), 1323.

[References are to pages.]

- McHugh v. Schlosser (159 Pa. 480; 28 Atl. 291; 23 L. R. A. 574), 2179, 2189.
- McIlveney v. Whittingham (25 N. Z. 29), 1285, 1287.
- McInaney v. Hildreth ([1897] 1 Q. B. 600; 61 J. P. 325; 66 L. J. Q. B. 376; 76 L. T. 463; 13 T. L. R. 284), 380.
- McInerey v. Denver (17 Col. 302; 29 Pac. 516), 727.
- McInifee v. Wheelock (1 Gray [Mass.] 603), 1067.
- McIntire v. McConn (28 Iowa, 480), 2136, 2138, 2140, 2141.
- McIntosh v. Pueblo (9 Colo. App. 460; 48 Pac. 969), 1741.
- McIntosh v. State (140 Ala. 137; 37 So. 223), 1105, 1611.
- McIntyre v. Asheville (146 N. C. 475; 59 S. E. 1007), 717.
- McIntyre v. Parks (3 Met. 207), 1794, 1795.
- McIntyre v. People (38 Ill. 514), 2041, 2048, 2060, 2069, 2072.
- McKay v. McKay (18 B. Mon. 8), 2154, 2155, 2160.
- McKee v. Ingalls (5 Ill. 30), 2040.
- McKeen, *Ex parte* (32 N. B. 84), 1359.
- McKeever v. Beacom (101 Iowa, 173; 70 N. W. 112), 1811.
- McKeever v. Commonwealth (98 Va. 862; 36 S. E. 995; 2 Va. Sup. Ct. 473), 1624.
- McKenna v. Harding (69 J. P. 354), 1355.
- McKenzie v. Day (62 L. J. M. C. 49 [1893]; 1 Q. B. 289; 5 R. 161; 68 L. T. 345; 41 W. R. 384; 17 Cox C. C. 604; 57 J. P. 216), 1114.
- McKenzie v. Hogg (13 N. Z. L. R. 158), 644.
- McKeown v. Lambe (20 Rev. Leg. 232), 1509.
- McKibbins, *In re* (11 Pa. Super. Ct. 421), 696, 705, 706.
- McKillop v. Duluth St. R. Co. (53 Minn. 532; 55 N. W. 739), 1736.
- McKinley v. State (47 Tex. Cr. App. 222; 82 S. W. 1042), 1689.
- McKinley v. State (52 Tex. Cr. App. 182; 106 S. W. 342), 1597, 1606.
- McKinnell v. Robinson (3 Mees. & W. 434, 441), 1796.
- McKinney v. Nashville (96 Tenn. 79; 33 S. W. 724), 454, 1124, 1127, 1728.
- McKinney v. Town of Salem (77 Ind. 213), 91, 95, 129, 144, 182, 183, 448, 488, 489, 490, 491.
- McKinney v. State (3 Wyo. 719; 30 Pac. 293; 16 L. R. A. 710), 219.
- McKrell v. Brentford, J. J. ([1900] 2 Q. B. 387; 64 J. P. 663; 69 L. J. Q. B. 748; 48 W. R. 648; 83 L. T. 31; 16 T. L. R. 439), 681.
- McLain v. State (43 Tex. Civ. App. 213; 64 S. W. 865), 111, 249, 845, 1379.
- McLanahan v. Syracuse (18 Hun, 259), 798.
- McLane v. Granger (74 Iowa, 152; 37 N. W. 123), 259.
- McLane v. Leicht (69 Iowa, 401; 29 N. W. 327), 110, 125, 256.
- McLaughlin, *In re* 24 Pa. Co. Ct. Rep. 92), 718, 723.
- McLaughlin's Will (2 Redf. Sur. 504), 2135, 2136.
- McLaughlin v. Hinds (151 Ill. 403; 38 N. E. 136; affirming 47 Ill. App. 598), 2253, 2255.
- McLaughlin v. McCloy (26 Ir. L. T. 131), 690, 1275.
- McLaughlin v. South Bend (126 Ind. 471; 26 N. E. 185), 157.
- McLaughlin v. State (45 Ind. 338), 256, 1441, 1443, 1502, 1508.



[References are to pages.]

- McLaughlin v. Stevens (2 Cranch, [U. S. C. C.] 148), 271.
- McLaughlin v. Wisler (28 Ind. App. 61; 61 N. E. 73), 603, 612.
- McLaury v. Watelsky (39 Tex. Civ. App. 394; 87 S. W. 1045), 158, 281, 287, 761.
- McLean, *In re* (25 Upp. Can. 619), 894, 914.
- McLean v. State (43 Tex. Cr. App. 213; 64 S. W. 865), 839.
- McLees v. Niles (93 Ill. App. 442), 1843, 1977.
- McLellan v. Janesville (99 Wis. 544; 75 N. W. 308), 659.
- McLemore v. State ([Tex. Cr. App.] 110 S. W. 900), 1636.
- McLenon v. Richardson (15 Gray, 74), 2035.
- McLeod v. Scott (21 Or. 94; 26 Pac. 1061), 627, 763, 813.
- McLeod v. State (31 Tex. Cr. Rep. 331; 20 S. W. 749), 2058, 2090.
- McLeod v. State ([Tex. Cr. App.] 44 S. W. 1090), 1181.
- McLeod v. State (33 Tex. Civ. App. 170; 76 S. W. 216), 720.
- McMahon v. Dumas (96 Mich. 467; 56 N. W. 13), 1975, 1999, 2001.
- McMahon v. Sankey (133 Ill. 636; 24 N. E. 1027), 1859, 1983.
- McManigal v. Seaton (23 Neb. 549; 37 N. W. 271), 1957, 1958.
- McMillan v. State (18 Tex. App. 375), 1463, 1471, 1489.
- McMonagle, *In re* (41 N. Y. Misc. Rep. 407; 84 N. Y. Supp. 1068), 545, 582, 730.
- McMonigal v. State ([Tex. Civ. App.] 45 S. W. 1038), 773, 775.
- McManus, *Ex parte* (32 N. B. 481), 1717.
- McManus v. State (65 Kan. 720; 70 Pac. 700), 255, 256, 257, 1076.
- McMaster v. Dyer (29 S. E. 1016; 44 W. Va. 644), 1900, 1901.
- McMillan v. State (18 Tex. App. 375), 1559.
- McMintay v. State (38 Tex. Cr. Rep. 521; 43 S. W. 1010), 69.
- McMullen v. Berean (29 N. Y. Misc. Rep. 443; 60 N. Y. Supp. 578), 866.
- McMullen v. Charleston (1 Bay [S. C.] 46), 442.
- McNally, *Ex parte* (73 Cal. 632; 15 Pac. 368), 171, 187.
- McNary v. Blackburn (180 Mass. 473; 61 N. E. 885), 1867, 1868, 1900, 2006.
- McNaught, *Ex parte* (1 Okla. Cr. 260; 100 Pac. 271), 121.
- McNaughton v. Argyle (5 N. Y. Misc. Rep. 547; 26 N. Y. Supp. 229), 634.
- McNeal v. Ryan (56 N. J. L. 443; 28 Atl. 552), 573, 616, 617, 624.
- McNeely v. Morgantown (125 N. C. 375; 34 S. E. 510), 907.
- McNeely v. State (49 Tex. Cr. App. 286; 92 S. W. 419), 1201, 1696.
- McNeely v. Welz (166 N. Y. 124; 59 N. E. 697; affirming 20 N. Y. App. Div. 566; 47 N. Y. Supp. 310), 703.
- McNeely v. Welz (20 N. Y. App. Div. 566; 47 N. Y. Supp. 310), 1170, 1776.
- McNeill v. Collinson (130 Mass. 167), 1224, 1901.
- McNeill v. State (92 Tenn. 720; 23 S. W. 52), 454.
- McNelson v. Herb. ([Mich.] 123 N. W. 17), 1954.
- McNulty, *Ex parte* (73 Cal. 632; 15 Pac. 368), 445.

[References are to pages.]

- McNulty v. Toopf ([Ky.] 75 S. W. 258; 25 Ky. L. Rep. 430), 168, 460, 461, 469, 983.
- McOmber, *In re* (3 Pa. Dist. Rep. 431), 700.
- McPhee v. Sully (163 Mass. 216; 39 N. E. 1007), 2198, 2201.
- McPherson's Appeal (9 Cent. Rep. [Pa.] 408), 2138.
- McPherson v. Simmons (63 Ark. 593; 40 S. W. 78), 767, 768, 769.
- McPherson v. State (90 N. E. 610), 290, 291.
- McPike v. Penn (51 Mo. 63), 885, 886.
- McPherson v. State (90 N. E. 610), 291.
- McPike v. Penn (51 Mo. 63), 886.
- McQuade v. Collins ([Iowa] 61 N. W. 213), 985, 991.
- McQuade v. Hatch (65 Vt. 482; 27 A. 136), 1950.
- McQuery v. State (40 Tex. Cr. App. 571; 51 S. W. 247), 845, 1458.
- MacRae, *In re* (75 Neb. 757; 106 N. W. 1020), 534, 624, 1228.
- McReynolds v. State (26 Tex. App. 372; 9 S. W. 617), 1113.
- McRoberts v. State (45 Tex. Cr. App. 288; 92 S. W. 804), 58, 87, 1185, 1700, 1704.
- McRobie v. Bowden (24 N. Z. 10), 2030.
- McSorley, *In re* (15 R. I. 608; 10 Atl. 659), 253, 270, 1010, 1075, 1748.
- McSorley v. McSorley (2 Bradf. Sur. 188), 2136, 2138, 2142.
- McSparran v. Neely (91 Pa. St. 17), 2112.
- McTigue v. Commonwealth (99 Ky. 66; 35 N. W. 121), 1739.
- McVeigh v. Eccles (18 N. Z. 44), 1251.
- McVey v. Grand Lodge (53 N. J. L. 17; 20 Atl. 873), 2220, 2229.
- McVey v. Manatt (80 Iowa, 132; 45 N. W. 548), 1920, 1924, 1930, 1959, 2012, 2013.
- McVey v. William (91 Ill. App. 144), 1896.
- McVicker, *In re* (21 N. Y. Misc. Rep. 383; 45 N. Y. Supp. 1008), 580.
- McVickar v. McVicar (46 N. J. Eq. 490); 19 Atl. 249; 19 Am. St. Rep. 422), 2165, 2167, 2168.
- McWhorter v. Blumenthal (136 Ala. 568; 33 So. 552), 1806.
- McWilliams, *Ex parte* (1 Leg. News [Can.] 66), 1300.
- McWilliams v. Dawson (56 J. P. 182), 378.
- McWilliams v. Phillips (51 Miss. 196), 688, 799.
- McWilliams v. State ([Ga.] 34 S. E. 1016), 1720.

**M**

- M. Schendler Bottling Co. v. Welch (42 Fed. 561), 154, 307, 313.
- Maconnehey v. State (5 Ohio St. 77), 2051.
- Maccrobie v. Accident Ins. Co. (13 Sc. L. Rep. 391), 2238, 2239.
- Mace, *In re* (42 Up. Can. p. 76), 870, 883, 889.
- Mace v. Smith (164 Ind. 152; 72 N. E. 1135), 562.
- Mace v. Reed (89 Wis. 440; 62 N. W. 186), 2258.
- Macey v. McKenzie (88 L. T. 631; 67 J. P. 251; 20 Cox C. C. 449), 1244.
- Machine Co. v. Gage (100 U. S. 679), 156.
- Mack v. Handy (39 La. Ann. 491), 65, 67, 2155, 2158, 2160, 2166.
- Mack v. Harding (39 La. Ann. 491; 2 So. 181), 65.
- Mack v. Lee (13 R. I. 293), 1787.

[References are to pages.]

- Mack v. State (116 Ga. 546; 42 S. E. 776), 1172.
- Mackall v. District of Columbia (16 App. D. C. 301), 965, 971.
- Macken v. State (62 Md. 224), 917.
- Mackenzie v. Day ([1893] 1 Q. B. at p. 291), 76.
- Mackenzie v. Spear ([1905] 2 K. B. p. 220; 69 J. P. p. 270), 1141.
- Mackenzie v. Whittingham (23 N. Z. 857; 24 N. Z. 620), 1285, 1287.
- Mackey v. Siddell (23 N. Z. L. R. 391), 1116.
- Mackie v. Erhardt (59 Fed. 771), 18.
- Mackinnell v. Robinson (3 M. & W. 434), 375.
- Mackinson v. Hannay ([1906] Vict. L. R. 604), 1130.
- Macleod v. Gerger (53 Iowa, 615; 6 N. W. 21), 1946.
- Madden v. State (1 Kan. 340), 35.
- Maddox v. State (118 Ga. 32; 44 S. E. 806), 1491, 1495, 1497.
- Maddox v. State ([Tex. Cr. App.] 55 S. W. 832), 1697.
- Maddox v. State (42 Tex. Cr. App. 509; 60 S. W. 960), 1472.
- Madison v. Commonwealth (17 S. W. 164; 13 Ky. L. Rep. 313), 2060, 2072.
- Madison, etc., Church v. Baptist Church (46 N. Y. 131), 1162.
- Madison Co. v. Powell (75 Miss. 762; 23 So. 425), 875.
- Magahay v. Magahay (35 Mich. 210), 65, 2153, 2155, 2156.
- Magee v. McCan (69 Me. 79), 1838.
- Magee v. State (50 Tex. Cr. App. 444; 98 S. W. 245), 1692, 1729.
- Magill v. State (51 Tex. Cr. App. 357; 103 S. W. 397), 874, 890, 1690, 1710.
- Maguire, *In re* (57 Cal. 604; 40 Am. Rep. 125), 218.
- Maguire v. Middlesex R. Co. (115 Mass. 239), 2177, 2202.
- Maguire v. Sheehan (117 Fed. 819; 59 L. R. A. 496), 2172, 2189.
- Maguire v. State (47 Md. 485), 262, 1572, 1647.
- Maguire v. State ([Tex. Cr. App.] 86 S. W. 329), 1708.
- Mahan v. Commonwealth ([Ky.] 56 S. W. 529; 21 Ky. L. Rep. 1807), 554, 852, 1470.
- Mahon v. Gaskell (42 J. P. 583), 1277.
- Mahone v. Mahone (19 Cal. 626; 81 Am. Dec. 91), 66, 67.
- Mahoney v. LePage (21 Austr. L. T. 200; 6 Austr. L. R. 23), 1352, 1359.
- Mahood v. Tealza (26 La. Ann. 108), 1801.
- Maier v. Mass. Ben. Ass'n (107 Mich. 687; 65 N. W. 552), 2243, 2245.
- Maier v. State (21 Tex. Civ. App. 296; 21 S. W. 974), 43, 780, 781.
- Main v. McCarty (15 Ill. 442), 2035.
- Mair v. Railway Passenger's Ass'n Co. (37 L. T. 356), 2238, 2239.
- Maize v. State (4 Ind. 342), 229, 231, 240.
- Makepeace v. Bronnenberg (146 Ind. 243; 45 N. E. 336), 2019, 2020.
- Malaghan, *In re* (184 N. Y. 253; 77 N. E. 12; affirming 108 N. Y. App. Div. 355; 95 N. Y. Supp. 1142), 582.
- Malken v. Chicago (217 Ill. 471; 75 N. E. 548; affirming 119 Ill. App. 542), 69, 560, 691, 714, 720, 1119.
- Mallet v. Stevenson (26 Conn. 428), 11, 1036, 1043.

[References are to pages.]

- Mallon v. Commonwealth ([Ky.] 98 S. W. 315; 30 Ky. L. Rep. 328), 1135.
- Malmo v. Fairfield Co. (72 Conn. 1; 43 Atl. 485), 652, 664.
- Malmo, Appeal of (73 Conn. 232; 47 Atl. 163), 665.
- Malone, *In re* (41 Up. Can. 159, 253), 889, 894, 907.
- Malone v. Malone (19 Cal. 627), 81 Am. Dec. 91), 2154, 2156.
- Malone v. State (49 Ga. 210), 2067.
- Malone v. State ([Tex. Cr. App.] 107 S. W. 927), 1029.
- Malone v. State ([Tex. Civ. App.] 51 S. W. 381), 8, 958, 963, 964, 1611.
- Maloney v. Clifford (6 W. N. [N. S. W.] 124), 375.
- Maloney v. Dailey (67 Ill. App. 427), 1889, 1896, 1972, 1981, 1982.
- Maloney v. Traverse (87 Iowa, 306; 54 N. W. 155), 985.
- Malt Extract Co. v. Chicago, etc., R. Co. (73 Iowa, 98; 34 N. W. 761), 1788.
- Manasses Club v. Mobile (121 Ala. 561; 25 So. 628), 1338.
- Manchester Brewery Co. v. Coombs ([1901] 2 Ch. 608; 70 L. J. Ch. 814; 82 L. T. 347; 16 T. L. R. 299), 1816.
- Manchester, etc., Ins. Co. v. Feibelman (118 Ala. 308; 23 So. 759), 1778.
- Mandeville v. Bard (111 La. 806; 35 So. 915), 593.
- Mandeville v. Baudot (40 La. Ann. 236; 21 So. 258), 5, 549.
- Mangan v. Auger (31 Can. S. C. 186), 1792.
- Manger v. Phillips (139 Mich. 61; 102 N. W. 292; 11 Det. Leg. N. 748), 1981.
- Manheim v. State (66 Ind. 65), 358.
- Manis v. State (3 Heisk. 315), 1279.
- Mankato v. Arnold (36 Minn. 62; 30 N. W. 305), 1478.
- Manker v. Atlanta (78 Ga. 668; 2 S. E. 559), 1083.
- Mankins v. Leightner (18 Ill. 282), 2099.
- Manley's Estate, *In re* (12 N. Y. Misc. Rep. 472; 34 N. Y. Supp. 258), 64.
- Manly v. Wilmington, etc., R. Co. (74 N. C. 655), 2180.
- Manning v. Canon City ([Colo.] 101 Pac. 978), 1338.
- Manning v. State (36 Tex. 670), 1158.
- Manor v. State ([Tex. Civ. App.] 34 S. W. 769), 980.
- Mansfield v. State (17 Tex. App. 468), 1111, 1505, 1507.
- Mansfield v. Stonehan (15 Gray, 149), 477.
- Mansfield v. Watson (2 Clarke [Ia.] 111), 2094, 2123.
- Manson v. London, etc., Ry. Co. (L. R. 6 Eq. 101), 691.
- Manville v. State (58 Ind. 63), 1497.
- Manzer v. Phillips (139 Mich. 61; 102 N. W. 292; 11 Det. Leg. N. 748), 1973.
- Mapes v. People (69 Ill. 523), 1253, 1461, 1564, 1633, 2031.
- Mapes v. State (69 Ill. 523), 1632.
- Maples v. State (130 Ala. 121; 30 So. 428), 1379.
- Marbury v. Madison (1 Cranch [U. S.] 137), 1014.
- March v. Commonwealth (12 B. Mon. [Ky.] 25), 271.
- Marcotte v. Lambe (4 Quebec S. C. 2), 798.
- Marcus v. State (89 Ala. 23; 8 So. 155), 1198.
- Mardorf v. Hemp ([Pa.] 6 Atl. 754), 224, 1840.
- Marenthal v. Shafer (6 Iowa, 223), 1777.
- Margate Pier Co. v. Hannam (3 B. & Ald. 266, 270), 1421.

[References are to pages.]

- Margooley v. Commonwealth (3 Met. [Ky.] 405), 779.
- Marianner v. Vincent (68 Ark. 244; 58 S. W. 25), 1738.
- Marietta v. Alexander ([Ga.] 12 S. E. 681), 1478.
- Marion v. Chandler (6 Ala. 895), 436, 444, 447.
- Marion v. State (20 Neb. 233; 29 N. W. 918), 226.
- Markel v. State (3 Ind. 535), 1443.
- Market v. Hoffner (5 Ohio Dec. 335), 1938.
- Markison v. State ([Okla.] 101 Pac. 353), 83, 1698.
- Markle v. Akron (14 Ohio, 586), 475.
- Markle v. State (37 Ala. 169), 967.
- Markle v. Akron (14 Ohio, 586), 41, 85, 110, 962, 1171.
- Markle v. Newton (64 Ohio St. 493; 60 N. E. 619), 794.
- Marks, *Ex parte* (64 Cal. 29; 28 P. 109; 49 Am. Rep. 684), 2261.
- Marks v. State ([Ala.] 48 So. 864), 23, 24, 25, 60, 85.
- Marks v. Trustees, etc. (37 Ind. 163), 248.
- Markus v. Thompson ([Tex. Civ. App.] 111 S. W. 1074), 357, 1242, 1904, 1942.
- Marmer v. State (47 Tex. Cr. App. 424; 84 S. W. 830), 1218, 1219.
- Marmont v. State (48 Ind. 21), 1306, 1337, 1340.
- Marnaugh v. Orlando (41 Fla. 433; 27 So. 34), 432.
- Marous v. Marous (86 Ill. App. 597), 2158.
- Marquardt v. State (52 Ark. 269; 12 S. W. 562), 1566.
- Marquett Co. v. Ishpeming (49 Mich. 244; 13 N. W. 639), 807, 809.
- Marquett, etc., R. Co. v. Hanford (39 Mich. 537), 2185.
- Marre v. State (36 Ark. 222), 1623.
- Marsden v. Harlocker (48 Ore. 90; 85 Pac. 328), 867, 869.
- Marsden v. State (54 Tex. Cr. App. 70; 111 S. W. 945), 1171.
- Marsh v. Clark Co. (27 Wkly. L. Bull. 56), 2256.
- Marsh v. Marsh (28 L. J. Mat. [N. S.] 13; 1 Swab. & T. 312; 5 Jur. [N. S.] 46), 2165, 2167.
- Marshall's Case (1 Lewin C. C. 76), 2049.
- Marshall, *Ex parte* (64 Ala. 266), 198, 790.
- Marshall, *Ex parte* (71 J. P. 501), 376.
- Marshall & Salt's Contract, *In re* ([1900] 2 Ch. 202; 69 L. J. Ch. 542; 48 W. R. 508; 83 L. T. 147), 1833.
- Marshall v. Central Ontario Ry. Co. (28 Ont. Rep. 241), 363.
- Marshall v. Donovan (10 Bush [Ky.] 681), 280.
- Marshall v. Fox (L. R. 6; Q. B. 370; 24 L. T. 751; 40 L. J. T. C. 142; 19 W. R. 1108; 35 J. P. 631), 369, 726.
- Marshall v. Creen (26 N. Y. 161), 369.
- Marshall v. Marksville (116 La. 746; 41 So. 57), 416.
- Marshall v. Riley (38 N. Y. Misc. Rep. 770; 78 N. Y. Supp. 827), 1735.
- Marshall v. Snediker (25 Tex. 460; 78 Am. Dec. 534), 814, 815.
- Marshall v. State (49 Ala. 21), 1240 1241, 1374, 1460.
- Marshall v. State (59 Ga. 154), 2041, 2068, 2071.
- Marshall Co. v. Knoll ([Iowa] 69 N. W. 1146), 767, 802.
- Marston v. Commonwealth (18 B. Mon. 485), 369.



[References are to pages.]

- Martel v. East St. Louis (94 Ill. 67), 185, 815.  
 Martens v. People (186 Ill. 314; 37 N. E. 871; affirming 85 Ill. App. 66), 415, 416, 424, 576.  
 Martin v. Blattner (68 Iowa, 286; 25 N. W. 131), 110, 259.  
 Martin v. Dix (52 Miss. 53), 394.  
 Martin v. Harsh (231 Ill. 384; 83 N. E. 164; 13 L. R. A. [N. S.] 1000), 2095.  
 Martin v. People (76 Ill. 499), 1764.  
 Martin v. Pycroft (2 De G. M. & G. 785; 22 L. J. Ch. [N. S.] 94; 16 Jur. 1125), 2094, 2099, 2122.  
 Martin v. Rooks Co. (32 Kan. 146; 4 Pac. 158), 663.  
 Martin v. State (59 Ala. 34), 1162, 1333, 1338.  
 Martin v. State (23 Neb. 371; 36 N. W. 554), 182, 183, 185, 471, 490, 714, 740, 744.  
 Martin v. State (30 Neb. 507; 46 N. W. 621), 1361, 1502, 1508.  
 Martin v. State ([Tenn.] 79 S. W. 131), 1127.  
 Martin v. State (31 Tex. Cr. Rep. 27; 19 S. W. 434), 1508, 1509.  
 Martin v. State ([Tex. Cr. App.] 61 S. W. 486), 1692, 1729.  
 Martin v. State ([Tex.] 122 S. W. 24), 1602.  
 Martinsville v. Frieze (33 Ind. 507), 396, 404, 413.  
 Martz, *In re* (12 Pa. Super. Ct. 521), 593.  
 Marxhouser v. Commonwealth (29 Gratt. 853), 202, 204.  
 Mascowitz v. State (49 Ark. 170; 4 S. W. 656), 1232.  
 Maskew v. Highlands ([Colo.] 47 Pac. 846), 407.  
 Mason, *Ex parte* (102 Cal. 171; 36 Pac. 401), 550.  
 Mason v. Atlanta (77 Ga. 662), 942.  
 Mason v. Gray (73 Mass. [7 Gray] 354), 1011.  
 Mason v. Lancaster (4 Bush, 406), 139.  
 Mason v. Lathrop (7 Gray, 354), 254, 385, 1059, 1061, 1073, 1077, 1079, 1165, 1166, 2035.  
 Mason v. Mason (1 Edw. 278), 2164, 2165, 2167.  
 Mason v. Mason (131 Pa. 161; 18 Atl. 1021), 2153, 2167.  
 Mason v. Rollins (2 Biss. 99; Fed. Cas. No. 9252), 206.  
 Masson v. Severance (2 N. H. 501), 69.  
 Mason v. Shay (5 Ohio Dec. 194), 1848.  
 Mason v. Shawneetown (77 Ill. 533), 469.  
 Mason v. State (1 Ga. App. 534; 58 S. E. 139), 408, 964, 970.  
 Mason v. State (170 Ind. 195; 83 N. E. 613), 343.  
 Mason v. State ([Okla.] 103 Pac. 369), 826.  
 Mason v. State ([Tex.] 119 S. W. 852), 7.  
 Mason v. Trustees (4 Bush [Ky.] 406), 167, 397, 402, 449.  
 Massey, *Ex parte* (49 Tex. Cr. App. 60; 92 S. W. 1083), 132, 249, 278, 335, 953, 1280.  
 Massey v. Dunlap (146 Ind. 350; 44 N. E. 145; 46 N. E. 585), 602, 604, 611, 614.  
 Massey v. State (74 Ind. 368), 1162, 1224.  
 Massie v. State (52 Tex. Cr. App. 548; 107 S. W. 846), 1466, 1472.  
 Matey, *In re* (9 Kulp. 215), 717.  
 Matthew, *In re* (213 Pa. 269; 63 Atl. 837; reversing 28 Super. Ct. 384), 565.  
 Mathews v. Baxter (L. R. 8 Exch. 132), 2116, 2117, 2118.  
 Mathews v. Freker (68 Ark. 190; 57 S. W. 262), 1162.

[References are to pages.]

- Mathews v. People (159 Ill. 399; 42 N. E. 864; reversing 53 Ill. App. 305), 761.
- Mathias v. Dulpin Co. (122 N. C. 416; 30 S. E. 23), 635.
- Mathieu v. Wentworth ([1895] 4 Quebec Q. B. 343), 1681.
- Mathre v. Devendorf (130 Iowa, 107; 106 N. W. 366), 2006.
- Matkins v. State ([Tex. Cr. App.] 58 S. W. 108), 968, 1473, 1474, 1603, 1687, 1699.
- Matkins v. State ([Tex. Cr. App.] 62 S. W. 911), 963, 968, 973, 1611, 1681, 1690.
- Mattair v. Card (18 Fla. 761), 2131.
- Matter v. Card (18 Fla. 761), 2123.
- Mattewan Co. v. Bentley (13 Barb. 641), 2127.
- Matthew, *In re* (213 Pa. 269; 62 Atl. 837), 759.
- Maupin v. Commonwealth (1 Ky. L. Rep. [abstract] 281), 836.
- Mausley, *In re* (136 Iowa, 66; 113 N. W. 548), 533.
- Maw v. Hindmarsh ([1873] 28 L. T. 644), 1819.
- Maw v. King Tp. (8 Ont. 248), 2186, 2197.
- Maxton Co. v. Robeson (107 N. C. 335; 12 S. E. 92), 635, 636, 648.
- Maxwell v. Hannibal, etc., R. Co. (85 Mo. 95), 2198, 2199.
- Maxwell v. Jonesboro (11 Heisk. 257), 454, 509.
- Maxwell v. Pittinger (3 N. J. Eq. 156), 2100, 2102, 2103, 2122, 2129.
- Maxwell v. State (27 Ala. 660), 1192, 1248.
- Maxwell v. State ([Ala.] 25 So. 235), 1163.
- Maxwell v. State (140 Ala. 131; 37 So. 266), 1168, 1216, 1379.
- May v. New Orleans (178 U. S. 496; 44 L. Ed. 1165; 20 Sup. Ct. 976; affirming 51 La. Ann. 1064; 25 So. 959), 309, 1433, 1434.
- May v. People (8 Colo. 210; 6 Pac. 816), 2246.
- Mayer, *Ex parte* (39 Tex. Cr. App. 36; 44 S. W. 831), 870.
- Mayer v. Smith (121 Ill. 442; 13 N. E. 216), 1912.
- Mayer v. State (50 Ind. 18), 1560.
- Mayer v. State (83 Wis. 339; 53 N. W. 444), 1373.
- Mayes, *Ex parte* (39 Tex. Cr. R. 36; 44 S. W. 831), 925.
- Mayhew v. Eugene ([Ore.] 104 Pac. 727), 441, 936, 1696, 1723.
- Maynard v. Eaton (108 Mich. 201; 65 N. W. 760), 1095.
- Mayne v. State (48 Tex. Cr. App. 93; 86 S. W. 329), 1697, 1698, 1702.
- Mayor v. Allaire (14 Ala. 400), 215, 271.
- Mayor of Anniston, *Ex parte* (90 Ala. 516; 7 So. 779), 447.
- Mayor, etc., v. Beasley (1 Humph. [Tenn.] 232), 408, 428, 443, 444, 461.
- Mayor v. Dickerson (45 N. J. L. 38), 783, 1188.
- Mayor v. Dry Dock, etc., E. B. & B. R. Co. ([N. Y. App.] 28 Am. St. Rep. 614 [s. c. 30 N. E. 563]), 461.
- Mayor, etc., v. Guillo (3 Ala. 137), 469.
- Mayor v. Mason (4 E. D. Smith, 142), 504.
- Mayor v. Rodecke (49 Md. 217), 454.
- Mayor v. Rouse (8 Ala. 515), 215, 271.
- Mayor v. Shattuck (19 Colo. 104), 397, 424.

[References are to pages.]

- Mays v. Cincinnati (1 Ohio St. 268), 426, 811.
- Mays v. Commonwealth (3 Ky. L. Rep. [abstract] 327), 554.
- Mays v. Commonwealth (3 Ky. L. Rep. [abstract] 250), 836.
- Mayson v. Atlanta (77 Ga. 662), 439, 454, 566, 612, 1641, 1638.
- Meacham v. N. Y. St. Mut. Ben. Ass'n (120 N. Y. 237; 24 N. E. 283), 2223, 2229, 2243.
- Mead, Appeal of (161 Pa. 375; 29 Atl. 21; 34 W. N. C. 373), 628, 629, 632.
- Mead v. Stratton (87 N. Y. 493; 41 Am. Rep. 386), 295, 1843, 1864, 1869, 1897, 1924, 1925, 1926, 1929, 1930, 1949.
- Meador v. Adams (33 Tex. Civ. App. 167; 76 S. W. 238), 759.
- Meadows v. State (127 Ga. 283; 56 S. E. 404), 1186, 1198.
- Meanx v. Whitehall (8 Brad. 173), 1751.
- Meason, *Ex parte* (5 Binn. 67), 75.
- Meathe v. Meathe (83 Mich. 150; 47 N. W. 109), 66, 68, 2158, 2159.
- Medford v. State (45 Tex. Cr. App. 180; 74 S. W. 768), 938.
- Meehan v. Board (73 N. J. L. 382; 64 Atl. 689), 103, 110, 148, 192, 214, 295, 490.
- Meenan, *In re* (11 Pa. Super. Ct. 575), 664, 718, 739, 747, 1192.
- Megown v. Commonwealth (2 Met. [Ky.] 3), 215, 216, 1566, 1567, 1633, 1651.
- Mehan v. State (7 Wis. 670), 1645.
- Meidel v. Anthis (71 Ill. 241), 296, 1843, 1859, 1982, 1987.
- Meier v. State (57 Ind. 386), 1520, 1522.
- Meier v. State (2 Tex. Civ. App. 296; 21 S. W. 974), 83.
- Meinoz v. Brassel ([Tex. Civ. App.] 108 S. W. 417), 762, 767.
- Meitzler's Application (2 Pa. Co. Ct. Rep. 37), 598, 599.
- Melchoir v. McCarty (31 Wis. 252), 1780.
- Melton v. Moultrie (114 Ga. 462; 40 S. E. 302), 750, 752.
- Memphis v. Memphis Water Co. (8 Baxt. 590), 461.
- Memphis, etc., R. Co. v. Womack (84 Ala. 149; 4 So. 618), 2175, 2182.
- Menach v. State ([Tex. Cr. App.] 97 S. W. 503), 2056.
- Menken v. Atlanta (78 Ga. 668), 119, 125, 232, 243, 454, 492, 495, 715, 931, 943, 1087, 1372, 1377.
- Menkins v. Lightner (18 Ill. 282), 65, 2093, 2105, 2127.
- Mensing v. Steiner-Medinger ([Neb.] 94 N. W. 633), 1162.
- Menzies, *Ex parte* (24 N. S. W. 179), 1129.
- Merced Co. v. Fleming (111 Cal. 46; 43 Pac. 392), 795.
- Merced Co. v. Helm (102 Cal. 159; 36 Pac. 399), 426, 793.
- Mercer, *Ex parte* (25 N. B. 517), 1683.
- Mercer v. State (17 Ga. 146), 2041, 2046, 2053.
- Mercier v. Brillan (5 L. C. J. 337), 1781.
- Meredith, *In re* (2 Pa. Co. Ct. Rep. 82), 563, 637, 639.
- Meredith v. Commonwealth (116 Ky. 524; 76 S. W. 8; 25 Ky. L. Rep. 455), 666.
- Meriden v. Silverstein (36 La. Ann. 912), 216.
- Merkison v. State ([Okla.] 101 Pac. 353), 38.
- Merkle v. State (37 Ala. 139), 86, 87, 962, 1713.
- Mernaugh v. Orlando (41 Fla. 433; 27 So. 34), 934.
- Mernaugh v. State (41 Fla. 433; 27 So. 34), 413.

[References are to pages.]

- Meroney v. State (49 Tex. Cr. App. 337; 92 S. W. 844), 800, 1161.
- Merow, *In re* (112 N. Y. App. 562; 99 N. Y. State, 9), 887, 899.
- Merrifield v. Swift (103 Iowa, 167; 72 N. W. 444), 978, 981.
- Merrill v. Commonwealth (6 Ky. L. Rep. [abstract] 663), 1463.
- Merrill v. Pepperdine (9 Ind. App. 416; 36 N. E. 921), 2187, 2191.
- Merrill v. Savage ([Tex. Civ. App.] 109 S. W. 408), 921.
- Merriman, Appeal of (108 Mich. 454; 66 N. W. 372), 2253.
- Merrimane v. Miller ([Mich.] 118 N. W. 11), 1862, 1912, 1915, 1922, 1924, 1973.
- Merritt v. Commonwealth (122 Ky. 669; 92 S. W. 611; 28 Ky. L. Rep. 184), 949, 950.
- Merritt v. Sherburne (1 N. H. 199), 1014.
- Merrweather v. State (53 Tex. Cr. App. 410; 108 S. W. 661), 1605.
- Mertz, *In re* (12 Super. Ct. Rep. 521), 639.
- Meservey v. Gray (55 Me. 540), 122, 1800.
- Meshmeier v. State (11 Ind. 482), 229.
- Mesken v. Highlands (9 Colo. App. 255; 47 Pac. 846), 467.
- Messenger v. Parker (6 R. & G. 237; 6 C. L. T. 444), 1159.
- Messer v. Cross (26 Tex. Civ. App. 34; 63 S. W. 169), 923.
- Metcalf, *In re* (17 Ont. 357), 921, 1321.
- Metcalf v. Hart (3 Wyo. 513; 27 Pac. 900; 31 Am. St. 122), 479.
- Metcalf v. State (76 Ga. 308), 573, 576.
- Mette v. McGuckin (18 Neb. 323; 25 N. W. 338), 151, 148, 311.
- Metropolitan Board v. Barrie (34 N. Y. 657), 91, 95, 98, 101, 110, 120, 124, 129, 138, 168, 179, 182, 183, 184, 185, 488, 489, 490, 496.
- Metropolitan Police Commissioners v. Roberts (73 L. J. K. B. 231 [1904]; 1 K. B. 369; 52 W. R. 560; 68 J. P. 39; 20 T. L. R. 105), 1131.
- Metzger v. People (14 Ill. 101), 1509.
- Metzler v. State (18 Ind. 35), 1353.
- Meyer v. Baker (120 Ill. 567; 12 N. E. 79), 136, 138, 248, 592.
- Meyer v. Bohlring (44 Ind. 238), 1989.
- Meyer v. Bridgeton (37 N. J. L. 160), 413, 473, 1477.
- Meyer v. Clark (9 Jones & S. 107), 2033.
- Meyer v. Decatur (125 Ill. App. 556 [1908]), 559, 628, 634, 635, 172, 652.
- Meyer v. Hobson (116 Iowa, 349; 90 N. W. 85), 943.
- Meyer v. King (72 Miss. 1; 16 So. 245; 35 L. R. A. 474), 2175, 2189, 2196.
- Meyer v. Pacific R. Co. (40 Mo. 151), 2177, 2202, 2203, 2295.
- Meyer v. State (50 Ind. 8), 1623.
- Meyer v. State (41 N. J. L. 6; 42 N. J. L. 145), 1103, 1110, 1106.
- Meyer v. State ([Tex. Civ. App.] 105 S. W. 48), 1029, 1035.
- Meyer v. Village of Tentopolis (121 Ill. 552; 23 N. E. 651), 109.
- Meyer, Josen & Co. v. City of Mobile (147 Fed. 843), 427.
- Meyers, *Ex parte* ([Tex. Cr. App.] 44 S. W. 831), 883.
- Meyers v. Kirt (57 Iowa, 421; 10 N. W. 828), 2011.
- Meyers v. Smith (121 Ill. 442; 13 N. E. 216; affirming 25 Ill. App. 67), 1960, 1973.

[References are to pages.]

- Mezchen v. More (54 Wis. 214; 11 N. W. 534), 605.
- Miazza v. State (36 Me. 612), 1650.
- Michael, Appeal of (63 Conn. 583), 640.
- Michael v. Bacon (49 Mo. 474), 1801.
- Michaud, *Ex parte* (4 Can. Cr. Cas. 569), 1755.
- Michaud, *Ex parte* (32 Can. L. Jr. 779), 1755.
- Michaud, *Ex parte* (34 N. B. 123), 1755.
- Michels v. State (115 Wis. 43; 90 N. W. 1096), 1161.
- Michigan Cent. R. Co. v. Gilbert (46 Mich. 176), 2198, 2199.
- Middlekauff v. Adams (76 Neb. 265; 107 N. W. 232), 616, 652.
- Middleton v. Robbins (54 N. J. L. 566; 25 Atl. 471), 797, 868, 879.
- Midland Valley R. Co. v. Hamilton (84 Ark. 81; 104 S. W. 540), 2191.
- Miles, *In re* (28 Up. Can. 333), 914.
- Miles v. Rogers (36 N. B. 345), 620.
- Miles v. State (53 Neb. 305; 73 N. W. 678), 720.
- Miles v. State (5 W. Va. 524), 1589.
- Mill v. Harsher (L. R. 9 Ech. 317), 1170.
- Miller, *Ex parte* (98 Ind. 451), 561, 602.
- Miller, *In re* (179 Pa. 651; 36 Atl. 139; 39 L. R. A. 220; 1 Wigmore Ev. 571), 1736.
- Miller, *In re* (8 Pa. Super. Ct. 223), 666.
- Miller, Appeal of (13 Pa. Super. Ct. 272; 13 York Leg. Rec. 199), 564.
- Miller, *In re* (179 Pa. 645; 36 Atl. 139; 39 L. R. A. 220), 2135, 2136, 2137, 2139, 2145, 2151.
- Miller, *In re* (171 Fed. 263), 480, 703.
- Miller v. Ammon (145 U. S. 421; 12 Sup. Ct. 884; 36 L. Ed. 759), 414, 448.
- Miller v. Belthasser (78 Ill. 302), 1974.
- Miller v. Buncombe Co. (89 N. C. 171), 629.
- Miller v. Camden (63 N. J. 501; 43 Atl. 1069), 1738, 1764.
- Miller v. Commonwealth ([Ky.] 76 S. W. 515; 25 Ky. L. Rep. 848), 1215, 1548.
- Miller v. DeArmond (93 Ind. 74), 662, 671.
- Miller v. Drake (113 Ga. 347; 38 S. E. 747), 923.
- Miller v. Dudley, J. J. (46 W. R. 606), 366, 725.
- Miller v. Finley (2 Mich. N. P. 231), 2095, 2108, 2110.
- Miller v. Finley (26 Mich. 249; 12 Am. Rep. 306), 2094, 2108, 2110, 2111.
- Miller v. Givens (35 Ind. App. 40; 78 N. E. 1067), 669.
- Miller v. Givens (41 Ind. App. 401; 83 N. E. 1018), 609.
- Miller v. Gleason (18 Ohio Cir. Ct. Rep. 374; 10 Ohio C. D. 20), 65, 1254, 1977.
- Miller v. Hammers (93 Iowa, 746; 61 N. W. 1087), 1987.
- Miller v. Hobson (17 N. Z. 225), 1153.
- Miller v. Hudson (114 Ind. 550; 17 N. E. 122), 1027.
- Miller v. Jones (80 Ala. 89), 244, 291, 431, 432, 436, 437, 447, 878, 879.
- Miller v. Minney (31 Kan. 522; 3 Pac. 427), 794.
- Miller v. Mut. Ben. L. Ins. Co. (31 Iowa, 216; 7 Am. Rep. 122; 4 Am. L. T. Rep. 218), 2221, 2234, 2235, 2244.
- Miller v. People (47 Ill. App. 472), 1765.
- Miller v. Reeder ([Ind.] 88 N. E. 516), 604, 607, 609, 612.



[References are to pages.]

- Miller v. State (33 Ind. App. 509; 71 N. E. 248), 1716.
- Miller v. State (55 Ark. 188; 17 S. W. 719), 1219, 1223.
- Miller v. State (5 How. [Miss.] 250), 1445.
- Miller v. State (68 Miss. 533; 9 So. 289), 1120, 1127, 1134.
- Miller v. State (36 Ohio St. 475), 255, 975, 998, 1241, 1461, 1543.
- Miller v. State (5 Ohio St. 275), 1253.
- Miller v. State (35 Tex. Cr. Rep. 650; 34 S. W. 959), 370, 1576.
- Miller v. State (37 Tex. Cr. App. 35; 38 S. W. 772), 834.
- Miller v. State (44 Tex. Cr. App. 99; 69 N. W. 522), 1320, 1539.
- Miller v. State (107 Ind. 152; 7 N. E. 898), 1257, 1565, 1631, 1633.
- Miller v. State (52 Tex. Cr. App. 72; 105 S. W. 502), 2068, 2090.
- Miller v. Wade (58 Ind. 91), 196, 531, 532, 599, 601, 602, 627, 663.
- Milliman v. New York, etc., R. Co. (66 N. Y. 643, affirming 4 Hun, 409; 6 T. & C. 585), 2201, 2202.
- Mills, *In re* (28 Up. Can. 333), 894.
- Mills, *Ex parte* (46 Tex. Cr. App. 224; 79 S. W. 555), 863.
- Mills v. Ludington ([Mich.] 122 N. W. 1082), 424, 429.
- Mills v. Perkins (120 Mass. 41), 825, 829, 831.
- Mills v. State (148 Ala. 633; 42 So. 816), 953.
- Mills v. State (47 Tex. Cr. App. 220; 82 S. W. 1045), 1599.
- Mills v. Williams (11 Ired. [N. C.] 558), 394.
- Minden v. Solverstein (36 La. Ann. 912), 217, 424, 1306, 1351, 1353, 1361.
- Minneapolis v. Olson (76 Minn. 1; 78 N. W. 877), 471, 758.
- Minneapolis Brewing Co. v. McGillivray (104 Fed. 258), 332.
- Minnehaha Co. v. Champion (5 Dak. 397; 41 N. W. 754), 930.
- Minnehaha County v. Champion (37 N. W. 766), 174, 233.
- Minot v. Doherty ([Mass.] 89 N. E. 188), 2004.
- Minter v. State (33 Tex. Civ. App. 182; 76 S. W. 312), 357, 771.
- Mishey's Appeal (107 Pa. St. 611), 2152.
- Miskin v. Hughes ([1893] 1 Q. B. Div. 275; 57 J. P. 265; 67 L. T. 680), 701, 709.
- Missouri Pac. R. Co. v. Evans (71 Tex. 361; 9 S. W. 325; 1 L. R. A. 476), 2174, 2176, 2185, 2202, 2203.
- Missouri Pac. R. Co. v. Patton ([Tex. Civ. App.] 25 S. W. 39; 26 S. W. 978), 2200.
- Mitchell, *In re* (41 N. Y. App. Div. 271; 58 N. Y. Supp. 632), 721.
- Mitchell, *Ex parte* ([Tex. Cr. App.] 79 S. W. 558), 863.
- Mitchell v. Branham (104 Mo. App. 480; 79 S. W. 739), 694.
- Mitchell v. Commonwealth (106 Ky. 602; 51 S. W. 17; 21 Ky. L. Rep. 222), 964, 1697.
- Mitchell v. Crenshaw ([1909] 1 K. B. 701; 72 L. J. K. B. 398; 88 L. T. 463; 67 J. P. 179; 20 Cox C. C. 395), 1244.
- Mitchell v. Duncan (7 Fla. 13), 467.
- Mitchell v. Gascoigne (23 N. S. W. 239; 6 S. R. [N. S. W.] 717), 1256.

[References are to pages.]

- Mitchell v. Hindman (150 Ill. 538; 37 N. E. 916), 1974.  
 Mitchell v. Kingman (5 Pick. 431), 2093.  
 Mitchell v. Ratts (57 Ind. 259), 1849, 1936.  
 Mitchell v. Scott (62 N. H. 596), 1812.  
 Mitchell v. State (55 Ala. 160), 372.  
 Mitchell v. State (133 Ala. 65; 32 So. 687), 170, 172, 174, 175, 176, 288, 295.  
 Mitchell v. State (141 Ala. 90; 37 So. 407), 1206, 1469, 1475.  
 Mitchell v. State (148 Ala. 678; 41 So. 951), 1212.  
 Mitchell v. State (63 Ind. 276), 1623, 1754.  
 Mitchell v. State (146 Ill. 175; 33 N. E. 757; 37 Am. St. 147), 1452.  
 Mitchell v. State (12 Neb. 538; 11 N. W. 848), 1717.  
 Mitchell v. State ([Okla.] 101 Pac. 1100), 1502.  
 Mitchell v. State ([Tex. Cr. App.] 40 S. W. 284), 1210.  
 Mitchell v. State (48 Tex. Cr. App. 533; 89 S. W. 645), 2026, 2091.  
 Mitchell v. Williams (27 Ind. 62), 788.  
 Mix v. McCoy (22 Mo. App. 488), 61, 2040.  
 M. Levy & Son v. Stegemann ([Iowa] 104 N. W. 372), 1798.  
 Mobile v. Kimball (102 U. S. 691), 316.  
 Mobile v. Phillips (146 Ala. 158; 40 So. 826), 1366.  
 Mobile v. Richards (98 Ala. 594; 12 So. 793), 520, 553.  
 Mobile v. Rouse (8 Ala. 515), 448.  
 Mobile v. Yerville (3 Ala. 113), 443.  
 Mobile, etc., R. Co. v. State (29 Ala. 586), 280, 294.  
 Mobile, etc., R. Co. v. Davis (130 Ill. 146; 22 N. E. 850; reversing 31 Ill. App. 490), 2254.  
 Mobile, etc., R. Co. v. Watly (69 Miss. 145; 13 So. 825), 2102.  
 Moch v. Lose (13 R. I. 293), 310.  
 Modlen v. Snowball ([1861] 4 De. G. F. & J. 143; 31 L. J. Ch. 44), 1831.  
 Mogensen, *Ex parte* (5 Cal. App. 596; 90 Pac. 1063), 169, 1762.  
 Mogler v. State (47 Ark. 109; 14 S. W. 473), 1357, 1358, 1515, 1563.  
 Mohrman v. State (105 Ga. 709; 32 S. E. 143), 1086, 1133, 1148, 1337, 1338, 1347.  
 Moise v. Weymuller (78 Neb. 266; 110 N. W. 554), 1779, 1789.  
 Moley, *Ex parte* (7 Low. Can. Jr. 1), 1449.  
 Molihan v. State (30 Ind. 266), 671, 1351, 1353, 1361.  
 Molinari, *Ex parte* (6 L. N. [Can.] 395), 734.  
 Moloney v. Rogers (3 N. S. W. L. R. 251), 712.  
 Molyneux v. Ellison (8 Aust. L. R. [C. N.] 1113).  
 Molyneux v. herson (23 Austr. L. R. 2-3; 8 Austr. L. R. 120), 1314.  
 Monaghan v. Insurance Co. (53 Mich. 246; 18 N. W. 797), 945.  
 Monaghan v. Longfellow (82 Me. 419; 19 Atl. 857), 1027.  
 Monaghan v. Reid (40 Mich. 665), 1786.  
 Monaghan v. State (66 Miss. 513; 6 So. 241; 4 L. R. A. 800), 1228, 1229.  
 Monce v. State (5 Ga. App. 229; 62 S. E. 1053), 1773.  
 Moncla v. State ([Tex. Cr. App.] 70 S. W. 548), 1131.  
 Monford v. State (35 Tex. Cr. Rep. 237; 33 S. W. 351), 1557, 1650, 1740.

[References are to pages.]

- Monigal v. State ([Tex. Civ. App.] 45 S. W. 1038), 760.  
 Moniteau Co. v. Lewis (123 Mo. App. 673; 100 S. W. 1107), 774.  
 Moniteau Co. v. Lewis (123 Mo. 673; 100 S. W. 1107), 782.  
 Monk v. New Utrecht (104 N. Y. 552; 11 N. E. 268), 2196.  
 Monmouth v. Popel (183 Ill. 634; 56 N. E. 348; affirming 81 Ill. App. 512), 193.  
 Monroe v. Lawrence (44 Kan. 607; 24 P. 1113), 258.  
 Monroe v. People (113 Ill. 670), 1645.  
 Monroe v. State (8 Tex. App. 212), 492, 929.  
 Monroe v. State ([Tex. Cr. App.] 120 S. W. 479), 1611.  
 Monroe v. Thomas (61 Me. 581), 1779, 1782.  
 Monroe Co. v. Kreuger (88 Ind. 231), 812.  
 Monses v. State (78 Ga. 110), 1119, 1124, 1126, 1127, 1133.  
 Mont v. State (90 Ind. 29), 96.  
 Montag v. People (141 Ill. 75; 30 N. E. 337), 2038, 2056.  
 Montclair v. State ([N. J. L.] 69 Atl. 451), 1285.  
 Montford v. Christian (13 Vict. L. R. 893), 369.  
 Montgomery v. O'Dell (67 Hun, 169; 22 N. Y. Supp. 412), 684.  
 Montgomery v. State (88 Ala. 141; 7 So. 51), 290, 292.  
 Montgomery v. State ([Ala.] 49 So. 1902), 2039, 2068.  
 Montpelier v. Mills (171 Ind. 175; 85 N. E. 6), 549, 649, 659, 1159, 1608, 1640.  
 Montross v. Alexander (152 Mich. 513; 116 N. W. 190), 1854, 1962, 1966, 1969, 1970.  
 Montross v. Commonwealth (8 Pa. Super. Ct. 237), 1568, 1720.  
 Monty v. Arneson (25 Iowa, 383), 1777.  
 Moody v. Commonwealth (6 Ky. L. Rep. [abstract] 219), 543.  
 Moody v. McKinney (73 S. C. 438; 53 S. E. 543), 1022.  
 Moody v. Steggles ([1879] 12 Ch. D. 261), 1834.  
 Moog v. Espalla (93 Ala. 503; 9 So. 596), 493.  
 Moog v. Hannon (93 Ala. 500; 9 So. 596), 1780.  
 Moog v. State ([Ala.] 41 So. 166), 334.  
 Moon v. Hartsuck (137 Iowa, 236; 114 N. W. 1043), 676.  
 Moon v. State (68 Ga. 687), 2061.  
 Mooney v. State (33 Ala. 419), 2041, 2074.  
 Moore, *In re* ([Iowa] 118 N. W. 879), 662, 666, 826.  
 Moore v. Danville (232 Ill. 307; 83 N. E. 845), 132, 251.  
 Moore v. Eubanks (66 S. C. 374; 44 S. E. 971), 1027.  
 Moore v. Indianapolis (120 Ind. 483; 22 N. E. 424), 91, 96, 98, 103, 124, 125, 126, 144, 179, 182, 184, 417, 418, 446, 488, 489, 796.  
 Moore v. Kelley (136 Mich. 139; 98 N. W. 989; 10 Detroit Leg. N. 1002), 460.  
 Moore v. Moore (41 Mo. App. 176), 2162.  
 Moore v. People (109 Ill. 499), 497, 551, 756, 824.  
 Moore v. People (14 How. 13), 274.  
 Moore v. Robinson ([1879] 48 L. J. Q. B. 156; 40 L. T. 99; 28 W. R. 312), 1819.  
 Moore v. State (16 Ala. 411), 1112.  
 Moore v. State (126 Ga. 414; 55 S. E. 327), 938, 1280, 1284, 1286, 1288, 1558.  
 Moore v. State (65 Ind. 382), 1240.  
 Moore v. State (58 Neb. 608; 79 N. W. 163), 651, 668

[References are to pages.]

- Moore v. State (64 Neb. 557; 90 N. W. 533), 1361, 1374, 1615.
- Moore v. State (69 Neb. 653; 96 N. W. 225), 604.
- Moore v. State (12 Ohio St. 387), 1714.
- Moore v. State (9 Yerg. 353), 71, 1096.
- Moore v. State (96 Tenn. 544; 35 S. W. 556), 961.
- Moore v. Winstead (24 Ind. App. 56; 55 N. E. 777), 1781, 1789, 1790, 1791.
- Moran v. Atlanta ([Ga.] 30 S. E. 298), 432, 452, 1634.
- Moran v. Creager (27 Ind. App. 659; 62 N. E. 61), 561, 573, 611, 615.
- Moran v. Goodman (130 Mass. 158; 39 Am. Rep. 443), 183, 184, 223, 1840, 1842, 1848, 1862, 1895.
- Morel v. State (89 Ind. 275), 1567.
- Moreland v. Durocher (121 Mich. 398; 80 N. W. 284), 1954.
- Moreland v. State ([Okla.] 101 Pac. 138), 325, 327.
- Morenus v. Crawford (51 Hun 89; 5 N. Y. Supp. 453), 1859, 1934, 1945.
- Morgan, *Ex parte* (23 L. T. 605; 35 J. P. 37), 622.
- Morgan v. Commonwealth ([Ky.] 97 S. W. 411; 30 Ky. L. Rep. 139), 1555.
- Morgan v. Commonwealth (7 Grat. 592), 1493.
- Morgan v. Koestner (83 Iowa, 134; 49 N. W. 80), 983, 987.
- Morgan v. Monmouth Plank Road Co. (2 Dutch. 99), 233.
- Morgan v. State (81 Ala. 72; 1 So. 472), 1180, 1221, 1379, 1578, 1619.
- Morgan v. State (117 Ind. 569; 19 N. E. 154), 264, 267, 1585.
- Morgan v. Tighe (12 Ohio Cir. Ct. Rep. 719; 4 Ohio C. D. 470), 1739.
- Morganstern v. Commonwealth (94 Va. 787; 26 S. E. 402), 403, 453, 467, 1119, 1122, 1445, 1626.
- Morgan's Steamship Co. v. Louisiana Board (118 U. S. 455; 6 Sup. Ct. 1114), 116.
- Morgan's S. S. Co. v. Board (118 U. S. 455; 6 Sup. Ct. 1114), 315.
- Moriarty v. Bartlett (34 Hun 272), 1838.
- Moriarty v. Steffleran (89 Ill. 528), 2127.
- Morien v. Gallagher (199 Mass. 486; 85 N. E. 579), 585.
- Morrell v. Cook (35 Me. 211), 1058.
- Morrill v. State (38 Wis. 428), 443.
- Morrill v. Thurston (46 Vt. 732), 1739.
- Morrilton v. Comer (75 Ark. 458; 87 S. W. 1024), 475.
- Morris, *Ex parte* (34 Can. L. J. 46), 1163.
- Morris v. Baltimore (5 Gill [Md.] 244), 811.
- Morris v. Connolly (113 Iowa, 545; 85 N. W. 789), 984.
- Morris v. Lowry (113 Iowa 544; 85 N. W. 788), 984.
- Morris v. Mills (Tex. Civ. App. 82 S. W. 334), 759.
- Morris v. Nixon (7 Humph 579), 2094, 2106, 2107, 2108, 2124.
- Morris v. People (2 T. & C. [N. Y.] 219), 1759.
- Morris v. Rome (10 Ga. 532), 263, 397, 440, 443, 457, 459.
- Morris v. State (47 Ind. 503), 1307, 1308, 1566, 1567.
- Morris v. State ([Tex. Cr. App.] 44 S. W. 510), 1607, 1693, 1695.
- Morris v. State (48 Tex. Cr. App. 562; 89 S. W. 832), 1365.

[References are to pages.]

- Morris v. Territory (1 Okla. Cr. Rep. 637; 99 Pac. 760; 101 Pac. 111), 2039.  
 Morison v. Commonwealth (7 Dana 218), 1542.  
 Morrison v. McLeod (2 Dev. & Bat. Eq. 221), 2103.  
 Morrison v. Morrison (14 Mont. 8; 35 Pac. 1), 2166.  
 Morrison v. State (84 Ala. 405; 4 So. 402), 2042, 2059, 2069.  
 Morrissey v. Eastern R. Co. (126 Mass. 377; 30 Am. Rep. 686), 2182.  
 Morrow v. State ([Tex.] 120 S. W. 491), 1580, 1737.  
 Morton v. State (37 Tex. Cr. App. 131; 38 S. W. 1019), 1682, 1720.  
 Moseley v. State (156 Ala. 136; 47 So. 193), 1558.  
 Mosley v. State (23 Tex. App. 409; 4 S. W. 907), 2034.  
 Moser v. Stebel (29 Ohio Cir. Ct. Rep. 487), 805, 1810.  
 Moskow v. Highlands ([Colo.] 47 Pac. 846), 401.  
 Moss v. State ([Tex. Cr. App.] 44 S. W. 833), 1213.  
 Moss v. State (47 Tex. Cr. App. 459; 89 S. W. 833), 914.  
 Moss v. Warren ([Tex. Civ. App.] 123 S. W. 1157), 172, 561, 563.  
 Moufflet v. Cole ([1872] L. R. 8 Ex. 32; 42 L. J. Ex. 8; 21 W. R. 175), 1819, 1832.  
 Moulton, *In re* (168 N. Y. 645; 61 N. Y. 1131; affirming 59 N. Y. App. Div. 25; 69 N. Y. Supp. 14), 580, 730.  
 Moulton, *In re* (59 App. Div. 27; 69 N. Y. S. 14), 544, 580, 581.  
 Moulton v. Reid (54 Ala. 320), 925.  
 Moundsville v. Fountain (27 W. Va. 182), 167, 272, 395, 397, 402.  
 Mountfield v. Ward ([1897] 1 Q. B. 326; 61 J. P. 216; 66 L. J. Q. B. 246; 76 L. T. 202; 45 W. R. 288; 18 Cox C. C. 515; 13 T. L. R. 159), 1149.  
 Mt. Carmel v. Wabash Co. (50 Ill. 69), 412, 435, 808.  
 Mount Pleasant v. Breeze (11 Iowa 399), 469.  
 Mt. Pleasant v. Vansice (43 Mich. 361; 5 N. W. 378; 38 Am. Rep. 193), 169, 410, 414, 474.  
 Mt. Sterling v. King ([Ky.] 104 S. W. 322; 31 Ky. L. Rep. 919), 290.  
 Mowery v. Camden (49 N. J. L. 106; 6 Atl. 438), 1454.  
 Moyer, *In re* (20 Pa. Co. Ct. Rep. 663), 721.  
 Moyer, Appeal of (8 Pa. Super. Ct. Rep. 475; 43 W. N. C. 100), 717.  
 Moynihan, *In re* (75 Conn. 358; 53 Atl. 903), 197.  
 Mueller v. People (24 Colo. 251; 48 Pac. 965), 460, 945.  
 Mueller & Co. v. Commonwealth ([Ky.] 116 S. W. 336), 1342, 1344.  
 Mufford v. Clewell (21 Ohio State 191), 1864, 1868, 1980, 1854, 1856, 1857, 1982.  
 Mugler v. Kansas (123 U. S. 623; 8 Sup. Ct. 273; 31 L. Ed. 205; affirming 29 Kan. 252; 44 Am. Rep. 634), 91, 99, 109, 119, 125, 139, 148, 149, 161, 181, 211, 256, 315, 398, 418, 450, 490.  
 Muir v. Keay (L. R. 10 Q. B. 599; 40 J. P. 694; 44 L. J. M. C. 143; 23 W. R. 700; 41 J. P. 423), 1296.  
 Mulcahy v. Givens (115 Ind. 286; 17 N. E. 598), 1767, 1849, 1864, 1866.  
 Mulherrin v. Delaware, etc., R. Co. (81 Pa. St. 366), 2180.



[References are to pages.]

- Mulikin v. Davis (53 Ind. 206), 671.
- Mullen v. Peek (49 Ohio St. 447; 31 N. E. 1077), 2012.
- Mullen v. State (96 Ind. 304), 10, 41, 1497, 1499.
- Mullen v. State (30 Ohio Cir. Ct. Rep. 251), 950.
- Muller v. Buncombe Co. (89 N. C. 171), 628.
- Muller v. Mayo (38 Ind. 227), 662.
- Mulligan v. United States (120 Fed. 98), 1261, 1263.
- Mullinix v. State (43 Ind. 511), 1714.
- Mullinix v. People (76 Ill. 211), 63, 1254, 1358, 1740, 1754, 1763, 1764.
- Mullins v. Bellemore (7 Low. Can. 228), 1365.
- Mullins v. Collins (L. R. 9. Q. B. 292; 43 L. J. M. C. 67; 29 L. T. 838; 27 W. R. 297), 1221, 1355.
- Mullins v. Lancaster ([Ky.] 63 S. W. 475; 23 Ky. L. Rep. 436), 404, 936.
- Mullins v. State ([Tex. Cr. App.] 68 S. W. 272), 844, 845.
- Mulreed v. State (107 Ind. 62; 7 N. E. 884), 1240, 1241, 1242, 1628, 2200.
- Mumford v. Walker ([1901] 71 L. J. K. B. 19; 85 L. T. 518; 18 T. L. R. 80), 1825.
- Muncey v. Collins ([Iowa] 106 N. W. 262), 567, 572.
- Munch v. State (3 Tex. App. 552), 1743.
- Mundy, *In re* (59 How. [N. Y.] Pr. 359), 443.
- Mundy v. State (74 Pac. 378), 1739.
- Municipal Suffrage to Women, *In re* (160 Mass. 586; 36 N. E. 488; 23 L. R. A. 113), 231.
- Municipality v. Morgan (1 La. Ann. 111), 294.
- Municipality, etc. v. Wilson (5 La. Ann. 747), 270.
- Munn v. Illinois (94 U. S. 145), 93.
- Munoz v. Brassel ([Tex. Civ. App.] 108 S. W. 417), 337, 771, 772, 773, 781, 784, 1903, 1956.
- Munsel v. Temple (3 Gil. [Ill.] 93), 799.
- Munson, *In re* (95 N. Y. App. Div. 23; 88 N. Y. Supp. 509), 871, 873, 879.
- Munz v. People (90 Ill. App. 637), 1865, 1876.
- Munzebock v. State (10 Ohio Dec. 277; 19 Wkly. L. Bull. 389), 1127.
- Murphy v. Board (73 Ind. 483), 530, 561, 670.
- Murphy v. Curran (24 Ill. App. 475), 1947, 1983.
- Murphy v. Landrun (76 S. C. 21; 56 S. E. 850), 175, 251, 809.
- Murphy v. McNulty (145 Mass. 464; 14 N. E. 532), 1353.
- Murphy v. Montclair (10 Vroom, 673), 43, 47, 84.
- Murphy v. Monroe Co. (73 Ind. 483), 607.
- Murphy v. Nolan (126 Mass. 542), 688.
- Murphy v. People (90 Ill. 59), 65, 66, 1254, 1632, 1633.
- Murphy v. State ([Ala.] 45 So. 208), 1606.
- Murphy v. State (1 Ind. 366), 1179, 1190.
- Murphy v. State (106 Ind. 96; 5 N. E. 767), 1485.
- Murphy v. State (28 Miss. 637), 1245.
- Murphy v. State (77 Tenn. [9 Lea] 373), 134, 247, 1745.
- Murphy v. Union R. Co. (118 Mass. 228), 2198, 2206.
- Murphy v. Willow Springs Brewing Co. (81 Neb. 223; 115 N. W. 763), 1838, 1896, 1897, 1904, 1933, 1973.

[References are to pages.]

- Murray v. Board (81 Minn. 359; 84 N. W. 103; 51 L. R. A. 828), 278.
- Murray v. Carlin (67 Ill. 286), 2102, 2109.
- Murray v. Freer ([1894] App. Cas. 576; 58 J. P. 508; 63 L. J. M. C. 242; 71 L. T. 44; affirming [1893] 1 Q. B. 635; 57 J. P. 101, 583; 67 L. T. 507; 62 L. J. M. C. 33), 681, 709.
- Murray v. State (46 Tex. Cr. App. 128; 79 S. W. 568), 19, 964, 971, 1186.
- Murray v. State (48 Tex. Cr. App. 128; 79 S. W. 568), 1689.
- Murray v. State (48 Tex. Cr. App. 219; 87 S. W. 349), 2025.
- Murray v. State ([Tex.] 120 S. W. 438), 1652.
- Murray v. Wilson Distilling Co. (213 U. S. 151; 29 Sup. Ct. 458), 176.
- Musgrove v. Graham (4 S. R. [N. S. W.] 475; 21 W. N. C. [N. S. W.] 145), 1373.
- Musgrave v. Hall (40 Me. 498), 1028, 1777.
- Musick v. State (51 Ark. 165; 10 S. W. 225), 36, 86, 968.
- Musselman v. Cravens (47 Ind. 1), 2093, 2122.
- Mutual, etc., Ass'n. v. Colter (81 Ark. 205; 99 S. W. 67), 2227.
- Mutual, etc., Ins. Co. v. Holterhoff (2 Cin. Sup. Ct. Rep. 379), 2220, 2244.
- Mutual Life Ins. Co. v. Simpson ([Tex. Civ. App.] 28 S. W. 837), 2223.
- Mutual Ins. Co. v. Stibbe (46 Md. 302), 2234.
- Mutual Life Ins. Co. v. Thomson (94 Ky. 253; 22 S. W. 87; 14 Ky. L. Rep. 800), 2232, 2243.
- Mydosh v. Bayonne (72 N. J. L. 439; 60 Atl. 1111), 697.
- Myers v. Circuit Court ([W. Va.] 63 S. E. 201), 662, 665, 667.
- Myers v. Conway (55 Iowa 166; 7 N. W. 481), 1848.
- Myers v. Kirt (57 Iowa 421; 10 N. W. 828), 1929, 1930.
- Myers v. People (67 Ill. 503), 294, 1502, 1506.
- Myers v. State (93 Ind. 251), 10, 41, 42, 84, 1592, 1711, 1712, 1976.
- Myers v. State (37 Tex. Cr. App. 331; 39 S. W. 938), 1611.
- Myers v. State ([Tex. Cr. App.] 39 S. W. 111), 2259.
- Myers v. State (52 Tex. Cr. App. 558; 108 S. W. 392), 1693.
- Myers v. State ([Tex.] 118 S. W. 1032), 1664.
- Myrich v. Myrich (67 Ga. 771), 2155, 2158, 2159.

## N

- Nace v. State (117 Ind. 114; 19 N. E. 729), 1110.
- Nacrelli, *In re* (8 Del. Co. Rep. 20), 696, 697.
- Nadeau v. Lewis (16 Que. L. R. 210), 1441.
- Nagle, *Ex parte* (30 N. B. 77), 938.
- Nagle v. Baylor (3 Dr. & War. 60), 2099.
- Nagle v. Keller (237 Ill. 431; 86 N. E. 694; affirming 141 Ill. App. 444), 1862.
- Nalder & Collyer's Brewery Co., Limited v. Harman ([1900] 64 J. P. 358; affirmed C. A. 83 L. T. 257), 1821.
- Nall v. Tinsley (107 Ky. 441; 54 S. W. 187; 21 Ky. L. Rep. 1167), 852, 869, 872.
- Nance v. Kemper (35 Ind. App. 605; 73 N. E. 937), 2093.
- Nankivell v. Donovan (13 N. Z. L. R. 60), 1154.

[References are to pages.]

- Napier v. Hodges (31 Tex. 287), 199.
- Napier v. State (50 Ala. 168), 371.
- Nappee Valley Wine Co. v. Kasanave ([Wis.] 122 N. W. 812), 698.
- Nash v. Southern Ry. Co. (136 Ala. 177; 33 So. 932), 63, 2202, 2205.
- Nashville v. Linck (12 Lea 499), 216, 432.
- Nashville Hermitage Club v. Shelton (104 Tenn. 101; 56 S. W. 838), 794.
- Nast v. Eden (89 Wis. 610; 62 N. W. 409), 636.
- Nathan v. Louisiana (8 How. [U. S.] 73), 790.
- National Sporting Club v. Cope (82 L. T. 352; 48 W. R. 446; 64 J. P. 310; 19 Cox C. C. 485), 1345.
- National, etc., Co. v. Board (138 Iowa 11; 115 N. W. 480), 794.
- Naul v. McComb City (70 Miss. 699; 12 So. 903), 1608.
- Mazum v. State (88 Ind. 599), 85.
- Neal, *Ex parte* (47 Tex. Cr. App. 441; 83 S. W. 831), 888.
- Neal, etc., Co., *Ex parte* (58 S. C. 269; 36 S. E. 584), 123, 1806.
- Neal v. State ([Tex. Cr. App.] 101 S. W. 1139), 874.
- Neal v. State (51 Tex. Cr. App. 513; 102 S. W. 1139), 857, 909, 917, 958, 1684.
- Neales v. State (10 Mo. 498), 1491, 1497, 1501, 1502, 1505, 1507.
- Needham v. State (19 Tex. 332), 1554.
- Neely v. State (60 Ark. 66; 28 S. W. 800; 46 Am. St. 148; 27 L. R. A. 503), 1227.
- Neideiser v. State (6 Baxt. 499), 1362, 1568, 1753.
- Neighbors v. Commonwealth ([Ky.] 9 S. W. 718), 289, 1463, 1464, 1467, 1594, 1680, 1686.
- Neilly, *In re* (37 Up. Can. 289), 468.
- Neilon v. Kansas City, etc., R. Co. (85 Mo. 599), 2198, 2199.
- Neilson v. Dunsmore (3 F. [Just. Cas.] 6), 1114.
- Neimann v. State ([Tex. Cr. App.] 74 S. W. 558), 1321.
- Nelson v. Commonwealth (23 S. W. 350), 1609.
- Nelson v. Galveston, etc., R. Co. (78 Tex. 621; 14 S. W. 1021), 1906.
- Nelson v. State (17 Ind. App. 403; 46 N. E. 941), 163, 212, 279, 342, 344, 490, 1319.
- Nelson v. State (32 Ind. App. 88; 69 N. E. 298), 1869, 1870.
- Nelson v. State (53 Neb. 796; 74 N. W. 279), 1662, 1703.
- Nelson v. State (44 Tex. Cr. App. 595; 75 S. W. 502), 871, 890, 938, 1646, 1682, 1683, 1686.
- Nelson v. State (111 Wis. 394; 87 N. W. 235), 1225.
- Nelson v. United States (30 Fed. 112), 173, 210, 1259, 1503, 1521.
- Nelson v. Woodford ([1779] 2 Vesey, Jr., 319), 1907.
- Nepp v. Commonwealth (2 Duv. 546), 635.
- Netter, *In re* (11 Pa. Super. Ct. 566), 664.
- Netso v. State (24 Fla. 363; 5 So. 857), 39, 83, 1711.
- Neuman v. State (76 Wis. 112; 45 N. W. 30), 479.
- Nevin v. Ladue (1 N. Y. Code Rep. 43; 3 Denio 43, 437), 10, 40, 42, 46, 47, 48, 82, 85, 966, 1592.
- Nevling v. Commonwealth (98 Pa. 323), 2054.

[References are to pages.]

- New v. McKechnie (95 N. Y. 632; 47 Am. Rep. 89), 1864, 1876, 1880, 1984, 1985.
- Newbern v. McCann (105 Tenn. 159; 58 S. W. 114; 50 L. R. A. 476), 454.
- New Decatur v. Laude (93 Ala. 84; 9 So. 382), 1621.
- Newell v. Hemingway (58 L. J. M. C. 46; 60 L. T. 544; 16 Cox C. C. 604; 53 J. P. 324), 512, 1328, 1330, 1346, 1347.
- New Gloucester (28 Me. 60), 1500, 1583.
- New Hampton v. Conroy (56 Ia. 498; 9 N. W. 417), 397.
- New Iberia v. Erath (118 La. 305; 42 So. 945), 332.
- New Iberia v. Moss Hotel Co. (112 La. 525; 36 So. 552), 416, 447, 812.
- Newman v. Jones (17 Q. B. Div. 132; 50 J. P. 373; 55 L. J. M. C. 113; 55 L. T. 327), 1345, 1346, 1352, 1355, 1374.
- Newman v. State (63 Ga. 533), 1515.
- Newman v. State (101 Ga. 534; 28 S. E. 1005), 1486, 1505.
- Newman v. State (7 Lea 617), 1385.
- Newman v. State (76 Wis. 112; 45 N. W. 30), 1523.
- New Orleans v. Clark (42 La. Ann. 9; 7 So. 58), 186, 796, 797.
- New Orleans v. Guth (11 La. Ann. 405), 541.
- New Orleans v. Jane (34 La. Ann. 667), 508, 520, 549.
- New Orleans v. Kaufman (29 La. Ann. 283; 29 Am. Rep. 283), 791.
- New Orleans v. Machecha (112 La. 559; 36 So. 747), 206.
- New Orleans v. Smythe (116 La. 685; 41 So. 33), 103, 206, 649.
- New Orleans Gas Light Co. v. Louisiana Light Co. (115 U. S. 650; 6 Sup. Ct. 252), 100, 116.
- New Orleans W. W. Co. v. St. Tammany W. W. Co. (120 U. S. 69; 6 Sup. Ct. 405; affirming 14 Fed. 194), 97.
- New South, etc., Co. v. Commonwealth (123 Ky. 443; 96 S. W. 805; 29 Ky. L. Rep. 873), 948.
- New York v. Mason (4 E. D. Smith, 142), 503, 506, 1484, 1159, 1650.
- New York v. Milim (11 Pet. 102), 100.
- New York Breweries Corp. v. Baker (68 Conn. 337; 36 Atl. 785), 552, 954.
- New York Life Ins. Co. v. Graham (2 Duv. 506), 2244.
- New York Life Ins. Co. v. La Boiteaux (4 Am. L. Rep. 1), 2234, 2244.
- New York Life Ins. Co. v. Parent (3 Quebec L. R. 163), 233, 2225.
- New York, etc., L. Ins. Co. v. Simpson ([Tex. Civ. App.] 28 S. W. 837), 2223, 2226.
- Newbridge Rhondda Brewing Co., Limited, v. Evans ([1902] 86 L. T. 453; 18 T. L. R. 396), 1818.
- Newburgh, *In re* ([N. Y. Misc. Rep.] 89 N. Y. Supp. 1065), 898.
- Newbury v. State ([Tex. Cr. App.] 44 S. W. 843), 958, 1616, 1694.
- Newcomer v. Tucker (89 Iowa 486; 56 N. W. 499), 1001.
- Neudeck v. Grand Lodge (1 Mo. App. 330), 2245.
- Newell v. Fisher (11 Sm. & M. 431; 49 Am. Dec. 66), 2094, 2108, 2118.
- Newlan v. Aurora (14 Ill. 364), 1652.

[References are to pages.]

- Newman, *Ex parte* (9 Cal. 502), 106.
- Newman v. Bendysche (10 A. & E. 11; 2 P. & D. 340), 1540.
- Newman v. Covenant Mut. Ins. Ass'n (76 Iowa, 56; 40 N. W. 87; 14 Am. St. 196), 2233, 2239, 2241, 2244.
- Newman v. Des Moines County (85 Iowa, 89; 52 N. W. 105), 1004.
- Newman v. Lake (70 Kan. 848; 79 Pac. 675), 736.
- Newman v. State (88 Ala. 115; 11 So. 762), 1284, 1288.
- Newman v. State ([Ala.] 39 So. 648), 174.
- Newman v. State (63 Ga. 533), 1241.
- Newman v. State (101 Ga. 534; 28 N. E. 1005), 1539, 1760.
- Newman v. State (63 Ind. 533), 1563.
- Newman v. State (7 Lea, 617), 824.
- Newman v. State (55 Tex. Cr. App. 376; 116 S. W. 1156), 1601.
- Newman v. State (76 Wis. 112; 45 N. W. 30), 750, 1583.
- Newson v. State (1 Ga. App. 790; 58 S. E. 71), 951, 1561.
- Newson v. Tahigahen (30 Miss. 414), 798.
- Newsome v. State (1 Ga. App. 790; 58 S. E. 71), 951, 1234.
- Newton v. Central Vt. R. Co. (80 Hun, 491; 30 N. Y. Supp. 488), 2176, 2197.
- Newton v. Locklin (77 Ill. 103), 2033.
- Newton v. McKay ([Iowa] 102 N. W. 827), 199, 223, 790, 816.
- Niagara Ins. Co. v. DeGraff (12 Mich. 124), 1777, 1778.
- Nichols, *In re* (43 Fed. Rep. 164), 426.
- Nichols v. Commonwealth ([Ky.] 87 S. W. 1072; 27 Ky. L. Rep. 1176, reversing 86 S. W. 513; 27 Ky. L. Rep. 690), 958, 2067, 2069.
- Nichols v. Lehman ([Ind.] 85 N. E. 786), 607.
- Nichols v. Nichols (136 Mass. 256), 2253.
- Nichols v. Polk County (78 Iowa, 137; 42 N. W. 627), 1075.
- Nichols v. State (49 Neb. 777; 69 N. W. 99), 1761.
- Nichols v. State (8 Ohio St. 425), 2073, 2074.
- Nichols v. State (37 Tex. Cr. App. 546; 40 S. W. 268), 872.
- Nichols v. State (39 Tex. Cr. App. 80; 40 S. W. 268), 832.
- Nichols v. Thomas (89 Iowa, 394; 56 N. W. 540), 994, 1004.
- Nichols v. Valentine (36 Me. 322), 552, 1031, 1773, 1776.
- Nicholson v. People (29 Ill. App. 57), 1102, 1452, 1549.
- Nickerson v. Boston (131 Mass. 306), 97.
- Nicol v. Fenning ([1881] 19 Ch. D. 258; 45 L. T. 738; 51 L. J. Ch. 166), 1814.
- Nicolini v. Langermann ([Tex. Civ. App.] 104 S. W. 501), 704.
- Nierosi v. State (52 Ala. 336), 1182, 1189.
- Nieland v. McGrath (29 N. Y. Misc. Rep. 682; 62 N. Y. Supp. 760), 737.
- Nielson v. Lafflin (50 N. Y. St. Rep. 277; 21 N. Y. Supp. 731), 2102, 2126, 2130.
- Nightengale, Petitioner (11 Peck, 167), 448.
- Niles v. Fries (35 Iowa, 41), 1777.
- Niles v. Mathusa (19 N. Y. Misc. Rep. 96; 44 N. Y. Supp. 88), 699, 704, 819.



[References are to pages.]

- Ninenger v. State (25 Tex. App. 449; 8 S. W. 480), 1464, 1471.
- Nipples v. Valentine (36 Me. 322), 1772.
- Nishimiya v. United States (131 Fed. 650), 44.
- Nix v. Nottingham, J. J. ([1899] 2 Q. B. 294; 68 L. J. Q. B. 854; 63 J. P. 628; 47 W. R. 628; 81 L. T. 41; 15 T. L. R. 463), 534, 547, 671, 681.
- Nixon v. State (76 Ind. 524), 821, 827, 1181.
- Noble v. Adams (7 Taunt. 59), 2125.
- Noble v Commonwealth ([Ky.] 105 S. W. 413; 32 Ky. L. Rep. 73), 1608.
- Noble v. Hart ([1897] 34 Sc. L. R. 151), 1823.
- Noblett v. Hopkinson ([1905] 2 K. B. 214; 69 J. P. 269; 74 L. J. K. B. 544; 53 W. R. 637; 92 L. T. 462; 21 T. L. R. 448), 1136, 1140.
- Noecker v. People (91 Ill. 494), 822, 1349, 1358.
- Noel v. Karper (53 Pa. 97), 2121, 2122.
- Nolan, *In re* (16 Viet. L. R. 227; 11 Austr. L. T. 156), 624.
- Noonan v. Hudson County (22 Vroom, 454; 18 Atl. 117; 23 Vroom, 398; 23 Atl. 255), 233.
- Noonan v. Orton (31 Wis. 265), 610.
- Norcross v. Norcross (53 Me. 163), 72.
- Norden v. Bosman (21 Juta, 634), 695.
- Nordin v. Kjos (13 S. D. 497; 83 N. W. 573), 1898.
- Norfleet v. State (4 Sneed, 340), 2068.
- Norfolk & W. R. Co. v. Commonwealth (93 Va. 749; 24 S. E. 837), 324.
- Norfolk, etc., R. Co. v. Harman (83 Va. 553; 8 S. E. 251), 2184, 2185.
- Norfolk, etc., R. Co. v. Hoover (79 Md. 253; 29 Atl. 994; 25 L. R. A. 710), 2201.
- Norfolk & Western R. Co. v. Hoover (79 Md. 253; 29 Atl. 994; 25 L. R. A. 710), 2198.
- Norgans Liquors, *In re* (16 R. I. 542; 18 Atl. 279), 1043.
- Norman v. Commonwealth ([Ky.] 104 S. W. 1024; 31 Ky. L. Rep. 1283), 2068.
- Norman v. Thompson (96 Tex. 250; 72 S. W. 62; affirming 30 Tex. Civ. App. 537; 72 S. W. 64), 888, 903, 920, 925.
- Norment v. Charlotte (85 N. C. 387), 904.
- Normoyle v. Latah Co. (5 Idaho, 19; 46 Pac. 831), 797.
- Norris, *Ex parte* (23 N. S. W. 27; 6 S. R. [N. S. W.] 47), 1354.
- Norris v. Langley (19 N. H. 423), 1807.
- Norris v. Oakman (138 Ala. 411; 35 So. 450), 460.
- North v. Barringer (147 Ind. 224; 46 N. E. 531), 534, 618, 758.
- Northern Ind. R. Co. v. Connelly (10 O. S. 159), 793.
- Northern Pac. R. Co. v. Craft (29 U. S. App. 687; 69 Fed. 124; 16 C. C. A. 175), 2176, 2191, 2192, 2193, 2194, 2195.
- Northern Pacific R. Co. v. Sanders (47 Fed. 604), 1162.
- Northern Pac. R. Co. v. Whalen (3 Wash. T. 452; 17 Pac. 890), 675, 658, 980.
- Northwestern Mut. Life Ins. Co. (122 U. S. 501; 30 L. Ed. 1100; 7 Sup. Ct. Rep. 1221; Appeal of Miskey [107 Pa. St. 611]), 64, 65, 2233, 2243.
- Norton v. Alexander (28 Tex. Civ. App. 466; 67 S. W. 787), 921, 922, 923, 925.

[References are to pages.]

- Norton v. Salisbury (4 C. B. 32), 569.
- Norton v. State (65 Miss. 297; 3 So. 665), 934, 1464, 1468, 1513, 1765.
- Norton v. W. H. Thomas, etc., Co. ([Tex. Civ. App.] 91 S. W. 780), 1785.
- Norton v. W. H. Thomas, etc., Co. ([Tex. Civ. App.] 93 S. W. 711), 1785.
- Nortwick v. Bennett (62 S. J. L. 151), 646.
- Norwood v. Raleigh, etc., R. Co. (111 N. C. 236; 16 S. E. 4), 2178, 2183.
- Norwood v. Stuart (23 N. Z. 473, 1108), 1300.
- Nossman v. Rickert (18 Ind. 350), 1989.
- Nourse v. Pope (13 Allen), 1807.
- Novich ([Tex. Cr. App.] 86 S. W. 332), 1282.
- Nowotny v. Blair (32 Neb. 175; 49 N. W. 357), 1937.
- Nundy, *In re* (59 How. Pr. 359), 627, 634.
- Nundy, *In re* (3 Pennewill, 282; 51 Atl. 605), 540.
- Nurnberger v. Bornwell (42 S. C. 158; 20 S. E. 14), 815.
- Nussbaumer v. State (54 Fla. 87; 4 So. 712), 80, 85, 87.
- Nussear v. Arnold (13 S. & R. 323), 2146.
- Nye v. Lowry (82 Ind. 316), 605.
- O**
- Oak Cliff v. State ([Tex. Civ. App.] 77 S. W. 24; affirmed 67 Tex. 391; 79 S. W. 1), 234.
- Oak Cliff v. State ([Tex. Cr. App.] 107 S. W. 1121), 1553.
- Oakes v. Marrifield (93 Me. 297; 45 Atl. 31), 1791, 1807.
- O'Banion v. De Garmo (121 Iowa, 139; 96 N. W. 739), 774.
- Oberer v. State (28 Ohio Cir. Ct. Rep. 620), 1558.
- Oberfell, *In re* (28 Pa. Super. Ct. 68), 565.
- O'Brien, *In re* (29 Mont. 530; 75 Pac. 196), 232, 234, 919, 932.
- O'Brien v. Mahon (126 Iowa, 539; 102 N. W. 446), 755, 759, 774, 775, 797, 801, 802.
- O'Brien v. People (36 N. Y. 276), 2051.
- O'Brien v. People (48 Barb. 274), 2054.
- O'Brien v. Putney (55 Iowa, 292; 7 N. W. 615), 1924, 1927.
- O'Brien v. State (91 Ala. 16; 8 So. 560), 1161.
- O'Brien v. State (109 Ga. 51; 35 S. E. 112), 230, 1600.
- O'Brien v. State (63 Ind. 242), 1520, 1522.
- O'Bryan v. Fitzpatrick (48 Ark. 487; 3 S. W. 527), 1792, 1806.
- O'Bryan v. State (48 Ark. 42; 2 S. W. 339), 1555, 1560.
- O'Bryane v. Hadley ([Ala.] 50 So. 87), 1811.
- O'Connell v. Garrett (145 Mass. 311; 14 N. E. 234), 1229.
- O'Connell v. Larkins (5 N. S. W. L. R. 8), 1293.
- O'Connell v. O'Leary (145 Mass. 311; 14 N. E. 143), 1227, 1932.
- O'Connell v. O'Malley (18 N. Z. 577), 1153, 1154.
- O'Connell v. State ([Ga. App.] 62 S. E. 1007), 1696.
- O'Conner, *In re* (Temp. Wood [Manitoba] 293), 683.
- O'Conner v. Rempt (29 N. J. Eq. 156), 2095, 2099, 2108.
- O'Connor, *In re* (Temp. Wood [Manitoba] 284), 567.
- O'Connor v. Board ([Idaho] 105 Pac. 560), 868.
- O'Connor v. Congen (102 N. Y. 702; 7 N. E. 369), 1975.

[References are to pages.]

- O'Connor v. Gillespie (17 Vict. L. R. 374), 1192.
- O'Connor v. Kielman ([Iowa] 121 N. W. 1088), 1784.
- O'Connor v. Price (14 Vict. L. R. 946; 10 Austr. L. T. 155), 1347.
- O'Connor v. State (45 Ind. 347), 1291, 1292, 1501, 1517, 1742.
- Odd Fellows' Mut. L. Ins. Co. v. Rohkopp (94 Pa. St. 59; 9 Ins. L. Jr. 787), 2236, 2245.
- O'Dea v. State (57 Ind. 31), 144.
- Odell v. Wharton (87 Tex. 173; 27 S. W. 123), 925.
- O'Donnell v. Commonwealth (108 Va. 882; 62 S. E. 373), 1461, 1616, 1706.
- O'Driscoll v. Viard (2 Bay [S. C.] 316), 558.
- Oechslein v. Passaic (2 N. J. Law J. 85), 441.
- O'Flaherty v. Hackett (14 Vict. L. R. 97), 1132.
- O'Flinn v. State (66 Miss. 7; 5 So. 390), 766, 767, 771.
- Ogburn v. Elmore (123 Ga. 677; 51 S. E. 641), 920, 925.
- Ogden v. Saunders (12 Wheat. [U. S.] 213), 261.
- Oglesby v. State (121 Ga. 602; 49 S. E. 706), 283, 1525.
- O'Grady v. People (42 Colo. 312; 95 Pac. 346), 1579, 1580.
- O'Grady v. State (36 Neb. 320; 54 N. W. 556), 2040, 2081.
- O'Hagan v. Dillon (10 Jones & S. 456), 2171, 2186, 2195.
- O'Halloran v. Jackson (107 Mich. 138; 64 N. W. 1046), 763.
- O'Halloran v. Kingston (16 Ill. App. [16 Bradw.] 659), 1912.
- O'Hara, *In re* (63 N. Y. App. 512; 71 N. Y. Supp. 613), 884, 889.
- O'Hare v. Chicago (125 Ill. App. 73), 167.
- O'Hara v. Cox (42 Miss. 496), 793.
- O'Herrin v. State (14 Ind. 420), 2040, 2080.
- Ohio v. Dollison (194 U. S. 445; 24 Sup. Ct. 703; 48 L. Ed. 1062; affirming 68 Ohio St. 688; 70 N. E. 1131), 250.
- Ohlrogg v. Worth County ([Iowa] 99 N. W. 178), 1002.
- Ohlsson v. Kuhr (18 Juta, 205), 712, 1812.
- Oil City v. Oil City Trust Co. (151 Pa. St. 454; 31 Am. St. Rep. 770), 426.
- Oke v. McManus ([Iowa] 121 N. W. 177, reversing 115 N. W. 580), 1271.
- O'Keefe v. Chicago, etc., R. Co. (32 Iowa, 467), 2172.
- O'Keefe v. Chicago, etc., R. Co. (32 Iowa, 467), 2178, 2184.
- O'Keefe v. State (24 Ohio St. 175), 1095.
- Oldham, J. J. v. Gee (66 J. P. 341; 18 T. L. R. 348), 710.
- Oldham v. Ramsden (44 L. J. C. P. 309; 22 L. T. 825; 39 J. P. 583), 378.
- Oldham v. Sheasby (60 L. J. M. C. 81; 55 J. P. 214), 1152.
- Oldham v. State (52 Tex. Cr. App. 516; 108 S. W. 657), 784, 1220, 1378, 1605, 1620.
- O'Leary v. Frisby (17 Ill. App. 553), 1912.
- O'Leary v. State (44 Ind. 91), 1353, 1357, 1359, 1615, 1629, 1633, 1655.
- Olivaris v. State (23 Tex. App. 305; 4 S. W. 903), 918.
- Oliver v. Connell (29 Vict. L. R. 329; 25 Austr. L. T. 76; 9 Austr. L. R. 177), 712.
- Oliver v. London (60 J. P. 248), 1317.
- Ollre v. State ([Tex. Cr. App.] 123 S. W. 1116), 1354.
- Olmstead v. Crook (89 Ala. 228; 7 S. E. 776), 867, 872, 918, 930.

[References are to pages.]

- Olmstead v. Noll (82 Neb. 147; 117 N. W. 102), 1981.
- Olmstead v. State (90 Ala. 634; 8 So. 668), 1637.
- Olmstead v. State (89 Ala. 16; 7 So. 775), 1456.
- Olson v. Hurley (33 Minn. 39; 21 N. W. 842), 1805.
- Olson v. People (125 Ill. App. 460), 1759, 1760.
- Omit v. Commonwealth (9 Harris [Pa.] 426), 1310.
- O'Neal v. Adams ([Iowa] 122 Pac. 976), 2263.
- O'Neal v. Minary (101 S. W. 951; 30 Ky. L. Rep. 888; 125 Ky. 571), 859, 874, 893, 900, 904, 934, 935, 943.
- O'Neal v. Parker (83 Ark. 133; 103 S. W. 165), 1028.
- O'Neil v. Murray (4 Bradf. 311), 2136.
- O'Neil, *Ex parte* (9 Can. Cr. Cas. 141), 263.
- O'Neil v. Keokuk, etc., R. Co. (45 Iowa, 456), 2253.
- O'Neill v. Nolan (50 N. Y. St. Rep. 641; 21 N. Y. Supp. 222), 2106, 2122.
- O'Neil v. State (116 Ga. '839; 43 S. E. 248), 1538.
- O'Neil v. State (76 Neb. 44; 107 N. W. 119), 1022, 1084.
- O'Neil v. Vermont (144 U. S. 323; 12 Sup. Ct. 693; 36 L. Ed. 450), 298, 299, 307.
- Optumwa v. Schaub (52 Ia. 515; 3 N. W. 529), 471.
- Orange Co. v. Dougherty (55 Barb. 332), 1369.
- Orcutt v. Nelson (1 Gray, 536), 1786, 1796.
- Orcutt v. Renigardt (46 N. J. L. 337), 80, 561, 575, 577, 859.
- Oriatt v. Pond (29 Conn. 479), 1008, 1031.
- Orke v. McManus ([Iowa] 115 N. W. 580), 341, 364, 1782.
- O'Reilly v. State ([Tex. Cr. App.] 85 S. W. 8), 1474.
- Orme v. Tusculumbia (150 Ala. 520; 43 So. 589), 453, 1122.
- Ormerod v. Chadwick (16 M. & W. 687; 2 N. Sess. 697), 567.
- O'Rourke v. People (3 Hun, 225; 5 Thomp. & C. 496), 533.
- Osborn v. Sargent (23 Me. 527), 1739.
- Osborn v. State ([Tex. Cr. App.] 26 S. W. 625), 2046.
- Osborne v. Hare (40 J. P. 759), 374, 1145.
- Osborne v. State (77 Ark. 439; 92 S. W. 406), 1015, 1022.
- Osburn v. Marietta (118 Ga. 53; 44 S. E. 807), 168, 452.
- Osgood v. People (39 N. Y. 449), 1493, 1504.
- Oshe v. State (37 Ohio St. 494), 1093, 1091, 1456.
- Oshkosh v. State (59 Wis. 425; 18 N. W. 324), 683, 740.
- O'Shannessey v. State ([Tex. Cr. App.] 96 S. W. 790), 1624, 1598, 1602.
- Ostler v. State (3 Ind. App. 122; 29 N. E. 270), 1109.
- Oswald v. Moran (8 N. D. 111; 77 N. W. 281), 1804.
- Oswego Lake Tp. v. Kirston (72 Mich. 1; 40 N. W. 26), 945.
- Ott, *In re* (95 Fed. 274), 2263.
- Ottawa v. La Salle (11 Ill. 339), 473.
- Otte v. State (29 Ohio Cir. Ct. Rep. 203), 132, 853, 911, 1444, 1553, 1589, 1602.
- Ottman v. Young (12 Hawaii, 303), 639, 644.
- Otto v. State ([Tex. Cr. App.] 87 S. W. 698), 1214, 1282, 1289.
- Ottumwa v. Schaub (52 Iowa, 515; 3 N. W. 529), 714, 727, 767.
- Ottumwa v. Zekind (95 Iowa, 922; 64 N. W. 622; 29 L. R. A. 734; 58 Am. St. 447), 483.
- Ould v. Richmond (23 Gratt. [Va.] 464), 791

[References are to pages.]

Ouong Woo, *In re* (13 Fed. 229), 189.  
 Our v. Commonwealth (9 Dana, 9), 1541.  
 Our House No. 2 v. State (4 Greene [Iowa] 172), 109, 256, 989, 1486, 1551.  
 Outlaw v. State (35 Tex. 481), 2040.  
 Outred v. Keddel (2 N. Y. 201), 1279.  
 Ovenden v. Raymond (40 J. P. 727), 1145, 1318.  
 Overall v. Berzeau (37 Mich. 506), 76, 1085, 1111, 1115, 1158, 1169.  
 Overby v. State (18 Fla. 178), 789.  
 Overman v. State (88 Ind. 6), 1109.  
 Overseen, etc. v. Warner (3 Hill [N. Y.] 150), 498.  
 Overton v. Hunter (23 J. P. £08; 1 L. T. 360), 1136.  
 Overton v. Schindele (85 Iowa, 715; 50 N. W. 977), 991.  
 Overseers v. Woerner (3 Hill, 150), 72.  
 Overstreet v. Brubacher (98 Mo. App. 75; 71 S. W. 1090), 1805.  
 Oviatt v. Pond (29 Conn. 479), 109, 125, 126, 253, 255, 1776, 1777.  
 Owen v. Armstrong (13 Juta, 408), 969.  
 Owen v. Geyer (9 Juta, [H. C.] 162), 1347.  
 Owen v. Langford (55 J. P. 484), 1218.  
 Owen v. McLean (3 Can. Cr. Cas. 323), 45.  
 Owens v. People (56 Ill. App. 569), 532, 1752.  
 Owens v. State (47 Tex. Cr. App. 634; 85 S. W. 794), 950.  
 Owensboro v. Ellter (3 Ky. L. Rep. [abstract] 255), 815.

Owensboro v. Fulds ([Ky.] 102 S. W. 1184; 31 Ky. L. Rep. 627), 794.  
 Owing's Case (1 Bland. 371), 2093.  
 Oxford v. Frank (30 Tex. Civ. App. 343; 70 S. W. 426), 920, 939.  
 Oxford v. State (49 Tex. Cr. App. 321; 94 S. W. 463), 1380.  
 Oxford v. State ([Tex. Cr. App.] 97 S. W. 484), 948.  
 Oxley v. Allen ([Tex. Civ. App.] 107 S. W. 945), 909, 923, 938, 939, 942.

**P**

Pabst Brewing Co. v. Crenshaw (120 Fed. 144), 148, 151, 162, 225, 240, 1383.  
 Pabst Brewing Co. v. Crenshaw (198 U. S. 17; 25 Sup. Ct. 552; 49 L. Ed. 925, affirming 120 Fed. 144), 147, 225, 328, 331, 332, 427.  
 Pabst Brewing Co. v. City of Terre Haute (98 Fed. 330), 427.  
 Pabst Brewing Co. v. Commonwealth ([Ky.] 107 S. W. 728, 729; 32 Ky. L. Rep. 1010, 1013), 952.  
 Pace v. Raleigh (140 N. C. 65; 52 S. E. 277), 861.  
 Pace v. State ([Ala.] 50 So. 353), 1581.  
 Pacific University v. Johnson (47 Ore. 448; 84 Pac. 704), 403.  
 Paden v. Carson (15 Okla. 399; 82 Pac. 830), 671.  
 Padgett v. State (93 Ind. 396), 507, 673.  
 Padgett v. Sturgis ([Ga.] 65 S. E. 352), 1023.  
 Paducah v. James ([Ky.] 104 S. W. 971; 31 Ky. L. Rep. 1203), 430.



[References are to pages.]

- Paducah v. Jones (126 Ky. 829; 104 S. W. 971; 31 Ky. L. Rep. 1203), 1358.
- Page v. District of Columbia (20 App. D. C. 469), 546.
- Page v. Krekey (137 N. Y. 307; 33 N. E. 311; 21 L. R. A. 409), 2112.
- Page v. Krekey (63 Hun, 629; 17 N. Y. Supp. 764; 21 L. R. A. 409), 2121.
- Page v. Luther (51 N. C. [6 Jones] 413), 1246.
- Page v. Page ([Wash] 96 Pac. 82), 2156.
- Page v. Ratcliffe ([No. 2] [1896] 75 L. T. 371), 1831.
- Page v. State (11 Ala. 849), 72, 448, 550.
- Page v. State (4 South, 697; 84 Ala. 446), 771, 1220, 1230, 1714, 1845.
- Page v. State (28 Ohio Cir. Ct. Rep. 660), 1462.
- Pahner v. Doney (2 Johns. Cas. 346), 499.
- Pain v. Boughwood (24 Q. B. Div. 353; 55 J. P. 469), 1383.
- Palcher v. United States (11 Fed. 47), 1030, 1259.
- Palenthorpe v. Home Brewery Co., Limited ([1906] 2 K. B. 5; 75 L. J. K. B. 555; 94 L. T. 871; 54 W. R. 489; 22 T. L. R. 505), 1824.
- Palmer, *In re* (3 Pa. Co. Ct. 314), 603.
- Palmer v. Doney (2 Johns. Cas. 346), 504, 559.
- Palmer v. Hartford (73 Mich. 96; 40 N. W. 850), 764.
- Palmer v. Schurz ([S. D.] 117 N. W. 150), 1631, 1839, 1842, 1849, 1869, 1896, 1903, 1939, 1941.
- Pana v. State (51 Ark. 481; 11 S. W. 692), 1586.
- Pancake v. State (81 Ind. 93), 1538, 1634.
- Pancoast v. Graham (2 McCart. [N. J.] 294), 2137, 2142.
- Paola v. Williford (65 Kan. 859; 69 Pac. 331), 1191.
- Papworth v. Fitzgerald (106 Ga. 378; 32 S. E. 363), 127, 168, 452.
- Papworth v. Goodnow (104 Ga. 683; 30 S. E. 872), 639.
- Paquet v. Emery (87 Me. 215; 32 Atl. 881), 1051.
- Paris v. Graham (33 Mo. 94), 408, 418.
- Paris, etc., R. Co. v. Robinson ([Tex. Civ. App.] 114 S. W. 658), 2201, 2202.
- Parish v. State (47 Tex. Cr. App. 148; 82 S. W. 517), 1743.
- Parish v. Thurston (87 Ind. 437), 2127.
- Park v. State ([Tex. Cr. App.] 98 S. W. 243), 1729.
- Parker v. Alder ([1899] 1 Q. B. Div. 23; 68 L. J. Q. B. 7; 62 J. P. 772; 47 W. R. 142; 79 L. T. 381; 15 T. L. R. 3; 19 Cox C. C. 191), 1383.
- Parker v. Barker (43 N. H. 36), 1058.
- Parker v. Commonwealth ([Ky.] 12 S. W. 276), 835.
- Parker v. Commonwealth (6 Barr. [Penn.] 507), 231, 240.
- Parker v. Green (2 B. & S. 299; 26 J. P. 247; 31 L. J. M. C. 133; 10 W. R. 316), 367, 726.
- Parker v. Griffith ([N. C.] 66 S. E. 565), 434.
- Parker v. Parker (52 Ill. App. 333), 1736.
- Parker v. Portland (54 Mich. 308; 20 N. W. 55), 764.
- Parker v. Regina ([1896] 2 Irish Rep. 404), 1152.
- Parker v. State (126 Ga. 443; 55 S. E. 329), 938.
- Parker v. State (27 Ind. 393), 1304, 1307, 1308.

[References are to pages.]

- Parker v. State (31 Ind. App. 650; 68 N. E. 912), 822, 825, 833, 971.
- Parker v. State (99 Md. 189; 57 Atl. 677), 111, 281, 1523, 1524.
- Parker v. State (62 N. J. L. 801; 45 Atl. 1092, affirming 61 N. J. L. 308; 39 Atl. 651), 1110.
- Parker v. State (4 Ohio St. 563), 1564, 1615.
- Parker v. State (12 Tex. App. 401), 883.
- Parker v. State (39 Tex. Cr. App. 262; 45 S. W. 812), 1200, 1680.
- Parker v. State (45 Tex. Cr. App. 334; 77 S. W. 783), 1608.
- Parker v. State (48 Tex. Cr. App. 69; 85 S. W. 1155), 1280.
- Parker v. State ([Tex. Cr. App.] 75 S. W. 30), 1699.
- Parker v. State ([Tex. Cr. App.] 84 S. W. 822), 1225.
- Parker v. Wayne Co. (104 N. C. 166; 10 S. E. 137), 793, 797.
- Parker v. Winona, etc., R. Co. (83 Minn. 212; 86 N. W. 2), 2217.
- Parkinson v. State (14 Md. 184; 74 Am. Dec. 522), 289, 1173, 1223, 1515, 1563.
- Parks v. State (15 Ind. 9211; 64 N. E. 862), 1443.
- Parks v. State ([Ky.] 96 S. W. 328), 1282.
- Parmell v. State (29 Ga. 681), 1245.
- Parmenter v. United States (6 Ind. Ter. 530; 98 S. W. 340), 1505.
- Parrent v. Little (72 N. H. 566; 58 Atl. 510), 718, 719, 814, 819.
- Parrott v. Commonwealth (6 Ky. L. Rep. 221), 21, 52, 58, 60, 1698, 1699.
- Parrott v. Wilson (51 Ga. 255), 1767.
- Parsley v. Hutchins (47 N. C. 159), 522.
- Parsons v. Alexander (24 L. J. Q. B. 277; 5 E. & B. 263), 374.
- Parsons v. George (17 Juta, 192), 567.
- Parsons v. People (32 Colo. 22; 76 Pac. 666), 170, 198, 200, 286, 789.
- Part of Lot 294 v. State (1 Clarke [Iowa] 507), 1016.
- Parvin v. Winberg (130 Ind. 561; 30 N. E. 790), 900.
- Paschal v. State (84 Ga. 326; 10 S. E. 821), 1166, 1180.
- Pase v. State ([Tex. Cr. App.] 79 S. W. 521), 1735.
- Pasquier v. Neale ([1902] 2 K. B. 287; 67 J. P. 49; 72 L. J. K. B. 835; 51 W. R. 92; 87 L. T. 230; 18 T. L. R. 704), 690, 1275, 1318.
- Passenger Cases (7 How. 283; 12 L. Ed. 102), 100, 298.
- Paston v. State ([Neb.] 119 N. W. 520), 1708.
- Patchell, *Ex parte* (34 N. B. 258), 549.
- Pate v. Jonesboro (75 Ark. 276; 87 S. W. 437), 468.
- Patman v. Harland ([1881] 17 Ch. D. 353; 50 L. J. Ch. 642; 44 L. T. 728; 29 W. R. 707), 1814.
- Pattee v. Thompson ([N. H.] 41 Atl. 265), 1743.
- Patten v. Centralia (47 Ill. 370), 71, 1126.
- Patten v. Rhymer (3 El. & El. 1; 29 L. J. M. C. 189; 24 J. P. 342; 2 L. T. 352; 8 W. R. 496), 373, 374.
- Patterson, *In re* (4 How. Pr. 34), 2151.
- Patterson, *In re* (43 N. Y. Misc. Rep. 498; 89 N. Y. Supp. 437), 584.
- Patterson v. Kentucky (97 U. S. 501), 95, 408, 117, 315, 489.

[References are to pages.]

- Patterson v. Murray (15 N. Z. L. R. 487), 1812, 1818.  
 Patterson v. Nicol (115 Iowa, 283; 88 N. W. 323), 984.  
 Patterson v. Society, etc., 24 N. J. L. 385), 394.  
 Patterson v. State (21 Ala. 571), 1360.  
 Patterson v. State (36 Ala. 297), 1293.  
 Patterson v. State ([Tex. Cr. App.] 90 S. W. 31), 1482.  
 Patton v. McDonald (30 N. B. 523), 1027, 1075, 1076.  
 Patton v. People (1 Colo. 77), 521.  
 Patton v. State (80 Ga. 714; 6 S. E. 273), 1650, 1651, 1740.  
 Patton v. State (31 Tex. Cr. Rep. 20; 19 S. W. 252), 1568, 1569.  
 Patton v. State (42 Tex. Cr. App. 496; 61 S. W. 309), 1233, 1234.  
 Patton v. State ([Tex. Cr. App.] 100 S. W. 778), 1468, 1472.  
 Patton v. Williams (35 Tex. Civ. App. 129; 79 S. W. 357), 773, 781.  
 Patrick v. State (45 Tex. Cr. App. 587; 78 S. W. 947), 1608, 1690, 1703.  
 Patrick v. State ([Tex. Cr. App.] 87 S. W. 947), 1185.  
 Patrick v. Victor Knitting Mills Co. (37 N. Y. Supp. Div. 7; 55 N. Y. Supp. 340), 2254, 2255.  
 Paul v. Gloucester Co. (50 N. J. L. 585; 15 Atl. 272; 1 L. R. A. 86), 221, 228, 233, 236, 397, 888, 892.  
 Paul v. State ([Tex. Cr. App.] 106 S. W. 448), 132, 169, 975, 976.  
 Paul v. Troyer (3 Minn. 291), 402.  
 Paul v. Washington (134 N. C. 363; 47 S. E. 793; 65 L. R. A. 902), 431, 455, 461, 472.  
 Paulina's Cargo v. United States (7 Cranch [U. S.] 52), 252.  
 Paulk v. Sycamore (105 Ga. 501; 31 S. E. 200), 452, 1082.  
 Paulson v. Languess (16 S. D. 471; 83 N. W. 655), 1911.  
 Paunders v. State (37 Ark. 399), 1237.  
 Payne v. Johnston (22 N. Z. 176), 1153.  
 Payne v. State (66 Ark. 545; 52 S. W. 276), 2247.  
 Payne v. State (74 Ind. 203), 1226, 1500, 1561, 1630.  
 Payne v. State (5 Tex. App. 35), 2067.  
 Payne v. State ([Tex. Cr. App.] 19 S. W. 677), 1630.  
 Payne v. Thomas (60 L. J. M. C. 3; 53 J. P. 824; 63 L. T. 456; 17 Cox, C. C. 212; 39 W. R. 240), 353.  
 Paynor v. Holzgraf (35 Tex. Civ. App. 233; 79 S. W. 829), 772.  
 Peache v. Colman (L. R. 1 C. P. 324; 35 L. J. M. C. 118; 14 W. R. 439), 1151.  
 Peacock v. Limburger (95 Tex. 258; 67 S. W. 518), 210, 219, 1239, 1245.  
 Peacock v. Oaks (85 Mich. 578; 48 N. W. 1082), 1848, 1960, 1943.  
 Peak v. Bidinger (133 Iowa, 127; 110 N. W. 292), 979.  
 Pearce v. Brooks (L. R. 1 Exch. 213), 1795.  
 Pearce v. Commonwealth (5 Ky. L. Rep. 407), 1545.  
 Pearce v. State (40 Ala. 720), 1293, 1610.  
 Pearce v. State (35 Tex. Cr. Rep. 150; 32 S. W. 697), 509.  
 Pearce v. State (48 Tex. Cr. App. 352; 88 S. W. 234), 825, 833, 972.  
 Pearman v. Pearman (1 Swab. & T. 601; 29 L. J. Mat. [N. S.] 54; 8 W. R. 274), 2166.

[References are to pages.]

- Pearsall v. Supervisors (71 Mich. 438; 39 N. W. 578), 878.
- Pearson's Case (2 Lewin, C. C. 144), 2039.
- Pearson v. Broadbent (36 J. P. 485), 682, 684.
- Pearson v. Cass Co. (90 Iowa, 756; 57 N. W. 871), 1001.
- Pearson v. International Distillery (72 Iowa, 348; 34 N. W. 1; affirmed 128 U. S. 1; 9 Sup. Ct. 6; 32 L. Ed. 346), 111, 119, 126, 161, 827, 1194.
- Pearse v. Gill (41 J. P. 742), 1138.
- Pearson v. State (66 Miss. 510; 6 So. 243; 4 L. R. A. 835), 1280, 1284.
- Pease v. Coats ([1866] L. R. 2 Eq. 688; 36 L. J. Ch. 57; 30 J. P. 819; 14 L. T. 886), 1813.
- Peavy v. Georgia, etc., Co. (81 Ga. 485; 8 S. E. 70), 2206.
- Peavy v. Goss ([Tex. Civ. App.] 37 S. W. 317), 1895, 1897, 1903.
- Pecaria v. State (48 Tex. Cr. App. 352; 90 S. W. 42), 952.
- Peck, *In re* (167 N. Y. 391; 60 N. E. 775; 53 L. R. A. 888; reversing 57 N. Y. App. Div. 635; 68 N. Y. Supp. 1145), 738, 743, 990.
- Peck, *In re* (42 N. Y. St. Rep. 898), 2142.
- Peck v. Cary (27 N. Y. 9; 84 Am. Dec. 220), 2134, 2135, 2136, 2138, 2140, 2142.
- Peck v. Conner (82 Iowa, 725; 47 N. W. 977), 1001.
- Peck v. Jenness (7 How. [U. S.] 624), 1012.
- Peck v. Weddell (17 Ohio St. 271), 925.
- Peckover v. Defries (95 L. T. 883; 71 J. P. 38; 21 Cox, C. C. 323; 23 T. L. R. 20), 1220, 1350, 1373.
- Peddie v. Bennett (61 J. P. 680), 376.
- Pedigo v. Commonwealth ([Ky.] 68 S. W. 1113; 70 S. W. 659; 24 Ky. L. Rep. 535), 1084, 1697.
- Pedigo v. Commonwealth (24 Ky. L. Rep. 1029; 70 S. W. 659), 33, 83.
- Peer v. Board (70 N. J. L. 496; 57 Atl. 153), 692.
- Peer v. Commonwealth (5 Gratt. 674), 1452.
- Pegram v. Story (31 W. Va. 220; 6 S. E. 485), 1850, 1852, 1934, 1984.
- Pehrson v. Ephraim (14 Utah, 147; 46 Pac. 657), 716.
- Peirce v. New Hampshire (46 U. S. 504), 1433.
- Peisch v. Linder (73 Iowa, 766; 33 N. W. 133), 991.
- Peitz v. State (68 Wis. 538; 32 N. W. 763), 1373.
- Pekin v. Smelzel (21 Ill. 464; 74 Am. Dec. 105), 83, 395, 398, 432, 470.
- Pelgreen v. State (71 Ark. 368), 1280.
- Pelham v. Page (6 Ark. 535), 2250, 2255.
- Pellectat v. Angell (2 Crompt. M. & R. 311, 313), 1794.
- Pelly v. Wills (141 Ind. 688; 41 N. E. 354), 598, 599, 600, 622, 637, 639, 1350.
- Pelton v. Drummond (21 Neb. 492; 32 N. W. 593), 567, 568.
- Pemberton v. State (11 Ind. App. 297; 38 N. E. 1096), 1749, 1751.
- Pence v. Commonwealth (5 Ky. L. Rep. [abstract] 608; 6 Ky. L. Rep. 113), 553.
- Pendennis Club v. Louisville (7 Ky. L. Rep. [abstract] 831), 1159, 1331, 1342, 1345.
- Pendergast v. Peru (20 Ill. 51), 1640.

[References are to pages.]

- Penn v. Alexander ([1893] 1 Q. B. 522; 57 J. P. 118; 68 L. T. 355; 41 W. R. 392; 17 Cox, C. C. 615), 1150.
- Penn v. State ([Tex. Cr. App.] 68 S. W. 170), 1706.
- Pennell v. State ([Wis.] 123 N. W. 115), 19, 32, 162.
- Penner v. Commonwealth (111 Ky. 604; 64 S. W. 435; 23 Ky. L. Rep. 774), 1380, 1381.
- Penny v. Warrant (26 N. Z. 234), 689.
- Penney v. Warren (22 N. Y. 602), 1297.
- Penniman v. Cole (8 Met. [Mass.] 496), 1067.
- Pennington v. Baehr (48 Cal. 565), 605.
- Pennington v. Gillespie (63 W. Va. 541; 61 S. E. 416), 1956, 1962.
- Pennington v. Pinecock ([1908] 2 K. B. 244; 77 L. J. K. B. 537; 98 L. T. 804; 72 J. P. 199; 6 L. G. R. 830; 24 T. L. R. 509), 354.
- Pennington v. Streight (54 Ind. 376), 1014.
- Pennsylvania R. Co. v. Books (57 Pa. 343; 98 Am. Dec. 299), 2199.
- Pennsylvania v. Keffer (Addison [Pa.] 290), 2031.
- Pennsylvania v. McFall (1 Addison [Pa.] 257), 2040.
- Pennsylvania R. Co. v. Newmeyer (129 Ind. 401; 28 N. E. 860), 2194.
- Pennsylvania Co. v. State (142 Ind. 498; 41 N. E. 942), 228.
- Pennybaker v. State (2 Blackf. 484), 1369.
- People v. Ackerman (80 Mich. 588; 45 N. W. 367), 1121, 1319, 1377.
- People v. Acton (48 Barb. 524), 481.
- People v. Adair (44 N. Y. Misc. Rep. 444; 89 N. Y. Supp. 376), 1683.
- People v. Adams (95 Mich. 541; 55 N. W. 461), 19, 49, 1465, 1468, 1686, 1698.
- People v. Adams (17 Wend. 475), 1505.
- People v. Adolphi Club (149 N. Y. 5; 43 N. E. 410; 31 L. R. A. 510; 52 Am. St. 700; affirming 79 Hun, 415; 29 N. Y. Supp. 789), 1327.
- People v. Anderson ([Mich.] 123 N. W. 605), 1697, 1703.
- People v. Andrews (115 N. Y. 427; 22 N. E. 358; 6 L. R. A. 128, reversing 50 Hun, 591; 3 N. Y. Supp. 508), 1325, 1342.
- People v. Aldrich (104 Mich. 455; 62 N. W. 570), 1450, 1483, 1525, 1574.
- People v. Andrews (22 Jones & S. 183), 651.
- People v. Andrus (74 N. Y. App. Div. 542; 77 N. Y. Supp. 780), 1609.
- People v. Angie (74 N. Y. App. Div. 539; 77 N. Y. Supp. 832), 2035.
- People v. Arensberg (103 N. Y. 388; 57 Am. Rep. 741), 163.
- People v. Armstrong ([Mich.] 16 Am. St. Rep. 584 [s. c. 41 N. W. 275]), 461.
- People v. Aro (6 Cal. 607; 65 Am. Dec. 503), 1484.
- People v. Bacon (117 Mich. 187; 75 N. W. 438), 1104, 1731.
- People v. Bagley (41 N. Y. Misc. Rep. 97; 83 N. Y. Supp. 766), 1738.
- People v. Baird (11 Hun, 289), 1748.
- People v. Ball (42 Barb. 324), 1566, 1633.
- People v. Bashford (112 N. Y. Supp. 502; affirmed [N. Y. App. Div.]; 112 N. Y. Supp. 1143), 183, 235, 936.
- People v. Bates (61 N. Y. App. Div. 559; 15 N. Y. Cr. Rep. 469; 71 N. Y. Supp. 123), 1557.



[References are to pages.]

- People v. Batting (49 How. Pr. 392), 2040, 2067.  
 People v. Bauman (52 Mich. 584; 18 N. W. 369), 1363, 1570, 1642.  
 People v. Beadle (60 Mich. 22; 26 N. W. 800), 292.  
 People v. Beach (93 Mich. 25; 52 N. W. 1035), 824.  
 People v. Beard (33 How. Pr. 32), 481.  
 People v. Belencia (21 Cal. 544), 2062, 2067, 2072.  
 People v. Bell ([N. Y.] 86 N. E. 1130; affirming 125 N. Y. App. Div. 205; 109 N. Y. Supp. 90), 2261.  
 People v. Beller (73 Mich. 640; 41 N. W. 827), 1120, 1123, 1124, 1134, 1702.  
 People v. Bellet (99 Mich. 151), 215.  
 People v. Bemmerly (98 Cal. 299; 33 Pac. 263), 2247.  
 People v. Bennett (14 Hun, 63), 1810.  
 People v. Bennett (107 Mich. 430; 65 N. W. 280), 1651.  
 People v. Bennett (4 N. Y. Misc. 10; 23 N. Y. Supp. 695), 674.  
 People v. Berdenstein (65 Mich. 65; 31 N. W. 623), 756.  
 People v. Bird (138 Mich. 31; 100 N. W. 103; 11 Detroit Leg. N. 461; 67 L. R. A. 424), 1225.  
 People v. Blake (65 Cal. 275; 4 Pac. 1), 2041, 2051, 2078.  
 People v. Blake (52 Mich. 566; 18 N. W. 360), 1119, 1132, 1353, 1674.  
 People v. Bloom (120 Mich. 45; 78 N. W. 1015), 424.  
 People v. Board (24 Hun, 195), 747.  
 People v. Board (91 Hun, 269; 39 N. Y. Supp. 158), 564, 629, 674, 675.  
 People v. Board of Commissioners of Police and Excise (59 N. Y. 92), 743.  
 People v. Board ([N. Y.] 16 N. Y. Supp. 798), 627, 629, 643.  
 People v. Board (17 N. Y. Misc. Rep. 98; 40 N. Y. Supp. 741), 741.  
 People v. Board (32 N. Y. Misc. Rep. 123; 66 N. Y. Supp. 199), 850, 852.  
 People v. Board (110 N. Y. Supp. 745), 2033.  
 People v. Bouchard (82 Mich. 106; 46 N. W. 232; 9 L. R. A. 106), 503, 548, 1280.  
 People v. Bouduin (12 N. Y. Cr. Rep. 244), 1739.  
 People v. Bowkus (109 Mich. 360), 1119, 1125, 1128.  
 People v. Bradley (58 Hun, 601; 11 N. Y. Supp. 594; 33 N. Y. St. Rep. 562), 1508, 1509.  
 People v. Bradt (46 Hun, 445; 10 N. Y. Supp. 157; 7 N. Y. Cr. Rep. 444), 1499, 1673.  
 People v. Braisted (13 Colo. App. 532; 58 Pac. 796), 1188.  
 People v. Bray (105 Cal. 344; 38 Pac. 731; 27 L. R. A. 158), 1261, 1264.  
 People v. Breidenstein (65 Mich. 65; 31 N. W. 623), 1533, 1534.  
 People v. Bronner (145 Mich. 399; 108 N. W. 672; 13 Detroit Leg. N. 492), 1241, 1242, 1365.  
 People v. Brooklyn (4 N. Y. 419), 793.  
 People v. Brooklyn Police (59 N. Y. 92), 714, 743.  
 People v. Brown (85 Mich. 119; 48 N. W. 158), 185, 224, 1759.  
 People v. Brown (6 Parker Cr. Rep. 666), 1305.  
 People v. Brumbach (21 Ill. App. 501), 1869, 1872.

[References are to pages.]

- People v. Brunswick (13 N. Y. Misc. Rep. 537; 35 N. Y. Supp. 659), 634.  
 People v. Brush (41 N. Y. Misc. Rep. 56; 83 N. Y. Supp. 607; affirmed 92 N. Y. App. Div. 611; 86 N. Y. Supp. 1144), 934, 941.  
 People v. Buffum (27 Hun [N. Y.] 216), 510.  
 People v. Burns (77 Hun, 92; 28 N. Y. S. 300), 2261.  
 People v. Bush (92 N. Y. App. Div. 611; 86 N. Y. Supp. 1144; 41 N. Y. Misc. Rep. 56; 83 N. Y. Supp. 607), 934.  
 People v. Buss (238 Ill. 593; 77 N. E. 840; affirming 111 Ill. App. 218), 391.  
 People v. Butler (3 Cow. [N. Y.] 347), 261, 262.  
 People v. Camp (142 Mich. 219; 105 N. W. 155; 12 Det. L. N. 665), 2025.  
 People v. Cannon (236 Ill. 179; 86 N. E. 215), 926, 927.  
 People v. Cannon (139 N. Y. 32; 34 N. E. 759), 264, 265, 1585.  
 People v. Carrell (118 Mich. 79; 76 N. W. 118), 346, 469.  
 People v. Case (153 Mich. 98; 116 N. W. 558), 218, 219, 365, 464.  
 People v. Cassino (30 Hun, 388), 2061.  
 People v. Cavanagh (62 How. Pr. 187), 2040.  
 People v. Chandler (41 N. Y. App. Div. 178; 58 N. Y. Supp. 794), 880.  
 People v. Charbneau (115 N. Y. 433; 22 N. E. 271), 1452, 1741.  
 People v. Chase (41 N. Y. App. Div. 12; 58 N. Y. Supp. 292), 1314, 1739.  
 People v. Chipman (31 Colo. 90; 71 Pac. 1108), 996.  
 People v. Clark, 61 N. Y. App. Div. 500; 70 N. Y. Supp. 594), 1116, 1589.  
 People v. Claverack (4 N. Y. Misc. Rep. 330; 25 N. Y. Supp. 322), 634, 674.  
 People v. Clement ([N. Y.] 112 N. Y. Supp. 951), 818.  
 People v. Clement (58 N. Y. Misc. Rep. 631; 111 N. Y. Supp. 1033), 719.  
 People v. Clement ([N. Y.] 116 N. Y. Supp. 1098), 818.  
 People v. Colleton (59 Mich. 573; 26 N. W. 771), 197, 1739.  
 People v. Collins (3 Mich. 343), 121, 231, 233.  
 People v. Combs (16 Hun, 577), 1760.  
 People v. Compagnie Gen. (107 U. S. 59; 2 Sup. Ct. 87), 100.  
 People v. Congdon (137 Mich. 133; 100 N. W. 266; 11 Detroit L. N. 236), 1098, 1544.  
 People v. Converse ([Mich.] 121 N. W. 475), 385, 1675.  
 People v. Cooper (83 Ill. 585), 229.  
 People v. Copen (26 Hun, 377), 1285.  
 People v. Corey (148 N. Y. 476; 42 N. E. 1066), 2084.  
 People v. Corey ([N. Y.] 118 N. Y. Supp. 23), 1184.  
 People v. Cornyn (36 N. Y. Misc. Rep. 135; 72 N. Y. Supp. 1088), 1741.  
 People v. Cox (70 Mich. 247; 38 N. W. 235), 1119, 1123, 1127, 1128.  
 People v. Cox (106 N. Y. Div. 299; 94 N. Y. Supp. 526; affirming 45 N. Y. Misc. Rep. 311; 92 N. Y. Supp. 125), 963, 1495.  
 People v. Cox (45 N. Y. Misc. Rep. 311; 92 N. Y. Supp. 125), 963, 964, 1757.  
 People v. Craig (112 N. Y. Supp. 1142), 295.

[References are to pages.]

- People v. Cramer (12 N. Y. Cr. Rep. 469; 47 N. Y. Supp. 1039), 1482, 1742.  
 People v. Crilley (20 Barb. 246), 2, 3, 5, 23, 48, 82, 85, 966.  
 People v. Creiger 138 Ill. 401; 28 N. E. 812), 107, 474, 424, 436.  
 People v. Crotty (93 Ill. 180; affirming 3 Bradw. [Ill.] 465), 397, 405, 419.  
 People v. Crotty (22 N. Y. App. Div. 77; 47 N. Y. Supp. 845), 259, 1526.  
 People v. Crowley (90 Mich. 366; 51 N. W. 517), 133, 1127.  
 People v. Cullinan (173 N. Y. 604; 66 N. E. 1114; affirming 67 N. Y. App. Div. 446; 73 N. Y. Supp. 987), 817, 818, 819, 820.  
 People v. Cullinan (168 N. Y. 258; 61 N. E. 243; affirmed 69 N. Y. Supp. 1142), 817, 818.  
 People v. Cullinan (90 N. Y. App. Div. 606; 85 N. Y. Supp. 1142, affirming 41 N. Y. Misc. Rep. 404; 84 N. Y. Supp. 1018), 818.  
 People v. Cullinan 95 N. Y. App. Div. 598; 88 N. Y. Supp. 1022), 818.  
 People v. Cullinan (111 N. Y. App. Div. 32; 97 N. Y. Supp. 194), 817.  
 People v. Cummerford (58 Mich. 328; 25 N. W. 203), 1119, 1122, 1134, 1303.  
 People v. Cummins (47 Mich. 334; 11 N. W. 184), 2057, 2078, 2086.  
 People v. Curtis (95 Mich. 212; 54 N. W. 767), 1580.  
 People v. Curtis (129 Mich. 1; 87 N. W. 1040; 8 Detroit L. N. 832), 1237.  
 People v. Cutler (28 Hun, 465), 369.  
 People v. Dalton (7 N. Y. Misc. Rep. 558; 28 N. Y. Supp. 491), 627, 629, 643.  
 People v. Davis (45 Barb. 499; affirmed 36 N. Y. 77), 509, 532, 601, 682, 684.  
 People v. Decarie (80 Mich. 578; 45 N. W. 491), 1525.  
 People v. Decatur Tp. (33 Mich. 335), 806.  
 People v. Deegan (88 Cal. 602; 26 Pac. 500), 2246, 2248.  
 People v. Decker (28 N. Y. Misc. Rep. 699; 60 N. Y. Supp. 60; order affirmed 63 N. Y. Supp. 1113), 865, 880.  
 People v. DeGroot (111 Mich. 245; 69 N. W. 248; 3 Det. L. N. 619), 497, 952, 1286, 1372.  
 People v. Detroit (18 Mich. 445), 270.  
 People v. Detroit (82 Mich. 471), 216, 271.  
 People v. Dieterich (142 Mich. 527; 105 N. W. 1112; 12 Det. L. N. 798), 1650.  
 People v. Dillon (8 Utah, 92; 30 Pac. 150), 2060, 2061.  
 People v. Dippold (30 N. Y. App. Div. 62; 51 N. Y. Supp. 859), 1581, 1589, 1624, 1649.  
 People v. Douglass (4 Cow. 26; 15 Am. Dec. 332), 2247.  
 People v. Dowell (141 Cal. 493; 75 Pac. 45), 2038, 2077, 2078.  
 People v. Draper (15 N. Y. 545), 106.  
 People v. Drennan (86 Mich. 445; 49 N. W. 215), 513, 1372.  
 People v. Drew (5 Mason 28), 2134.  
 People v. Dunne (218 Ill. 346; 76 N. E. 570), 391.  
 People v. Dwyer (4 Pac. 451), 413.  
 People v. Eastwood (14 N. Y. 562), 1631, 1735, 2060, 2067, 2172.

[References are to pages.]

- People v. Eckman (63 Hun, 209; 18 N. Y. Supp. 654), 755, 756, 776, 777, 1223.  
 People v. Edwards (42 N. Y. Misc. Rep. 567; 87 N. Y. Supp. 618), 880.  
 People v. Everts (112 Mich. 194; 70 N. W. 430), 1187.  
 People v. Excise Commrs. (64 Hun, 632; 18 N. Y. Sup. 621), 651.  
 People v. Excise Commissioners (12 N. Y. Misc. Rep. 296; 34 N. Y. Supp. 22), 695.  
 People v. Fellows (122 Cal. 233; 54 Pac. 830), 2038, 2051.  
 People v. Ferris (55 Cal. 588), 2041, 2046, 2051, 2062.  
 People v. Finley (38 Mich. 482), 2041.  
 People v. Fish (125 N. Y. 136; 26 N. E. 319), 2062, 2070, 2072.  
 People v. Flynn (110 N. Y. App. Div. 279; 96 N. Y. Supp. 655; reversing 448 N. Y. Misc. Rep. 159; 96 N. Y. Supp. 653), 185, 186, 491, 560, 741, 819.  
 People v. Forbes (52 Hun, 30; 4 N. Y. Supp. 757; 22 N. Y. St. Rep. 278), 749.  
 People v. Foster (64 Mich. 715; 31 N. W. 596), 19, 49, 50, 497, 967.  
 People v. Foster (27 N. Y. Misc. Rep. 576; 58 N. Y. Supp. 574), 909, 1683.  
 People v. Fuller (2 Park. Rep. 16), 2039, 2062.  
 People v. Gadway (61 Mich. 285; 28 N. W. 101), 244, 291, 436.  
 People v. Gallagher (4 Mich. 244), 103, 110.  
 People v. Gamer (47 Ill. 246), 904.  
 People v. Ganey (8 Hun, 60), 525.  
 People v. Gantz (41 N. Y. Misc. Rep. 452; 85 N. Y. Supp. 79), 1741.  
 People v. Garbutt (17 Mich. 9; 97 Am. Dec. 162), 2041, 2045, 2053.  
 People v. Garrett (68 Mich. 487; 36 N. W. 234), 1226, 1227, 1229.  
 People v. Gaul (233 Ill. 630; 84 N. E. 721), 1756, 1761.  
 People v. Gault (104 Mich. 575; 62 N. W. 724), 551, 1525.  
 People v. Gaynor (33 N. Y. App. Div. 98; 53 N. Y. Supp. 86), 1735, 2034.  
 People v. Gebheard (151 Mich. 192; 115 N. W. 54; 14 Detroit Leg. N. 885), 1264.  
 People v. Gilkinson (4 Parker Cr. Rep. 26), 1487, 1519.  
 People v. Gosch (82 Mich. 22; 46 N. W. 101), 2056.  
 People v. Gray (61 Cal. 164; 44 Am. Rep. 549), 251, 2249.  
 People v. Gregg (59 Hun, 107; 13 N. Y. Supp. 114), 533, 1476, 1477.  
 People v. Greiser (67 Mich. 490; 35 N. W. 87), 509, 540, 542.  
 People v. Griesbach (211 Ill. 35; 71 N. E. 874; reversing 112 Ill. App. 192), 578, 586.  
 People v. Griffith (146 Cal. 339; 80 Pac. 68), 2038, 2069, 2082.  
 People v. Haas (79 Mich. 449; 44 N. W. 928), 1524, 1739, 1742.  
 People v. Haag (11 N. Y. App. Div. 74; 42 N. Y. Supp. 886), 578.  
 People v. Haley (48 Mich. 495; 12 N. W. 671), 2067.  
 People v. Hamilton (101 Mich. 87; 59 N. W. 401), 1253, 1490.  
 People v. Hamilton (143 Mich. 1; 106 N. W. 275; 12 Detroit Leg. N. 897), 852, 870, 873, 877, 890.  
 People v. Hamilton (25 N. Y. App. Div. 428; 49 N. Y. Supp. 605), 580, 581.

[References are to pages.]

- People v. Hamilton** (27 N. Y. Misc. Rep. 308; 58 N. Y. Supp. 584), 650, 910.  
**People v. Hamilton** (27 N. Y. Misc. Rep. 360; 58 N. Y. Supp. 959), 631, 869, 1683.  
**People v. Hamilton** (29 N. Y. Misc. Rep. 465; 61 N. Y. Supp. 979), 675.  
**People v. Hammill** (2 Park. Crim. Rep. 223), 2039, 2060, 2061, 2071.  
**People v. Hannon** (59 Hun, 617; 19 N. Y. Supp. 117; 35 N. Y. St. Rep. 117), 533.  
**People v. Haren** (35 N. Y. Misc. Rep. 590; 72 N. Y. Supp. 205), 1624, 1627.  
**People v. Harmon** (49 Hun, 558; 2 N. Y. Supp. 421), 1453.  
**People v. Harris** (29 Cal. 678), 2067.  
**People v. Harrison** (191 Ill. 257; 61 N. E. 99; affirming 92 Ill. App. 643), 73, 192, 419, 652.  
**People v. Hart** (1 Mich. 467), 1741.  
**People v. Hart** (24 How. Pr. 289), 83, 85.  
**People v. Hartmann** (10 Hun, 602), 533, 575.  
**People v. Hartstein** (49 N. Y. Misc. Rep. 336; 99 N. Y. Supp. 272), 1228.  
**People v. Hasbrouck** (21 N. Y. Misc. Rep. 188; 47 N. Y. Supp. 109), 675, 902, 921.  
**People v. Haug** (68 Mich. 549; 37 N. W. 21), 208, 254.  
**People v. Hawley** (3 Mich. 330), 9, 43, 47, 85, 98, 119, 129, 496, 966.  
**People v. Hayne** (83 Cal. 111; 23 Pac. 1), 1015.  
**People v. Hazard** (23 N. Y. Misc. Rep. 477; 52 N. Y. Supp. 670), 1760.  
**People v. Hazen** (35 N. Y. Misc. Rep. 590; 72 N. Y. Supp. 205), 1504, 1509.  
**People v. Heffron** (53 Mich. 527; 19 N. W. 170), 1034, 1533.  
**People v. Henschel** (12 N. Y. Supp. 46), 85, 1613, 1712, 1760.  
**People v. Henwood** (123 Mich. 317; 82 N. W. 70), 220, 849, 934.  
**People v. Henze** (149 Mich. 130; 112 N. W. 491; 19 Det. L. N. 491), 1127, 1133.  
**People v. Hicks** (79 Mich. 457; 44 N. W. 931), 1578.  
**People v. Higgins** (56 Mich. 159; 22 N. W. 309), 1119, 1127.  
**People v. Hill** (7 Cal. 97), 294.  
**People v. Hill** (123 Cal. 47; 55 Pac. 692), 2038, 2068, 2069, 2082.  
**People v. Hilliard** (176 N. Y. 604; 68 N. E. 1122), 796.  
**People v. Hilliard** (178 N. Y. 582; 70 N. E. 1106; affirming 81 N. Y. App. Div. 71; 80 N. Y. Supp. 792), 818, 819.  
**People v. Hilliard** (28 N. Y. App. Div. 140; 50 N. Y. Supp. 909), 631.  
**People v. Hilliard** (40 N. Y. Misc. Rep. 589; 83 N. Y. Supp. 21; affirmed 85 N. Y. App. Div. 507; 83 N. Y. Supp. 204), 796.  
**People v. Hilliard** (81 N. Y. App. Div. 80 N. Y. Supp. 792), 732.  
**People v. Hinchman** (75 Mich. 587; 42 N. W. 1006; 4 L. R. A. 707), 843, 844, 1490.  
**People v. Hislop** (77 N. Y. 331; affirming 16 Hun 577), 1248, 1760.  
**People v. Hobson** (48 Mich. 27; 11 N. W. 771), 929, 1319, 1538, 1539.  
**People v. Hoenig** ([N. Y.] 86 N. Y. Supp. 673), 1741.  
**People v. Hoffman** (24 N. Y. App. Div. 233; 48 N. Y. Supp. 482), 1654.



[References are to pages.]

- People v. Houghton (41 Hun 558), 737.  
 People v. House of Good Shepherd (32 N. Y. Misc. Rep. 453; 15 N. Y. Cr. Rep. 145; 66 N. Y. Supp. 794), 2023.  
 People v. Hower (151 Cal. 638; 91 Pac. 507), 2038, 2060, 2062, 2084.  
 People v. Huffman (24 N. Y. App. Div. 233; 48 N. Y. Supp. 482), 1504.  
 People v. Hughes (86 Mich. 180; 48 N. W. 945), 1357, 1359, 2248, 2252.  
 People v. Hughes (90 Mich. 368; 51 N. W. 531), 1119, 1122, 1127.  
 People v. Hughes (97 Mich. 543; 56 N. W. 942), 1123.  
 People v. Huntington (4 N. Y. Leg. Obs. 187), 111, 316.  
 People v. Husted (52 Mich. 624; 18 N. W. 388), 1485, 1539.  
 People v. Ingraham (100 Mich. 530; 59 N. W. 234), 1185, 1753.  
 People v. Jackson (8 Mich. 110), 270.  
 People v. James (100 Mich. 522; 59 N. W. 236), 1123.  
 People v. Jarvis (19 N. Y. App. Div. 466; 46 N. Y. Supp. 596), 786.  
 People v. Jenness (5 Mich. 305), 1746.  
 People v. Johnson (86 Mich. 175; 48 N. W. 870; 13 L. R. A. 163), 2035.  
 People v. Jones (63 Cal. 168), 2067, 2070.  
 People v. Jones (2 Edw. Sel. Cas. 88), 2039, 2071.  
 People v. Jones (2 Mich. N. P. 194), 2033, 2034, 2035.  
 People v. Jorneau (147 Mich. 520; 111 N. W. 95; 13 Det. L. N. 1115), 1381.  
 People v. Judson (59 N. Y. Misc. Rep. 538; 112 N. Y. Supp. 408), 671.  
 People v. Kansas (31 How. Pr. 334, *note*), 183.  
 People v. Keefer (97 Mich. 15; 56 N. W. 105), 944, 945, 1448.  
 People v. Kemmis (153 Mich. 117; 116 N. W. 554), 233.  
 People v. Kemmler (119 N. Y. 580; 24 N. E. 9), 2062, 2085.  
 People v. Kennedy (105 Mich. 75; 62 N. W. 1020), 345, 1537.  
 People v. Kestner (101 N. Y. App. Div. 265; 91 N. Y. Supp. 1004), 1700, 1709.  
 People v. King (27 Cal. 507; 87 Am. Dec. 95), 2061.  
 People v. Kinney (124 Mich. 486; 83 N. W. 147), 1698.  
 People v. Klass (115 Cal. 567; 47 Pac. 459), 2039, 2081.  
 People v. Koerner (117 N. Y. App. Div. 40; 102 N. Y. Supp. 93; affirmed 191 N. Y. 528; 84 N. E. 1117), 2038, 2039, 2068.  
 People v. Koob (109 Mich. 358; 67 N. W. 320), 1119, 1126.  
 People v. Krank (110 N. Y. 488; 18 N. E. 242; reversing 46 Hun 632), 1304, 1307, 1308, 1600, 1650.  
 People v. Kridler (80 Mich. 592; 45 N. W. 374), 1125.  
 People v. Kriesel (136 Mich. 80; 98 N. W. 850; 10 Detroit Leg. N. 972), 1132, 1319.  
 People v. Krushaw (31 How. Pr. 344 [*note*]), 186.  
 People v. Lacy (124 Mich. 180; 82 N. W. 826), 346.  
 People v. Lanamerts (18 N. Y. Misc. 343; 40 N. Y. Supp. 1107; affirmed 14 N. Y. App. Div. 628; 43 N. Y. Supp. 1161), 580, 590.  
 People v. Lane (100 Cal. 379; 34 Pac. 856), 2084.  
 People v. Langton (67 Cal. 427), 2063.

[References are to pages.]

- People v. Laning (73 Mich. 284; 41 N. W. 424), 765, 774, 779.  
 People v. Lavin (4 N. Y. Cr. Rep. 547), 1634.  
 People v. Law & Order Club (203 Ill. 127; 67 N. E. 855; 62 L. R. A. 884), 1325, 1338.  
 People v. Lawrence (36 Barb. [N. Y.] 190), 294.  
 People v. Lawton (30 Mich. 386), 383.  
 People v. Leary (105 Cal. 486; 39 Pac. 24), 2247.  
 People v. Lee Chuck (78 Cal. 317; 20 Pac. 719), 2251.  
 People v. Leonardi (143 N. Y. 360; 38 N. E. 372), 2072.  
 People v. Lester (80 Mich. 643; 45 N. W. 492), 511, 1372.  
 People v. Lewis (36 Cal. 531), 2041, 2045, 2062.  
 People v. Leying (74 Mich. 579; 42 N. W. 139), 1192.  
 People v. Longwell (120 Mich. 311; 79 N. W. 484), 1358.  
 People v. Longwell (136 Mich. 302; 99 N. W. 1; 10 Detroit L. N. 1049), 826.  
 People v. Luders (125 Mich. 440; 85 N. W. 1981; 8 Detroit L. N. 81), 1190, 1193.  
 People v. Ludnell (136 Mich. 303; 99 N. E. 12; 11 Detroit Leg. N. 1), 1127, 1132, 1363.  
 People v. Luhrs (7 N. Y. Misc. Rep. 503; 28 N. Y. Supp. 498), 1325.  
 People v. Lupton (52 N. Y. Misc. Rep. 336; 103 N. Y. Supp. 172), 1540.  
 People v. Lyman (156 N. Y. 407; 50 N. E. 1112; affirming 27 N. Y. App. Div. 527; 50 N. Y. Supp. 497), 698, 699, 705.  
 People v. Lyman (168 N. Y. 669; 61 N. E. 1133; affirming 53 N. Y. App. Div. 470; 65 N. Y. Supp. 1062), 752, 818, 820.  
 People v. Lyman (25 N. Y. Misc. Rep. 217; 55 N. Y. Supp. 76), 818, 820.  
 People v. Lyman (27 N. Y. App. Div. 527; 50 N. Y. Supp. 527), 819.  
 People v. Lyman (33 N. Y. Misc. Rep. 243; 68 N. Y. Supp. 331), 532, 818, 819.  
 People v. Lyman (48 N. Y. App. Div. 484; 62 N. Y. Supp. 902; affirmed 163 N. Y. 602; 57 N. E. 1120), 615, 796.  
 People v. Lyman (53 N. Y. App. Div. 470; 65 N. Y. Supp. 1062), 744.  
 People v. Layman (59 N. Y. App. Div. 172; 69 N. Y. Supp. 111; affirming 65 N. Y. Supp. 462), 818, 819.  
 People v. Lyman (67 N. Y. App. Div. 446; 73 N. Y. Supp. 987), 819.  
 People v. Lyman (69 N. Y. App. Div. 406; 74 N. Y. Supp. 1104), 818.  
 People v. Lyng (74 Mich. 579; 42 N. W. 139), 151, 153, 199, 200, 299.  
 People v. McBride (234 Ill. 146; 84 N. E. 865), 230, 233, 234, 264, 275, 282, 284, 335, 714, 752, 898, 1505, 1506, 1507.  
 People v. McDonald ([N. Y.] 108 N. Y. Supp. 749), 1453, 1486, 1495, 1498, 1540, 1552, 1566.  
 People v. McGlyn (131 N. Y. 602; 30 N. E. 864; affirming 62 Hun 237; 16 N. Y. Supp. 736), 748.  
 People v. McGowan (44 N. Y. App. Div. 30; 60 N. Y. Supp. 407), 735, 738.  
 People v. McKee (59 N. Y. Misc. Rep. 368; 112 N. Y. Supp. 338), 279, 682.  
 People v. MacLean (59 Hun 626; 13 N. Y. Supp. 677), 1735.

[References are to pages.]

- People v. Manzer (18 N. Y. Misc. Rep. 292; 41 N. Y. Supp. 1075), 697, 699.  
 People v. Markell (20 N. Y. Misc. Rep. 149; 45 N. Y. Super. 904), 2033.  
 People v. Marsh (125 Mich. 410; 84 N. W. 472; 7 Det. Leg. N. 555; 51 L. R. A. 461), 2261.  
 People v. Martin (60 Cal. 153), 426.  
 People v. Martin (15 N. Y. Misc. Rep. 6; 36 N. Y. Supp. 437; affirmed 149 N. Y. 621; 44 N. E. 1127), 1735.  
 People v. Marx (128 N. Y. App. Div. 828; 112 N. Y. Supp. 1011), 170, 1700.  
 People v. Maxwell (83 Hun. 157; 31 N. Y. Supp. 564), 1643.  
 People v. Mayor (33 Barb. 102), 98.  
 People v. Meakim (56 Hun. 631; 10 N. Y. S. 163), 743.  
 People v. Meakin (133 N. Y. 214; 30 N. E. 828; affirming 15 N. Y. Supp. 917), 734.  
 People v. Medberry (17 N. Y. Misc. Rep. 8; 39 N. Y. Supp. 207), 796.  
 People v. Methaver (132 Cal. 326; 64 Pac. 481), 2039, 2051, 2062, 2068.  
 People v. Metzger (95 Mich. 121; 54 N. W. 639), 472, 514, 721, 722, 1180, 1359.  
 People v. Miller (79 N. Y. St. 1122), 351.  
 People v. Mills (3 N. Y. Cr. Rep. 184), 2067.  
 People v. Mills (98 N. Y. 176), 2058.  
 People v. Mills (91 Hun. 142; 35 N. Y. Supp. 273), 627, 629.  
 People v. Minnock (52 Mich. 628; 18 N. W. 390), 1554, 1555.  
 People v. Minter (59 Mich. 557; 26 N. W. 701), 1304.  
 People v. Monroe (26 Colo. 232; 57 P. 696), 2261.  
 People v. Montague (71 Mich. 447; 39 N. W. 585), 2252.  
 People v. Monteith (73 Cal. 7; 14 Pac. 373), 1735.  
 People v. Montgomery ([N. Y.] 25 N. Y. Supp. 873), 636.  
 People v. Moore (62 Mich. 496; 29 N. W. 80), 2261.  
 People v. Moore (155 Mich. 107; 118 N. W. 742; 15 Det. L. N. 920), 1659, 1665, 1732.  
 People v. Moore (59 N. Y. Misc. Rep. 533; 112 N. Y. Supp. 475), 526.  
 People v. Morris (13 Wend. [N. Y.] 325), 394.  
 People v. Mosso (30 N. Y. Misc. Rep. 164; 63 N. Y. Supp. 588), 882, 900, 927, 940.  
 People v. Mount (186 Ill. 560; 58 N. E. 360; affirming 87 Ill. App. 194), 415, 416, 419, 445, 446, 558, 798.  
 People v. Mullins (5 N. Y. App. Div. 172; 39 N. Y. Supp. 361), 1604, 1620, 1728.  
 People v. Mulkins (25 N. Y. Misc. Rep. 599; 54 N. Y. Supp. 599), 945.  
 People v. Murphy (93 Mich. 41; 52 N. W. 1042), 1686.  
 People v. Murphy (5 Park. Cr. Co. [N. Y.] 130), 1304, 1310.  
 People v. Murray (149 N. Y. 367; 44 N. E. 146; 32 L. R. A. 344), 743.  
 People v. Murray (2 N. Y. App. Div. 607; 37 N. Y. Supp. 1096), 629.  
 People v. Murray (14 N. Y. Misc. Rep. 177; 35 N. Y. Supp. 463), 675.  
 People v. Murray (38 N. Y. Supp. 177), 628, 629, 643.  
 People v. Murry (2 N. Y. App. 607; 37 N. Y. Supp. 1096), 628.

[References are to pages.]

- People . Myers (95 N. Y. 223), 138.  
 People v. Myers (115 N. Y. App. Div. 864; 101 N. Y. Supp. 291), 1693.  
 People v. Myers (185 N. Y. 558; 77 N. E. 1193; affirming 109 N. Y. App. Div. 143; 95 N. Y. Supp. 993), 1490, 1498, 1499.  
 People v. Newmann (85 Mich. 98; 48 N. W. 290), 771, 1231, 1234, 1845.  
 People v. Newman (99 Mich. 148; 57 N. W. 1073), 543.  
 People v. Nicol (34 Cal. 212), 2041, 2047, 2060, 2063.  
 People v. Norman ([Mich.] 122 N. W. 369; 13 Det. L. News. 704), 1123.  
 People v. Norton (7 Barb. 477), 635, 685.  
 People v. Nylin (236 Ill. 19; 86 N. E. 156; affirming 139 Ill. App. 500), 508, 554, 1638.  
 People v. O'Connell (62 How. Pr. 436), 2040, 2051.  
 People v. Odell (1 Dak. 197; 46 N. W. 601), 2041, 2067, 2074.  
 People v. O'Donnell (46 Hun 358), 1453.  
 People v. Olmsted (74 Hun 323; 26 N. Y. Supp. 818), 1476, 1483, 1487.  
 People v. O'Neill (107 Mich. 556; 65 N. W. 540), 1744.  
 People v. O'Reilly ([N. Y.] 88 N. E. 1128; affirming 129 N. Y. App. Div. 522; 114 N. Y. Supp. 258), 12, 38, 45.  
 People v. O'Reily (129 N. Y. App. Div. 522; 114 N. Y. Supp. 258; affirmed [N. Y.] 88 N. E. 1128), 83.  
 People v. Osmer (24 How. Prac. 451), 1305.  
 People v. Owens (148 N. Y. 648; 43 N. E. 71; affirming 91 Hun 344; 36 N. Y. Supp. 755), 1309, 1634, 1669.  
 People v. Packerhan (115 N. Y. 200; 21 N. E. 1035), 1736.  
 People v. Page (3 Parker Crim. 600), 1457.  
 People v. Paquin (74 Mich. 34; 41 N. W. 852), 1445, 1447, 1532, 1534, 1641, 1648.  
 People v. Parks (49 Mich. 333; 13 N. W. 618), 1359.  
 People v. Pekarz (185 N. Y. 470; 78 N. E. 294), 2038, 2068.  
 People v. Pettit ([N. Y.] 113 N. Y. Supp. 243), 729.  
 People v. Phelan 93 Cal. 111; 28 Pac. 855), 2077.  
 People v. Pierson (64 N. Y. App. Div. 624; 72 N. Y. Supp. 1123; affirming 35 N. Y. Misc. Rep. 406; 71 N. Y. Supp. 993), 896, 902.  
 People v. Pierson (35 N. Y. Misc. Rep. 406; 71 N. Y. Supp. 993; order affirmed 64 N. Y. App. Div. 624; 72 N. Y. Supp. 1123), 894, 903.  
 People v. Pine (2 Barb. 566), 2040.  
 People v. Polhamus (8 N. Y. App. Div. 133; 40 N. Y. Supp. 491), 1482, 1487, 1504, 1558.  
 People v. Porter (2 Park. Crim. Rep. 14), 2039.  
 People v. Possing (137 Mich. 303; 100 N. W. 396; 11 Detroit Leg. N. 249), 1132, 1363.  
 People v. Potter (1 Parker Cr. Rep. 47), 2261.  
 People v. Pratt (22 Hun 300), 2035.  
 People v. Pscherhoder (64 Hun 483; 19 N. Y. Supp. 483), 2246, 2248.  
 People v. Power (24 Ill. 187), 393.  
 People v. Quant (12 How. Pr. 83; 2 Parker Cr. Rep. 410), 111.  
 People v. Quinn (74 Mich. 632; 42 N. W. 604), 1489, 1534.  
 People v. Rains (20 Colo. 489; 39 Pac. 341), 478, 521.

[References are to pages.]

- People v. Rall (135 Mich. 510; 98 N. W. 3; 10 Det. L. N. 858), 1524.  
 People v. Ramirez (56 Colo. 533; 38 Am. Rep. 73) 1584.  
 People v. Rand (114 N. Y. App. Div. 826; 100 N. Y. Supp. 174), 1131.  
 People v. Randolph (75 Hun 224; 27 N. Y. Supp. 41), 633.  
 People v. Remus (135 Mich. 629; 98 N. W. 397; 100 N. W. 403; 11 Det. L. N. 237), 842, 845, 1083, 1085, 1731.  
 People v. Rice (103 Mich. 350; 61 N. W. 540), 1372, 1375.  
 People v. Richmond (59 Mich. 570; 26 N. W. 770), 1135, 1511.  
 People v. Ringstead (90 Mich. 371; 51 N. W. 519), 1119, 1123, 1127, 1483.  
 People v. Robbins (79 Mich. 130; 37 N. W. 924), 1124, 1524.  
 People v. Robinson (1 Park. Crim. Rep. 649), 2039, 2045.  
 People v. Robinson (2 Park. Crim. Rep. 235), 2039, 2047, 2056, 2070, 2071.  
 People v. Robinson (135 Mich. 511; 98 N. W. 12; 10 Det. L. N. 857), 1084.  
 People v. Roby (52 Mich. 577; 18 N. W. 363; 50 Am. Rep. 270), 215, 1123, 1132, 1353.  
 People v. Rogers (18 N. Y. 9; 72 Am. Dec. 487), 2040, 2043, 2046, 2059, 2060.  
 People v. Rouse (72 Mich. 59; 40 N. W. 57), 1762.  
 People v. Rush (113 Mich. 539; 71 N. W. 863), 460, 1187.  
 People v. Ryan (86 N. Y. App. Div. 524; 83 N. Y. Supp. 657), 1129.  
 People v. Sackett (15 N. Y. App. Div. 290; 44 N. Y. Supp. 593; reversing 17 N. Y. Misc. Rep. 405; 40 N. Y. Supp. 413), 669, 676, 812, 817, 884.  
 People v. Sackett (17 N. Y. Misc. Rep. 406; 40 N. Y. Supp. 413), 531, 535.  
 People v. Safford (5 Denio [N. Y.] 112), 822, 835.  
 People v. St. Saviour's Sanitarium (34 N. Y. App. Div. 363; 56 N. Y. Supp. 431), 278, 2017.  
 People v. Salomon (51 Ill. 37), 233.  
 People v. Sansome (98 Cal. 235; 33 Pac. 202), 2247, 2252.  
 People v. Saratoga Co. (7 Abb. Prac. 34), 650.  
 People v. Saunders (25 Mich. 119) 1219.  
 People v. Schatz (50 N. Y. App. 544; 64 N. Y. Supp. 127; 15 N. Y. Cr. Rep. 38), 1742.  
 People v. Schewe (29 Hun 122), 12, 85, 86, 1753.  
 People v. Schimmel (141 Mich. 310; 104 N. W. 670; 12 Det. L. N. 406), 1537.  
 People v. Schmidt 19 N. Y. Misc. Rep. 458; 44 N. Y. Supp. 607), 1558.  
 People v. Schmitz (7 Cal. App. 330; 94 Pac. 407), 490.  
 People v. Schottey (116 Mich. 1; 74 N. W. 209), 1119, 1122, 1128, 1739.  
 People v. Scott (90 Mich. 376; 51 N. W. 520), 1534, 1555, 1556.  
 People v. Scranton (61 Mich. 244; 28 N. W. 81), 1119, 1752.  
 People v. Seeley (183 N. Y. 544; 76 N. E. 1102; affirming 105 N. Y. App. Div. 149; 93 N. Y. Supp. 982), 1453, 1535, 1624, 1627.  
 People v. Seeley (105 N. Y. App. Div. 149; 93 N. Y. Supp. 982), 1444, 1463, 1491, 1508, 1698.  
 People v. Sehorn (116 Cal. 503; 48 Pac. 495), 1735.



[References are to pages.]

- People v. Shaver** (37 N. Y. App. Div. 21; 55 N. Y. Supp. 701), 1452, 1486, 1506, 1760.  
**People v. Sheeler** (36 Mich. 161; 98 N. W. 986; 10 Detroit L. News, 1004), 194, 840, 841, 1293, 1510, 1747.  
**People v. Sinell** (12 N. Y. Supp. 40; 34 N. Y. Ct. R. 898), 1325.  
**People v. Smith** (145 Mich. 530; 108 N. W. 1072; 13 Det. L. N. 651), 344, 345, 346.  
**People v. Smith** (69 N. Y. 175), 508.  
**People v. Smith** (28 Hun 626; 1 N. Y. Cr. Rep. 72), 783, 1188, 1218.  
**People v. Solomon** (57 N. Y. Misc. Rep. 288; 106 N. Y. Supp. 1110), 2032.  
**People v. Soule** (74 Mich. 250; 41 N. W. 908; 2 L. R. A. 454), 1338, 1374.  
**People v. Squires** (95 N. Y. Supp. 995), 1490, 1499.  
**People v. State** ([Tex. Cr. App.] 99 S. W. 1102), 1473, 1699.  
**People v. Stock** (26 N. Y. App. Div. 564; 50 N. Y. Supp. 483; affirmed 157 N. Y. 691; 51 N. E. 1092), 1760.  
**People v. Sullivan** (83 Mich. 355; 47 N. W. 220), 1524.  
**People v. Supervisors, etc.** (16 N. Y. 432), 1014.  
**People v. Sweetser** (1 Dak. 308; 46 N. W. 452), 9, 1491, 1504, 1552, 1555, 1559, 1765.  
**People v. Sykes** (96 Mich. 452; 56 N. W. 12), 700.  
**People v. Symonds** (4 N. Y. Misc. Rep. 6; 23 N. Y. Supp. 689), 634, 674.  
**People v. Talbot** (120 Mich. 486; 79 N. W. 688), 1119, 1132, 1133, 1538, 1541.  
**People v. Taylor** (110 Mich. 491; 68 N. W. 303), 1119, 1134, 1525.  
**People v. Telford** (56 Mich. 541; 23 N. W. 213), 1524, 1556, 1574.  
**People v. Thielman** (115 Mich. 66; 72 N. W. 1102; 39 L. R. A. 218), 1319.  
**People v. Thompson** (147 Mich. 444; 111 N. W. 96; 13 Detroit Leg. N. 1122), 428, 787, 788, 841, 1663.  
**People v. Thornton** (186 Ill. 162; 57 N. E. 841), 403, 413.  
**People v. Throop** (12 Wend. [N. Y.] 183), 408.  
**People v. Tighe** (5 Hun 25), 722, 734.  
**People v. Tisdale** (57 Cal. 104), 929.  
**People v. Tolman** (148 Mich. 305; 111 N. W. 772; 14 Detroit L. News. 107), 1123, 127.  
**People v. Town Clerk** (26 N. Y. Misc. Rep. 220; 50 N. Y. Supp. 64), .....  
**People v. Townsey** (5 Denio 70), 1556.  
**People v. Toynbee** (2 Parker C. C. 329; 2 Park. C. C. 490; 1 Kern [N. Y.] 378), 122, 125, 255.  
**People v. Travers** (88 Cal. 233; 26 Pac. 88), 2051, 2052, 2055.  
**People v. Turner** (4 N. Y. Misc. Rep. 247; 23 N. Y. Supp. 913; judgment affirmed 71 Hun 614; 24 N. Y. Supp. 1148), 633, 674.  
**People v. Tuthill** (79 N. Y. App. Div. 24; 79 N. Y. Supp. 905), 1739, 1742.  
**People v. Tweed** (63 N. Y. 202), 394.  
**People v. United Surety Co.** (120 N. Y. App. Div. 655; 105 N. Y. Supp. 72), 784.  
**People v. Utley** (129 Mich. 628; 89 N. W. 349; 8 Detroit L. N. 1077), 756.

[References are to pages.]

- People v. Van Alstyne ([Mich.] 122 N. W. 193; 16 Det. Leg. N. 392), 52, 53, 1290.  
 People v. Vincent (95 Cal. 425; 30 Pac. 581), 2062.  
 People v. Voorhis (131 Mich. 398; 91 N. W. 624; 9 Detroit Leg. N. 377), 332.  
 People v. Wade (101 Mich. 89; 59 N. W. 438), 928, 1450.  
 People v. Wilbaum (1 Dak. 301; 46 N. W. 452), 1765.  
 People v. Waldvogel (49 Mich. 337; 13 N. W. 620), 1127, 1137.  
 People v. Walker (38 Mich. 156), 2067, 2078.  
 People v. Walker (60 N. Y. Misc. Rep. 130; 112 N. Y. Supp. 1021), 563.  
 People v. Wallace (70 Ill. 680), 227.  
 People v. Walling (53 Mich. 264; 18 N. W. 807), 299, 333, 486.  
 People v. Walsh (95 N. Y. Supp. 996), 1499.  
 People v. Walters (4 N. Y. Misc. Rep. 1; 23 N. Y. Supp. 691), 674.  
 People v. Warden (17 N. Y. Misc. Rep. 1; 38 N. Y. Supp. 837; affirmed 6 N. Y. App. Div. 520; 39 N. Y. Sup. 582), 488.  
 People v. Warder (6 N. Y. App. Div. 520; 39 N. Y. Supp. 582), 165, 495.  
 People v. Warfield (20 Ill. 163), 904.  
 People v. Warsaw (4 N. Y. Misc. Rep. 547; 24 N. Y. Supp. 739), 633.  
 People v. Webster (2 Doug. [Mich.] 92), 25, 80, 1534.  
 People v. Webster (139 N. Y. 73; 34 N. E. 730; affirming 68 Hun 11; 22 N. Y. Supp. 634), 2258, 2259.  
 People v. Welch (71 Mich. 548; 39 N. W. 747; 1 L. R. A. 385), 1235, 1236, 1240, 1242, 1628.  
 People v. Wells (11 N. Y. Misc. Rep. 239; 32 N. Y. Rep. 973), 695.  
 People v. Werner (174 N. Y. 132; 66 N. E. 667; reversing 66 N. Y. Supp. 1139), 1237, 1582, 1630.  
 People v. Wheeler (96 Mich. 1; 55 N. W. 371), 1538, 1539.  
 People v. Wheelock (3 Park [N. Y.] 9), 43, 84, 966, 1592.  
 People v. Whipple (107 Mich. 587; 66 N. W. 490), 1123.  
 People v. White (127 Mich. 428; 86 N. W. 992; 8 Detroit Leg. N. 397), 346.  
 People v. Whitney (105 Mich. 622; 63 N. W. 765), 911, 913, 1684, 1686.  
 People v. Wiant (48 Ill. 263), 904.  
 People v. Wilcox (152 Mich. 39; 115 N. W. 973), 1192.  
 People v. Wiley (2 Park. Rep. 19), 2039.  
 People v. Williams (43 Cal. 344), 2041, 2045, 2067, 2068, 2072, 2085.  
 People v. Williams (162 N. Y. 240; 56 N. E. 625; reversing 47 N. Y. App. Div. 88; 62 N. Y. Supp. 130), 807.  
 People v. Williams (29 N. Y. Misc. Rep. 463; 61 N. Y. Supp. 983), 807.  
 People v. Wilson (55 Mich. 506; 21 N. W. 905), 2041.  
 People v. Windholz (68 App. Div. 552; 74 N. Y. S. 241), 990.  
 People v. Wing (147 Cal. 379; 81 Pac. 1103), 1108.  
 People v. Winter (59 Mich. 557; 26 N. W. 701), 1124.  
 People v. Woodman (15 Daly 136; 3 N. Y. Supp. 926), 651, 716, 721.

[References are to pages.]

- People v. Woodman** (4 N. Y. Supp. 532; 22 N. Y. St. Rep. 435), 733, 751.  
**People v. Woodman** (5 N. Y. St. Rep. 318), 638.  
**People v. Wright** (3 Hun 506; 5 T. & C. 518), 737, 743, 752.  
**People v. Wuant** (2 Park. [N. Y.] 410), 110.  
**People v. Wynehamer** (2 Park. C. C. 377; 2 Park C. C. 421; 3 Kern [N. Y.] 378), 255.  
**People v. Young** (102 Cal. 411; 36 Pac. 770), 2041.  
**People v. Young** (237 Ill. 196; 86 N. E. 589), 1284.  
**People v. Zeiger** (6 Parker Crim. Cas. [N. Y.] 355), 12, 15, 85.  
**People's Ins. Co. v. Spencer** (53 Pac. 353; 91 Am. Dec. 217), 1778.  
**Peplow v. Richardson** (L. R. 4 C. P. 168; 33 J. P. 407; 17 W. R. 410), 1149.  
**Perdue v. Ellis** (18 Ga. 586), 109, 395, 413, 431.  
**Perdue v. Gill** (35 Ind. App. 99; 73 N. E. 844), 570.  
**Perkins, Ex parte** (34 Tex. Cr. Rep. 429; 31 S. W. 175), 852, 861, 911, 1723.  
**Perkins v. Brais** (20 Quebec S. C. 536), 1223, 1225, 1230, 1231.  
**Perkins v. Henderson** (68 Miss. 631; 9 So. 897), 577.  
**Perkins v. Henderson** (68 Miss. 327; 8 So. 507), 400, 627, 634.  
**Perkins v. Loux** (14 Idaho 607; 95 Pac. 694), 577, 629, 636.  
**Perkins v. State** (92 Ala. 66; 9 So. 536), 1171, 1615.  
**Perry v. Bailey** (12 Kan. 539), 2253, 2255.  
**Perry v. Edwards** (44 N. Y. 223), 1235, 1461.  
**Perry v. Rasmusen** (22 N. Z. 581), 1154.  
**Perry v. Richardson** (75 Mass [9 Gray] 216), 1027.  
**Perry v. Salt Lake City** (7 Utah 143; 25 Pac. 739, 998; 11 L. R. A. 446), 628, 634.  
**Perry v. State** (87 Ala. 30; 6 So. 425), 225.  
**Perry v. Washburn** (20 Cal. 350), 276.  
**Persinger, In re** ([Neb.] 90 N. W. 242), 663.  
**Persinger v. Miller** ([Neb.] 90 N. W. 242), 665.  
**Persons, Ex parte** (1 Hill 655), 650.  
**Pervear v. Commonwealth** (5 Wall 475; 18 L. Ed. 608), 147, 790.  
**Peter Schoenhofen Brewing Co., In re** (8 Pa. Super. Ct. 141; 42 W. N. C. 402), 538.  
**P. Schoenhofen Brewing Co. v. Whipple** ([Neb.] 89 N. W. 751), 1785, 1792.  
**Peters, In re** (10 Kulp, 93), 2261.  
**Peters v. District Court** (114 Iowa 207; 86 N. W. 300), 1185.  
**Peters v. Eaton Circuit Judge** 153 Mich. 467; 117 N. W. 68; 15 Det. L. N. 462), 1498, 1526.  
**Peters v. Goulden** (27 Mich. 171), 1804, 1805.  
**Peterson v. Brocky** ([Iowa] 119 N. W. 967), 1912, 1972, 1991.  
**Peterson v. Knoble** (35 Wis. 80), 1855.  
**Peterson v. State** (7 Ind. 603), 1521.  
**Peterson v. State** (83 Md. 194; 34 Atl. 834), 1628.  
**Peterson v. State** (63 Neb. 251; 88 N. W. 549), 80, 84, 1084.  
**Peterson v. State** (64 Neb. 875; 90 N. W. 964), 1084, 1086.  
**Peterson v. State** (69 Neb. 875; 90 N. W. 964), 1531.  
**Peterson v. State** (80 N. W. 549), 83.  
**Peterson v. State** ([Tex. Cr. App.] 70 S. W. 977), 1694.

[References are to pages.]

- Peterswold v. Bartley (4 S. R. [N. S. W.] 290; 21 W. N. C. [N. S. W.] 81), 484, 1195.
- Petherick v. Sargent (26 J. P. 135; 6 L. J. 48), 1136.
- Petit v. People ([Colo.] 52 Pac. 676), 1446.
- Petitfils v. Jeanerette (52 La. Ann. 1005; 27 So. 358), 413, 445, 796.
- Pett v. Smith (3 Campb. 33), 2092, 2106.
- Petteway v. State (36 Tex. Cr. App. 97; 35 S. W. 646), 968, 1699.
- Pettibone v. State (19 Ala. 586), 1544.
- Pettis County v. Debold ([Mo.] 117 S. W. 88), 1955.
- Pewtress v. Smith (13 Viet. L. R. 390), 1132, 1133.
- Peyton v. Hot Springs Co. (53 Ark. 236; 13 S. W. 764), 185, 812.
- Peyton v. State ([Ark.] 102 S. W. 1110), 1733.
- Pfefferle (39 Kan. 128; 17 Pac. 828), 1768.
- Pfärrmann, *Ex parte* (134 Cal. 143; 66 Pac. 205), 789.
- Phelan v. Gardner (43 Cal. 306), 2094, 2098, 2108, 2121, 2122.
- Phelps, *In re* (82 Neb. 45; 116 N. W. 681), 618, 800.
- Philadelphia Licenses, *In re* (4 Pa. Dist. Rep. 201), 639.
- Philadelphia v. Commonwealth (98 Pa. St. 48), 791.
- Philadelphia, etc., Co. v. Drinkhouse (17 Phil. 23), 2135, 2139.
- Phillips, *In re* (82 Neb. 45; 116 N. W. 950), 111, 168, 536, 600, 799.
- Phillips, *Ex parte* (26 N. B. 398), 1681.
- Phillips v. Denver ([Colo. Sup.] 41 Am. St. Rep. 230; 34 P. 902), 461.
- Phillip v. Desmaeais (28 L. C. J. 291), 1781.
- Phillips v. Fadden (125 Mass. 198), 2035.
- Phillips v. Goe (85 Ark. 304; 108 S. W. 207), 610, 879.
- Phillips v. Harris (3 J. J. Marsh. [Ky.] 122), 1027.
- Phillips v. Jefferson Co. 5 Kan. 412), 811.
- Phillips v. Mobile (208 U. S. 472; 28 Sup. Ct. 370; 52 L. Ed. —; affirming 146 Ala. 138; 40 So. 826), 331.
- Phillips v. Moore (11 Mo. 600), 2099.
- Phillips v. State (51 Ala. 20), 370.
- Phillips v. State (156 Ala. 140; 47 So. 245), 1381, 1601, 2249.
- Phillips v. State (95 Ga. 478; 20 S. E. 270) 1365, 1367.
- Phillips v. State (23 Tex. App. 304; 4 S. W. 893), 918.
- Phillips v. State ([Tex. Cr. App.] 40 S. W. 270), 1379.
- Phillips v. State (50 Tex. Cr. Rep. 481; 98 S. W. 868), 2090.
- Phillip v. Tecumseh (5 Neb. 305), 395, 400, 532.
- Phoenix Brewing Co. v. Rumbarger 181 Pa. St. 251; 37 Atl. 340), 1384.
- Pickard v. Teatro (34 Ill. App. 398), 1876.
- Pickens v. State (20 Ind. 116), 510.
- Pickering v. Railroad Co. (L. R. 3 C. P. 250), 1782.
- Picket v. State (22 Ohio St. 405), 1482, 1488.
- Pickett v. Sutter (5 Cal. 412), 2041, 2094, 2098.
- Pickett v. Wilmington, etc., R. Co. (117 N. C. 616; 23 S. E. 264; 30 L. R. A. 257), 2178.
- Pickens v. State (20 Ind. 116), 694.
- Pickey, *In re* ([1907] 14 App. Ont. L. R. 587), 889.

[References are to pages.]

- Piddlesden, *Ex parte* (18 J. P. 391), 547.
- Pidgeon v. Legge (21 J. P. 743), 362, 2028.
- Piedmont Club v. Commonwealth (87 Va. 541; 12 S. E. 963), 1330.
- Pierce v. Boston (3 Mete. [Mass.] 520), 276.
- Pierce v. Hillsborough (57 N. H. 324), 1767.
- Pierce v. New Hampshire ([License Cases] 5 How. 504), 315, 1426, 1428.
- Pierce v. Pierce (17 Ind. App. 107; 46 N. E. 480), 510), 694.
- Pierce v. Pierce (38 Mich. 412), 2134, 2135, 2136, 2147, 2148, 2152.
- Pierce v. State (109 Ind. 535; 10 N. E. 302), 1618.
- Pierce v. State (13 N. H. 536), 138, 314, 1189.
- Piers v. State (53 Ga. 365), 1631.
- Pierson, *In re* (32 N. Y. Misc. Rep. 293, 66 N. Y. Supp. 546), 730.
- Pierson v. State (39 Ark. 219), 523, 525.
- Pierson v. State ([Tex. Cr. App.] 107 S. W. 546), 1465, 1473.
- Pietz v. State (68 Wis. 538; 32 N. W. 763), 523, 540, 1194.
- Pigford v. State ([Tex. Cr. App.] 74 S. W. 323), 1311, 1374.
- Pigman v. State (14 Ohio 556, 45 Am. Dec. 558), 2040, 2061, 2067.
- Pike v. State (40 Tex. Cr. App. 613; 51 S. W. 395), 8, 948, 962, 963, 964, 1603, 1610.
- Pike v. State (40 Tex. Cr. App. 668; 51 S. W. 395), 1765.
- Pike County Dispensary v. Brundige (130 Ala. 193; 30 So. 451), 981.
- Pikeville v. Huffman (65 S. W. 794; 23 Ky. L. Rep. 1692), 50, 968.
- Pinchard v. State (13 Tex. App. 373), 929.
- Pindar v. Barlow (32 Vt. 828), 1807.
- Pine v. Barnes (20 Q. B. Div. 221; 52 J. P. 199; 57 L. J. M. C. 28; 58 L. T. 520; 36 W. R. 473), 1313, 1316, 1317.
- Pioneer Trust Co. v. Stich (71 Ohio St. 459; 73 N. E. 520), 805.
- Piper v. State (53 Tex. Cr. App. 485; 110 S. W. 898), 958, 1491.
- Piqua v. Zimmerlin (35 Ohio St. 507), 166, 216, 268, 294, 433, 437, 1728.
- Pirtle v. State (9 Humph. 663), 2040, 2063, 2067.
- Pisar v. State (56 Neb. 455; 76 N. W. 869), 567, 616.
- Pitner v. State (37 Tex. Cr. App. 268; 39 S. W. 662), 869, 957, 1611, 1730.
- Pitt v. Smith (3 Campb. 33), 2098, 2103, 2130.
- Pittinger v. Pittinger (2 Green Ch. 156), 2099.
- Pitts v. State (124 Ga. 79; 52 S. E. 147), 1650.
- Pittsburgh v. Anderson (7 Pa. Dist. Rep. 714), 801.
- Pittsburg Brewing Co., *In re* (12 Pa. Super. Ct. 129; 29 Pittsb. Leg. J. [N. S.] 349; 12 Pa. Super. Ct. 176; 30 Pittsb. Leg. J. [N. S.] 179), 537, 540.
- Pittsburg Brewing Co., *In re* (16 Pa. Super. Ct. 215), 421, 646.
- Pittsburg Brewing Co., *In re* (16 Super. Ct. Ap. 215), 347, 797.
- Pittsburg Brewing Co., *In re* (29 Pittsburg Leg. J. [N. S.] 350), 1192.
- Pittsburgh Nat. Bank v. Palmer (22 Pa. Leg. J. [O. S.] 189), 2106, 2112.



[References are to pages.]

- Pittsburg, etc., Coal Co. v. Bates (156 U. S. 577; 39 L. Ed. 538), 331.
- Pittsburgh, etc., R. Co. v. Caldwell (74 Pa. 421), 2191.
- Pittsburgh, etc., R. Co. v. Hinds 53 Pa. 512; 91 Am. Dec. 224), 2216.
- Pittsburgh, etc., R. Co. v. Pillow (76 Pa. 510), 2216.
- Pittsburg, etc., Ry. Co. v. Porter (32 Ohio St. 328), 2255, 2256.
- Pittsburgh, etc., Ry. Co. v. Vandyne (57 Ind. 576; 26 Am. Rep. 68), 2201, 2202.
- Pittston, *In re* (7 Kulp 527), 795, 796.
- Pize v. Fraser (17 Ont. Rep. 635), 602.
- Place, *In re* (27 App. Div. 561; 50 N. Y. S. 640), 545, 560, 581, 582, 589, 593, 694, 743.
- Place, *In re* (27 N. Y. App. Div. 561; 50 N. Y. Supp. 640; 34 N. Y. App. Div. 389; 54 N. Y. Supp. 294), 581.
- Plainfield v. Batchelder (44 Vt. 9), 1744.
- Plainfield v. Plainfield (67 Wis. 526; 30 N. W. 672), 809.
- Plainfield v. Watson (57 N. J. L. 525; 31 Atl. 1040), 1643.
- Plank v. Hertha (132 Iowa 213; 109 N. W. 732), 1004.
- Plank v. McIlvenney (21 N. Z. 508), 1347.
- Plass v. Clark (71 N. Y. App. Div. 488; 76 N. Y. Supp. 2), 346, 739, 745.
- Platteville v. Bell (43 Wis. 488), 452, 457, 459.
- Platteville v. McKernan (54 Wis. 487; 11 N. W. 798), 473.
- Platts v. White (25 J. P. 485), 1271.
- Plattsburg v. Riley (42 Mo. App. 18), 409.
- Plenler v. State (11 Neb. 547), 484, 490.
- Pletts v. Beattie ([1896] 1 Q. B. 519; 60 J. P. 185; 65 L. J. M. C. 86; 74 L. T. 148), 690, 1272.
- Pletts v. Campbell ([1895] 2 Q. B. 229; 59 J. P. 502; 64 L. J. M. C. 225; 73 L. T. 344; 43 W. R. 634; 15 R. 493), 690, 1271.
- Pleuler v. State (11 Neb. 547; 10 N. W. 481), 139, 182, 195, 407, 492, 714, 715, 788, 789, 793.
- Plinsley v. Plinsley (35 N. J. Eq. 18), 2168.
- Plisson v. Skinner (4 Terr. L. R. 391), 1365, 1371, 1779.
- Plucknett v. Tippey (45 Neb. 343; 63 N. W. 845), 757.
- Plumb v. Christie (103 Ga. 686; 30 S. E. 759; 42 L. R. A. 181), 111, 172, 175, 176, 259, 659.
- Plumbly v. Commonwealth (43 Mass. [2 Met.] 413), 262.
- Plumley v. Massachusetts (155 U. S. 461; 15 Sup. Ct. 154), 321, 1434, 1438.
- Plummer v. Commonwealth (1 Bush 26), 740.
- Plummers v. Erskine (58 Me. 59), 1783.
- Plunkett v. State (69 Ind. 68), 11, 83, 1097, 1292, 1442, 1491, 1500, 1586, 1592, 1657.
- Pocket v. State (5 Tex. App. 552), 2067.
- Poe v. State ([Tex. Cr. App.] 44 S. W. 493), 1623.
- Poffenbarger v. Smith (27 Neb. 788; 43 N. W. 1150), 1972.
- Poinders v. State (37 Ark. 399), 1223.
- Point Pleasant v. Greenlee (63 W. Va. 207; 60 S. E. 601), 760, 779.
- Poirer v. Carroll (35 La. Ann. 699), 2199.
- Poitras v. Quebec (9 Rev. Leg. 531), 1129.

[References are to pages.]

- Police Jury v. Descant (105 La. 512; 29 So. 976), 899, 919.
- Police Jury v. Mansfield (49 La. Ann. 796; 21 So. 598), 939.
- Police Jury v. Mansura (107 La. 201; 31 So. 650), 934, 935, 941, 942.
- Police Jury v. Marrero (38 La. 896), 520.
- Police Jury v. Ponchatoula (118 La. 138; 12 So. 725), 872.
- Polk v. State ([Tex. Cr. App.] 97 S. W. 467), 948, 1600.
- Polk Co. v. Johnson (21 Fla. 578), 563, 599.
- Polk County v. Hierb (37 Iowa 361; 222, 226, 260.
- Pollard, *In re* (127 Pa. 507; 17 Atl. 1087; 24 Wkly. N. C. 181), 291, 621, 630, 675.
- Pollard, *Ex parte* (51 Tex. Cr. App. 488; 103 S. W. 878), 863, 938.
- Pollard v. Allen (96 Me. 455; 52 Atl. 924), 822, 1084, 1792, 1793.
- Pollard v. Phoenix Ins. Co. (63 Miss. 244; 56 Am. Rep. 305), 1779.
- Pollard v. State (4 Ohio Dec. 30; 1 Cleve. Law Rec. 35), 1828.
- Pollock, *Ex parte* (24 N. S. Wales 144; 7 S. R. 648), 621.
- Pomeroy v. Rocky Mountain Ins. Co. (9 Colo. 295; 59 Am. Rep. 144), 2241.
- Ponchatoula v. Tangipahoa (120 La. 292; 46 So. 16), 924.
- Pond v. State (47 Miss. 39), 1643.
- Pontius v. Bowman (66 Iowa 88; 23 N. W. 277), 359, 982.
- Pontius v. Winebrenner (65 Iowa 591; 22 N. W. 646), 259, 981.
- Pool, *In re* (14 Vict. L. R. 519), 533.
- Pope v. People (26 Ill. App. 44), 1451.
- Pope v. State (36 Miss. 121), 2246, 2252.
- Pope v. Swan (2 Swan 611), 688.
- Popel v. Monmouth (81 Ill. App. 512), 190, 429, 1378.
- Porritt v. Porritt (16 Mich. 140), 2153, 2154.
- Porter v. Butterfield (116 Iowa 725; 89 N. W. 199), 623, 1748.
- Porter v. State (135 Ala. 51; 33 So. 694), 2060, 2065, 2068.
- Porter v. State (140 Ala. 87; 37 So. 81), 2038, 2051, 2056, 2082.
- Porter v. State ([Tex. Cr. App.] (86 S. W. 1014), 1700, 1704.
- Portingell, *Ex parte* ([1892] 1 Q. B. 15; 65 L. T. 603; 40 W. R. 102; 56 J. P. 276; 61 L. J. M. C. 1), 679.
- Portland v. Rolfe (37 Me. 400), 1744.
- Portland v. Schmidt (13 Ore. 17; 6 Pac. 221), 216, 410, 413, 417, 424, 427, 432, 437, 443.
- Portsmouth v. Smith (L. R. 13 Q. B. Div. p. 198), 74.
- Portsmouth Brewing Co. v. Smith (155 Mass. 100; 28 N. E. 1130), 1787, 1788.
- Portwood v. Baskett (64 Miss. 213; 1 So. 105), 198, 231, 790, 801.
- Post v. Sparta Tp. (63 Mich. 323; 29 N. W. 721), 763, 764, 765.
- Poston v. State ([Neb.] 119 N. W. 520), 1660, 1697, 1702.
- Pottenger v. State (54 Kan. 312; 38 Pac. 278), 993.
- Potter v. Bowling (5 W. N. [N. S. W.] 143), 533.
- Potter v. Homer (59 Mich. 8; 26 N. W. 208), 764.
- Potts v. State ([Tex. Cr. App.] 89 S. W. 836), 1608, 1697.
- Potts v. State ([Tex. Cr. App.] 96 S. W. 1084), 1213, 1225.
- Pounder, *In re* (19 App. Ont. 684), 921.
- Pounders v. State (37 Ark. 399), 1239, 1628, 1645.

[References are to pages.]

- Powell, *In re* ([Neb.] 119 N. W. 9), 575.
- Powell v. Bradlee (9 Gill & J. [Md.] 220), 1027.
- Powell v. Commonwealth ([Ky.] 66 S. W. 818; 23 Ky. L. Rep. 2167), 832, 834.
- Powell v. State (27 Ala. 151), 1245.
- Powell v. State (63 Ala. 177), 1293, 1635.
- Powell v. State (69 Ala. 10), 124, 156, 158, 183, 488, 490, 1491, 1493, 1517.
- Powell v. State (62 Ind. 531), 358.
- Powell v. State (50 Tex. Cr. App. 592; 99 S. W. 1002), 958.
- Power v. King ([N. D.] 120 N. W. 543), 2094, 2095, 2121.
- Power v. Litchfield (141 Mich. 350; 104 N. W. 664; 12 Detroit Leg. N. 484), 759, 764.
- Power v. Power (11 Jur. [N. S.] 800; 4 Swab. & T. 173; 34 L. J. Mat. [N. S.] 137; 13 W. R. 1113), 2165.
- Powers, *In re* (334 N. Y. Misc. Rep. 598; 70 N. Y. Supp. 590), 884.
- Powers v. Commonwealth (90 Ky. 167; 13 S. W. 450), 1175, 1456.
- Powers v. Decatur (54 Ala. 214), 798, 799.
- Powers v. Klett ([Iowa] 82 N. W. 752), 1270.
- Powers v. Powers (20 Neb. 529; 31 N. W. 1), 68, 2166, 2167.
- Powers v. Winters (106 Iowa, 751; 77 N. W. 509), 982.
- Poweshiek County v. Ross (9 Iowa, 511), 385.
- Pradat v. Ramsay (47 Miss. 29), 29), 882.
- Prader v. National, etc., Assoc. (95 Iowa, 149; 63 N. W. 601), 2189, 2238, 2239.
- Prater v. Commonwealth (3 Ky. L. Rep. [abstract] 695), 1483.
- Prater v. Commonwealth (4 Ky. L. Rep. 344), 480.
- Prather v. People (85 Ill. 36), 505, 506.
- Prather v. State (12 Tex. App. 401), 86, 850, 910, 1569, 1704.
- Prather v. State (14 Tex. App. 453), 492, 929.
- Prather v. People (85 Ill. 36), 762, 1639.
- Pratt, *Ex parte* (17 N. S. W. L. R. 295), 933.
- Pratt, *Ex parte* (13 W. N. [N. S. W.] 9), 682.
- Pratt v. Brown (80 Tex. 608; 16 S. W. 443), 2033.
- Pratt v. State (56 Ind. 179), 2247, 2250.
- Prentice v. Achorn (2 Paige, 30), 2093, 2099.
- Presbyterian Church v. City of New York (5 Cow. [N. Y.] 540), 404.
- Pressley v. State (114 Tenn. 534; 86 S. W. 378; 69 L. R. A. 291), 1232, 1762.
- Pressler v. State (13 Tex. App. 95), 1629, 1235.
- Preston v. Boston (12 Pick. 7), 811.
- Preston v. Culbertson (58 Cal. 198), 894.
- Preston v. Drew (33 Me. 558; 54 Am. Dec. 639), 110, 123, 126, 1031, 1032, 1776.
- Preston v. Reeve (65 N. H. 6), 2126.
- Prestwood v. Borland (92 Ala. 599; 9 So. 223), 897, 900, 906.
- Prestwood v. State (88 Ala. 235; 7 So. 259), 938.
- Price v. Jones ([1892] 2 Q. B. 428; 56 J. P. 471; 57 J. P. 148; 61 L. J. M. C. 203; 67 L. T. 543; 41 W. R. 57), 678.

[References are to pages.]

- Price v. Lincoln (130 Ill. App. 254), 643.
- Price v. Philadelphia, etc., R. Co. 84 Md. 506; 36 Atl. 263; 36 L. R. A. 213), 2204.
- Price v. St. Louis, etc., R. Co. (75 Ark. 479; 88 S. W. 575), 2215.
- Price v. State ([Miss.] 38 So. 41), 1207.
- Prichett v. Snider ([Ky.] 61 S. W. 277; 22 Ky. L. Rep. 1718), 883.
- Pride v. State (52 Tex. Cr. App. 449; 107 S. W. 819), 1603.
- Princeton v. Vierling (40 Ind. 340), 814.
- Princeville v. Hitchcock (101 Ill. App. 588), 1623.
- Prine v. Prine (36 Fla. 676; 18 So. 781; 34 L. R. A. 86), 2109, 2114.
- Prinzel v. State (35 Tex. Cr. Rep. 274; 33 S. W. 350), 25, 550, 551, 552.
- Pritiz, *Ex parte* (9 Ia. 30), 228.
- Privet v. Sexton (16 C. L. J. 192), 648.
- Prohibition Amendment Cases, *In re* (24 Kan. 700), 110, 124, 125, 183, 184, 211, 488, 489, 490, 491, 495, 716, 1194, 1521.
- Promoters Ins. Co. v. Barrie (5 Murray [S. C.] 135), 2243.
- Prospect Brewing Co., *In re* (127 Pa. 523; 17 Atl. 1090; 24 W. N. C. 177), 600, 621, 630, 649, 651.
- Providence Bank v. Billings (4 Pet. [U. S.] 514), 790.
- Providence v. Bligh (10 R. I. 208), 757.
- Providence v. Shackelford (106 Ky. 378; 50 S. W. 542; 20 Ky. L. Rep. 1921), 817.
- Provo City v. Shurtleff (4 Utah, 15; 5 Pac. 302), 410, 432, 437, 439, 827, 1640.
- Prowitt v. Denver (11 Colo. App. 70; 52 Pac. 286), 835, 838.
- Prussia v. Guenther (6 Abb. [N. S.] 230 ["sun smile"]), 14.
- Puckett v. Snider (110 Ky. 261; 22 Ky. 1718; 61 S. W. 277; 22 Ky. L. Rep. 1718), 853, 869, 873, 895, 896, 903, 920, 921.
- Puckett v. State (33 Fla. 385; 14 So. 834) 649.
- Puckett v. State (71 Miss. 192; 14 So. 452), 907.
- Pugh v. State (2 Tex. App. 539), 2074.
- Pugh v. State (55 Tex. Cr. App. 462; 117 S. W. 817), 2027.
- Pughsley v. State (4 Ga. App. 494; 61 S. E. 886), 403, 1558.
- Pulbrook v. Ashley ([1887] 56 L. J. Q. B. 376; 35 W. R. 779), 1817, 1834.
- Pulling v. People (8 Barb. N. Y. 384), 1303.
- Pullman Southern Car Co. v. Nolan (22 Fed. 276), 479.
- Pullman, etc., Co. v. State (64 Tex. 274), 793.
- Pulse v. State (5 Humph. 108), 1246.
- Pumpelly v. Green Bay Co. (13 Wall. 166), 117.
- Pumphrey v. Anderson ([Iowa] 119 S. W. 617), 348, 1001, 1002, 1643.
- Punnett, *Ex parte* ([1880] 16 Ch. D. 226; 50 L. J. Ch. 212; 44 L. T. 226; 29 W. R. 129), 1831.
- Purdy, *In re* (40 N. Y. App. Div. 133; 57 N. Y. Supp. 629), 544, 582, 731, 748.
- Purdy v. Sinton (56 Cal. 133), 208, 573, 576.
- Purefoy v. People (65 Ill. App. 167), 1129.
- Purkis v. Huxtable (1 E. & E. 780; 28 L. J. M. C. 221; 5 Jur. 790; 23 J. P. 197), 367.

[References are to pages.]

Pursifull v. Commonwealth ([Ky.]  
47 S. W. 772; 20 Ky. L. Rep.  
863), 403, 1764.  
Putnam v. Broadway, etc., R. Co.  
(55 N. Y. 108; 14 Am. Rep.  
190), 2201, 2206, 2216, 2217.  
Putney v. O'Brien, 53 Iowa, 89,  
117; 4 N. W. 891), 1931.  
Purvis v. Segar (132 Mich. 167;  
93 N. W. 261; 3 Det. Leg.  
N. 556), 2014.

## Q

Quachita Co. v. Rolland (60 Ark.  
516; 31 S. W. 144), 531.  
Qualls v. Sayler (18 Tex. Civ. App.  
400; 45 S. W. 839), 772.  
Qualter v. State (120 Ind. 92; 22  
N. E. 100), 1742.  
Queen v. Abel (29 Vict. L. R. 84;  
26 Austr. L. T. 58; 10 Austr.  
L. R. 158), 1269.  
Queen v. Armstrong (13 Juta,  
408), 833.  
Queen v. Atwell (9 East. Dist. Ct.  
Rep. 174), 1208.  
Queen v. Bridges (17 Juta, 385),  
1264.  
Queen v. Brooks (6 Sup. Ct. 319),  
1720.  
Queen v. Brooks (6 Juta, 319),  
1128.  
Queen v. Cahill (35 N. B. 240; 6  
Can. Cr. Cas. 204), 949, 950,  
1218.  
Queen v. Calhoun (20 N. S. 395;  
9 C. L. T. 62), 1159.  
Queen v. Cunerty (2 Can. Cr. Cas.  
325; 26 Ont. Rep. 51), 1191.  
Queen v. Davidson (6 Can. Cr.  
Cas. 117; 3 Terr. L. R. 425),  
1132.  
Queen v. Derringer (9 East. Dist.  
Ct. Rep. 168), 1357.  
Queen v. Deydier (13 Juta, 388),  
1227.  
Queen v. Dias (1 Can. Cr. Cas.  
534), 1257, 1853.  
Queen v. Fourie (17 Juta, 24),  
1189.  
Queen v. Goldman (9 Juta, 313),  
1208, 1215, 1229.  
Queen v. Harkins (7 Juta, 69),  
1248, 1634.  
Queen v. Harrell (1 Can. Cr. Cas.  
510), 1332, 1346, 1724.  
Queen v. Hazel (2 Can. Cr. Cas.  
516), 1272.  
Queen v. Hughes (2 Can. Cr. Cas.  
5), 1346.  
Queen v. Hurlburt (27 Nov. Sco.  
62; 26 Nov. Sco. 123), 1076.  
Queen v. King (25 Nova Scotia,  
488), 263.  
Queen v. Kirston (16 Juta, 510),  
1264.  
Queen v. Lammert (31 N. S. 387;  
5 Can. Cr. Cas. 151), 1105.  
Queen v. Langford (55 J. P. 484),  
1220, 1331, 1344, 1346.  
Queen v. Lloyd (1 Cox C. C. 51),  
1724.  
Queen v. Lyons (5 R. & G. [N. S.]  
201), 919.  
Queen v. McDonald (26 N. S. 402),  
343.  
Queen v. McGlashun (9 East. Dist.  
Ct. Rep. 9), 1502.  
Queen v. McKenzie (23 Nova Sco-  
tia, 6), 263.  
Queen v. McLean (3 Can. Cr. Cas.  
323), 13.  
Queen v. McLeod (6 Can. Cr. Cas.  
94), 1572.  
Queen v. McNutt (33 N. S. 14),  
1105.  
Queen v. McPherson (24 Nov. Sco.  
378), 594.  
Queen v. Major (9 East. Dist. Ct.  
Rep. 186), 1352.  
Queen v. Maybe (9 East. Dist. Ct.  
Rep. 186), 1354.  
Queen v. Murrens (7 Can. Cr. Cas.  
459), 1571.  
Queen v. Nokitshini (13 Juta,  
413), 1377.  
Queen v. Nurse (2 Can. Cr. Cas.  
57), 1579, 1719.



[References are to pages.]

Queen v. Otto (13 Juta, 251), 2028.  
 Queen v. Parrott (13 Juta, 452), 1264.  
 Queen v. Pilkington (10 Juta, 132), 1316.  
 Queen v. Pols (2 H. C. R. p. 580), 1189.  
 Queen v. Power (28 Nov. Sco. 373), 344.  
 Queen v. Rankin (17 Juta, 526), 1265.  
 Queen v. Reynolds (11 East. Dist. Ct. Rep. 17), 2028.  
 Queen v. Robertson (9 Juta, 299), 1228, 1229, 2029.  
 Queen v. Ronnan (23 Nova Scotia, 421), 263.  
 Queen v. Roos (17 Juta, 547), 1265.  
 Queen v. Saterio (1 Terr. L. R. 301 [\$100 per annum]), 480, 795.  
 Queen v. Sauer (3 B. C. Rep. 308; 1 Can. Cr. Cas. 317), 1312.  
 Queen v. Sutton (10 Juta, 273), 1310.  
 Queen v. Thesen (6 Juta, 68), 1366.  
 Queen v. Truman (15 Juta, 79), 1154.  
 Queen v. Van Zyle (16 Juta, 278), 689.  
 Queen v. Walsh (1 Can. Cr. Cas. 109), 1175, 1177, 1178.  
 Queen v. Walsh (29 Nov. Sco. 336), 1332.  
 Queen v. Walsh (29 Nov. Sco. 521; reversing 19 Nov. Sco. 336), 1346.  
 Queen v. Ware (12 Juta, 4), 518.  
 Quigley v. Monsees (56 N. Y. Misc. Rep. 110; 106 N. Y. Supp. 167), 581, 588.  
 Quill v. Isitt (10 N. Z. L. R. 636), 685.  
 Quinlan v. Welsh (23 N. Y. Supp. 963; 69 Hun, 584), 1904, 1905, 1907.  
 Quinn, *In re* (11 Pa. Super. Ct. 554), 594, 664, 665.

Quinn v. O'Keefe (9 N. Y. App. Div. 68; 41 N. Y. Supp. 116; appeal dismissed, 151 N. Y. 633; 45 N. E. 34; 75 N. Y. St. 753), 63, 1735.  
 Quinn v. State (123 Ind. 59; 23 N. E. 977), 1497, 1500.  
 Quinn v. State (82 Miss. 75; 33 So. 839), 282.  
 Quinnipac Brewing Co. v. Hackborth (74 Conn. 392; 50 Atl. 1023), 480, 1772.  
 Quintard v. Corcoran (50 Conn. 34), 456, 757, 766, 1125, 1134.  
 Quintard v. Knoedler (53 Conn. 485; 2 Atl. 752), 778.  
 Quinton, *In re* (169 Pa. 115; 32 Atl. 101), 664.  
 Quirk, *In re* (17 Pa. Co. Ct. Rep. 327), 598, 637, 696.  
 Quist v. American Bonding, etc., Co. (74 Neb. 692; 105 N. W. 255), 782.  
 Quolter v. State (120 Ind. 92; 22 N. E. 100), 1320.

**R**

Rabe v. State (39 Ark. 204), 11, 36, 968.  
 Racer v. State ([Tex. Cr. App.] 73 S. W. 968), 871.  
 Racer v. State ([Tex. Cr. App.] 73 S. W. 807), 964, 1703, 1704.  
 Radford v. Thornell (81 Iowa, 709; 45 N. W. 890), 982, 988.  
 Radley v. Leider (99 Mich. 431; 58 N. W. 366), 1862, 1889, 1962, 1983.  
 Rae v. Yates Castle Brewery ([1903] 67 J. P. 427), 1822.  
 Rafferty v. Buchman (46 Iowa, 195), 1888, 1897.  
 Rafferty v. People (66 Ill. 118), 2041.  
 Rafter v. State (62 Mo. App. 101), 1458.

[References are to pages.]

- Ragan v. State (67 Miss. 332; 7 So. 280), 1480, 1571.
- Ragle v. Mattox (159 Ind. 594; 65 N. E. 743), 612, 855.
- Ragland v. State ([Fla.] 46 So. 724), 1761.
- Rahrer, *In re* (140 U. S. 545; 11 S. Ct. 865; 35 L. Ed. 372; reversing 43 Fed. 556), 320, 328, 427, 695.
- Rail v. Potts (8 Humph. 225), 660.
- Railroad Co. v. Berry ([Ky.] 40 Am. St. Rep. 161; 10 S. W. 1026), 461.
- Railroad Co. v. Husen (95 U. S. 465), 116, 316.
- Railway Co. v. Illinois (118 N. S. 557; 7 Sup. Ct. 4), 316.
- Railway Co. v. Alabama (128 U. S. 96; 9 Sup. Ct. 28), 315.
- Railway Co. v. Valleley (32 Ohio St. 345), 2202, 2298, 2212, 2215.
- Railway Co. v. Wyant (114 Ind. 525; 17 N. E. 118), 1951.
- Railway Sleepers Co., *In re* (29 Ch. Div. 204), 569.
- Rains v. Sampson (50 Tex. 495; 32 Am. Rep. 609), 660.
- Raisler v. State (55 Ala. 64), 1553.
- Raleigh v. Cane (47 N. C. 293), 683.
- Raleigh v. Dougherty (3 Humph. [Tenn.] 11), 270.
- Raleigh v. Kane (47 N. C. 288), 635.
- Raley v. State ([Tex. Civ. App.] 105 S. W. 342), 768.
- Ralston v. Turpin (25 Fed. 7), 2094, 2105, 2106, 2121, 2122, 2152.
- Ramagnano v. Cook (85 Ala. 226; 3 So. 845), 291, 635.
- Ramagnano v. Crook (88 Ala. 450; 7 So. 247), 648, 668.
- Ramey v. State ([Tex. Cr. App.] 61 S. W. 126), 1148, 1728.
- Ramsey v. State (11 Ark. 35), 1093.
- Ran v. People (63 N. Y. 279), 41.
- Rana v. State (51 Ark. 481); 11 S. W. 692), 513, 1371, 1372, 1590, 1619, 1644.
- Ranch v. Commonwealth (78 Pa. St. 490), 262, 932, 935, 1572.
- Rancour, *In re* (66 N. H. 172; 20 Atl. 930), 976.
- Randall, *Ex parte* (50 Tex. Cr. App. 519; 98 S. W. 870), 865, 939.
- Randall v. State (14 Ohio St. 435), 1228, 1229, 1233.
- Randall v. State ([Tex. Cr. App.] 22 S. W. 411), 1628, 1629.
- Randall v. State (49 Tex. Cr. App. 261; 90 S. W. 1012), 952.
- Randall v. Tillis (43 Fla. 43; 29 So. 540), 233, 1467.
- Randenbusch, *In re* (120 Pa. 328; 14 Atl. 148), 626, 635.
- Randolph v. Randolph (40 N. J. Eq. 74), 1906.
- Rank v. People (80 Ill. App. 40), 73.
- Rankin v. Hunt ([1894] 10 R. 249), 1815.
- Rankine v. Greer (38 Kan. 343; 16 Pac. 680), 1027.
- Ranney v. Mutual Ben. L. Ins. Co. [U. S. D. C. Mass. 1873]; May on Ins. [3d Ed.] p. 302), 2234.
- Rapken, *In re* (14 Vict. L. R. 317), 1269.
- Rapp v. Rapp (149 Mich. 218; 112 N. W. 709; 14 Det. L. N. 415), 2158.
- Rasquin, *In re* (37 N. Y. Misc. Rep. 693; 76 N. Y. Supp. 404), 583, 729.
- Rater v. State (49 Ind. 507), 1579, 1580, 1590.
- Rather v. State (25 Tex. App. 623; 9 S. W. 69), 2070, 2090.
- Rathburn v. State (88 Tex. 281; 31 S. W. 189 [Texas Civ. App.] 32 S. W. 45), 794, 934.
- Rathburn v. State ([Tex. Civ. App.] 32 S. W. 45), 933.

[References are to pages.]

- Rathmiller v. People (44 Mich. 280; 6 N. W. 667), 1319.
- Ratliff v. State ([Tex. Cr. App.] 49 S. W. 583), 1603, 1608.
- Rattenbury v. Northville (122 Mich. 158; 80 N. W. 1012), 433.
- Raubenheimer v. Parsons (12 Juta, 326), 852.
- Raubold v. Commonwealth (12 Ky. L. Rep. [abstract] 987), 1117.
- Raubold v. Commonwealth ([Ky.] 54 S. W. 17; 21 Ky. L. Rep. 1125), 111, 400.
- Raubold v. Commonwealth (111 Ky. 433; 63 S. W. 781; 23 Ky. Law Rep. 735), 1493.
- Rauch v. Commonwealth (78 Pa. St. 490), 934, 1679.
- Raw v. People (63 N. Y. 277), 12, 47, 48, 82, 85, 277, 1592.
- Rawlins v. Desborough (2 M. & Rob. 328), 2220.
- Rawlins v. State (2 Md. 201), 1246.
- Rawlins v. Vidvard (34 Hun, 205), 1988.
- Rawls v. State (48 Tex. Cr. App. 622; 89 S. W. 1071), 909, 914, 1733.
- Rawson v. State (1 Conn. 292), 1541.
- Rawson v. State (19 Conn. 292), 1445, 1484.
- Ray v. State (50 Ala. 172), 369, 370, 371.
- Ray v. State (47 Tex. Cr. App. 407; 83 S. W. 1121), 211, 230, 233, 234, 246, 249.
- Ray v. State (46 Tex. Cr. App. 176; 79 S. W. 535), 1166, 1167, 1197, 1662, 1689.
- Rayman Brewing Co. v. Brister (179 U. S. 445; 21 Sup. Ct. 201; 45 L. Ed. 260; affirming 92 Fed. 28), 209, 311.
- Raymond v. Clement (118 N. Y. App. Div. 528; 102 N. Y. Supp. 1070), 880.
- Read v. Bishop of Lincoln ([1892] App. Cas. at p. 656), 27.
- Read v. Board ([N. J. L.] 71 Atl. 120), 573.
- Read v. Taft (3 R. I. 175), 1801.
- Reading v. Reading (96 Cal. 4; 30 Pac. 803), 2159, 2160.
- Reagan v. State (28 Tex. App. 227; 12 S. W. 601), 209, 2074, 2076.
- Real v. People (42 N. Y. 270; affirming 55 Barb. 551; 8 Abb. Prac. [N. S.] 314), 2060, 2082.
- Reams v. State (23 Ind. 111), 1499.
- Reason v. Commonwealth (5 Ky. L. Rep. [abstract] 428), 1486, 1670.
- Reath v. State (16 Ind. App. 146; 44 N. E. 808), 1860, 1900, 1907.
- Rebman, *In re* (41 Fed. Rep. §67), 156.
- Rector v. State (6 Ark. 187), 270.
- Rector v. State ([Tex. Cr. App.] 90 S. W. 41), 1379, 1579.
- Redd v. State ([Tex. Cr. App.] 77 S. W. 214), 1623, 1624.
- Redding v. Commonwealth (3 B. Mon. 339), 1499.
- Redding v. State (91 Ga. 231; 18 S. E. 289), 162, 931.
- Redgate v. Haynes (1 Q. B. Div. 89; 41 J. P. 86; 33 L. T. 779; 45 L. J. M. C. 65), 376.
- Redmond v. State (36 Ark. 58; 38 Am. Rep. 24), 1237.
- Redpath v. Nottingham (5 Blackf. 267), 758, 780.
- Reed's Will. *In re* (2 Con. Sur. 403; 20 N. Y. Supp. 649), 2137, 2147.
- Reed, Appeal of (114 Pa. 452; 6 Atl. 910), 621, 622.
- Reed v. Adams (2 Allen, 413), 1046, 1079.
- Reed v. Ball (42 Miss. 472), 183.

[References are to pages.]

- Reed v. Collins (5 Cal. App. 494; 90 Pac. 973), 91, 103, 627, 628, 630.
- Reed v. State ([Tex. Cr. App.] 44 S. W. 1093), 1379, 1380, 1381.
- Reed v. State (53 Tex. Cr. App. 4; 108 S. W. 368), 1186, 1615, 1716, 1732, 1733.
- Reed v. State ([Tex. Cr. App.] 109 S. W. 182), 1729.
- Reed v. Territory (1 Okla. Cr. App. 481; 98 Pac. 583), 1492, 1641, 1648, 1703, 1984.
- Reed v. Terwilliger (42 Hun, 310), 1927, 1988.
- Reed v. Terwilliger (116 N. Y. 530; 22 N. E. 1091), 1954, 1987, 1988.
- Reese v. Atlanta (63 Ga. 344), 497, 503, 504, 1160.
- Reese v. Newman (120 Ga. 198; 47 S. E. 560), 452, 1084, 1209.
- Reeve v. Long (1 Salk. 227), 1906
- Regadanz v. Haines (168 Ind. 140; 79 N. E. 352), 206, 209, 286, 612, 614, 618.
- Regadanz v. State (171 Ind. 387; 86 N. E. 449), 1444, 1510, 1512.
- Regan, *In re* (213 Pa. 279; 62 Atl. 841; reversing 28 Super. Ct. 386), 565, 759.
- Regan v. Wooten ([Tex.] 16 S. W. 546), 1851.
- Regdance v. Haines (168 Ind. 140; 79 N. E. 752), 606.
- Regina v. Aberdare (14 Q. B. 854), 569.
- Regina v. Adams (5 Manitoba, 153), 1316, 1697.
- Regina v. Alehurst (3 Vict. L. R. [Austr.] 111), 682.
- Regina v. Alexander (17 Ont. App. 458), 1555.
- Regina v. Allmey (35 J. P. 534), 547.
- Regina v. Altrincham (11 T. L. R. 3), 680.
- Regina v. Andover (55 L. J. M. C. 143; 16 Q. B. Div. 711; 55 L. T. 23; 34 W. R. 456; 50 J. P. 549), 670.
- Regina v. Anglesey (59 J. P. 743; 65 L. J. M. C. 12; 15 R. 614), 615, 620, 679.
- Regina v. Anglesey J. J. ([1892] 1 Q. B. 852), 654.
- Regina v. Armagh (1897] 2 Irish Rep. 57), 1159.
- Regina v. Armstrong (65 L. J. M. C. 35), 616, 620.
- Regina v. Ashton (1 E. L. & B. L. 286; 16 J. P. 790; 22 L. J. M. C. 61; 17 Jur. 501), 374.
- Regina v. Aulton (30 L. J. M. C. 129; 25 J. P. 69; 3 E. & E. 568; 3 L. J. 699; 9 W. R. 278; 16 Cox C. C. 259), 352.
- Regina v. Austin (17 Ont. Rep. 743), 1331, 1332, 1342, 1344.
- Regina v. Barrett (1 L. & C. 263; 32 L. J. M. C. 36; 7 L. T. 435; 11 W. R. 124), 724.
- Regina v. Barton (14 J. P. 738), 657.
- Regina v. Beard (13 Ont. 608), 1603.
- Regina v. Belmont (35 Up. Can. 298), 455, 468, 469.
- Regina v. Bennett (1 Ont. 445), 87, 1531, 1658, 1681, 1762.
- Regina v. Bigelow (36 Nov. Sco. 554), 1723.
- Regina v. Birley (55 J. P. 88), 570.
- Regina v. Bishop (5 Q. B. 259), 1251.
- Regina v. Blackburn J. J. (42 J. P. 775; 43 J. P. 111), 570.
- Regina v. Blakely (6 P. C. [Can.] Rep. 244), 2027.
- Regina v. Blair (24 N. B. 74), 1651.
- Regina v. Bodmin ([1892] 2 Q. B. 21; 56 J. P. 504; 61 L. J. M. C. 151; 66 L. T. 562; 40 W. R. 606; 8 T. L. R. 553), 657.

[References are to pages.]

- Regina v. Booth (3 Ont. App. 144; 9 C. P. 452), 539, 711.
- Regina v. Boteler (4 B. & S. 959; 33 L. J. M. C. 101; 28 J. P. 453), 632.
- Regina v. Bowman (67 L. J. Q. B. 463 [1898]; 1 Q. B. 663; 78 L. T. 230; 62 J. P. 374; 14 T. L. R. 303), 654, 689.
- Regina v. Brady (12 Ont. 358), 1762.
- Regina v. Breen (36 Up. Can. 84), 1372.
- Regina v. Bristol J. J. (5 R. 276; 57 J. P. 486; 68 L. T. 335; 41 W. R. 379), 656.
- Regina v. Bristol J. J. (67 J. P. 375), 620.
- Regina v. Brown (1 Q. B. 119; 64 L. J. M. C. 1; 72 L. T. 22; 43 W. R. 222; 59 J. P. 485; 15 Rep. 59), 378.
- Regina v. Brown (10 Ont. 41), 1724.
- Regina v. Brown (16 Ont. 41), 1755.
- Regina v. Cameron (12 Ont. 524), 1681.
- Regina v. Campbell (2 Pac. Rep. [Can.] 55), 1370.
- Regina v. Cavanagh (27 Com. Pl. [Can.] 537), 1479, 1481, 1540.
- Regina v. Charles (24 Ont. 432), 1332, 1346, 1347.
- Regina v. Chertsey J. J. (3 Q. B. D. 374; 42 J. P. 598; 47 L. J. M. C. 104; 26 W. R. 682), 655.
- Regina v. Clark (15 Ont. 49), 1724.
- Regina v. Cockshott ([1898] 1 Q. B. 582; 62 J. P. 325; 67 L. J. Q. B. 467; 78 L. T. 168; 14 T. L. R. 264), 744.
- Regina v. Commissioners (57 L. J. M. C. 92; 21 Q. B. Div. 569; 59 L. T. 378; 36 W. R. 692; 52 J. P. 390), 1299.
- Regina v. Conway (46 Up. Can. 85), 539.
- Regina v. Collier (12 Prac. Rep. [Can.] 316), 1483, 1484.
- Regina v. Collins (14 Ont. 613), 1739, 1762.
- Regina v. Cothan ([1898] 1 Q. B. 802; 62 J. P. 435; 14 T. L. R. 367; 67 L. J. Q. B. 632; 78 L. T. 468; 46 W. R. 512), 654, 711.
- Regina v. Coulter (4 Manitoba, 309), 1445, 1478.
- Regina v. Crewkerne J. J. ([1888] 21 Q. B. D. 85; 52 J. P. 372; 57 L. J. M. C. 127; 58 L. T. 450; 36 W. R. 629), 658.
- Regina v. Crothers (11 Manitoba, 567), 747.
- Regina v. Cruse (8 Car. & P. 541), 2073.
- Regina v. Curzon (L. R. 8 Q. B. 400; 42 L. J. M. C. 155; 37 J. P. 774; 29 L. T. 32; 21 W. R. 886), 710.
- Regina v. Darwen J. J. (39 L. T. [N. S.] 444), 570.
- Regina v. Davis (30 N. B. 248), 1448.
- Regina v. Davis (14 Cox C. C. 563; 28 Mack. Eng. Rep. 657), 2054, 2067, 2073.
- Regina v. Deane (2 Q. B. 96), 668.
- Regina v. Denbigh J. J. (59 J. P. 708*n*), 679.
- Regina v. Denham (35 Up. Can. Rep. 503), 840, 1192.
- Regina v. Denton (16 Q. B. 832; 18 Q. B. 761; 83 E. C. L. 761), 929.
- Regina v. Deputies (15 Q. B. 671), 679.
- Regina v. DeRutzen (1 Q. B. Div. 55; 40 J. P. 150; 33 L. T. 726; 24 W. R. 343; 45 L. J. M. C. 57), 547, 654.
- Regina v. Dickson (11 Cox C. C. 341), 2039.
- Regina v. Dixon (11 Cox C. C. 341), 2055.
- Regina v. Dobbins (48 J. P. 182), 350.



[References are to pages.]

- Regina v. Doody (6 Cox C. C. 463), 2039, 2077.
- Regina v. Doyle (12 Ont. 347), 1048, 1066.
- Regina v. Dublin (8 L. R. Irish Rep. 274), 1152.
- Regina v. Duquette (9 U. C. C. P. [Can.] 28), 1263, 1322.
- Regina v. Durnion (14 Ont. 172), 1739.
- Regina v. Eales (44 J. P. 553; 42 L. T. 735), 680.
- Regina v. Edgar (15 Ont. Rep. 142), 1442, 1724, 1762.
- Regina v. Elborne (19 Ont. App. 439; reversing 21 Ont. 504), 840.
- Regina v. Eli (10 Ont. 727), 1755.
- Regina v. Elliott (12 Ont. 524), 1681, 1762.
- Regina v. Essex J. J. (46 J. P. 761), 679.
- Regina v. Excise Commissioners (2 T. R. 381), 76.
- Regina v. Farquhar L. R. (9 Q. B. 258; 39 J. P. 166), 620, 656, 679, 680.
- Regina v. Faulkner (26 Up. Can. Rep. 529), 1192.
- Regina v. Fee (13 Ont. 590), 1579.
- Regina v. Flynn (20 Ont. 638), 1643.
- Regina v. Frances (4 Cox C. C. 57), 2074.
- Regina v. French (34 U. C. 403), 1322.
- Regina v. Gamble (8 Up. Can. 263), 420.
- Regina v. Gamlen (1 Fost. & F. 90), 2039.
- Regina v. Gibson (11 Vict. L. R. 94), 1251.
- Regina v. Gilroys (4 Sc. Sess. Cas. 3d series, 656), 513, 1272, 1352, 1355.
- Regina v. Gloucestershire J. J. (54 J. P. 519), 655.
- Regina v. Grannis (5 Manitoba, 153), 1132.
- Regina v. Green (12 P. R. 373), 1263.
- Regina v. Groom ([1901] 2 K. B. 157; 65 J. P. 452; 70 L. J. K. B. 636; 49 W. R. 484; 84 L. T. 534; 17 T. L. R. 433), 620.
- Regina v. Guittard (30 Ont. 283), 262.
- Regina v. Haggard (30 Upp. Can. Rep. 152), 1516, 1540.
- Regina v. Halliday (21 App. [Ont.] 42), 1270.
- Regina v. Halpin (12 Ont. 330), 919, 1579.
- Regina v. Hampshire (44 J. P. 72), 1276.
- Regina v. Harrell (12 Manitoba, 198, 522), 824.
- Regina v. Harris (2 B. C. 177), 1152.
- Regina v. Harris (13 East. 270), 657.
- Regina v. Heath (13 Ont. Rep. 471), 1218.
- Regina v. Heffernan (13 Ont. 616), 1048.
- Regina v. Henderson (4 Terr. L. R. 146; 2 Can. Cr. Cas. 364), 1132.
- Regina v. Herrell (12 Manitoba, 198, 522), 1643, 1644.
- Regina v. Higgins (18 Ont. 148), 538.
- Regina v. Hobbs ([1898] 2 Q. B. 647; 62 J. P. 474, 551; 67 L. J. Q. B. 928; 79 L. T. 160; 14 T. L. R. 573; 47 W. R. 79), 379.
- Regina v. Hodge (23 Ont. Rep. 450), 1047.
- Regina v. Hodgins (24 Ont. 433), 1220, 1332, 1346.
- Regina v. Holland J. J. (46 J. P. 312), 724.
- Regina v. Holland (1 T. R. 692), 657.

[References are to pages.]

- Regina v. Howard ([1902] 2 K. B. 363; 66 J. P. 579; 71 L. J. K. B. 754; 86 L. T. 839; 51 W. R. 21; 18 T. L. R. 690), 633.
- Regina v. Howard (45 Up. Can. 346), 1372.
- Regina v. Howard, Congleton J. J. (23 Q. B. D. 502; 53 J. P. 454; 60 L. T. 960; 37 W. R. 617), 656, 657, 681.
- Regina v. Hughes (2 Can. Cr. Cas. 5), 1332.
- Regina v. Hughes (29 Ont. Rep. 179), 1340.
- Regina v. Hull J. J. (47 J. P. 820), 709.
- Regina v. Humphrey ([1897] 2 Q. B. 242; 61 J. P. 548; 66 L. J. Q. B. 601; 77 L. T. 2; 46 W. R. 9; affirmed, H. L. [1899] A. C. 143; 68 L. J. Q. B. 392; 63 J. P. 260; 47 W. R. 580; 80 L. T. 538; 15 T. L. R. 266), 380.
- Regina v. Irland (31 Ont. Rep. 267), 1047.
- Regina v. James (12 J. P. 262), 567.
- Regina v. Jenkins (55 J. P. 824; 61 L. J. M. C. 57; 65 L. T. 857; 40 W. R. 318), 542.
- Regina v. Justices (2 Pug. [N. B.] 535), 262.
- Regina v. Justices (46 J. P. 312), 368, 535.
- Regina v. Keepers of the Peace (25 Q. B. Div. 257; 39 L. J. M. C. 146; 63 L. T. 243; 39 W. R. 11), 669.
- Regina v. Kennedy (17 Ont. 159), 1724.
- Regina v. Kennedy (10 Ont. 396), 1724.
- Regina v. Kensington J. J. (12 Q. B. 654; 12 J. P. 743), 547.
- Regina v. Kent J. J. (41 J. P. 263), 679.
- Regina v. King (57 L. J. M. C. 20; 20 Q. B. Div. 430; 58 L. T. 607; 36 W. R. 600; 52 J. P. 164), 1158.
- Regina v. King (20 Q. B. D. 43; 53 J. P. 164; 57 L. J. M. C. 20; 58 L. T. 607; 36 W. R. 600), 657, 658.
- Regina v. Kingston J. J. (66 J. P. 547; 86 L. T. 589; 18 T. L. R. 477), 656, 679.
- Regina v. Kirkdale J. J. (1 Q. B. Div. 49; 40 J. P. 39; 45 L. J. M. C. 36; 33 L. T. 603; 24 W. R. 205), 620.
- Regina v. Kirkdale (56 L. J. M. C. 24; 18 Q. B. Div. 248; 15 J. P. 214), 1127.
- Regina v. Klemp (10 Ont. Rep. 143), 1449, 1738, 1755.
- Regina v. Knopp (2 E. & B. 447; 22 L. J. M. C. 139; 17 J. P. 599), 1142.
- Regina v. Lancashire J. J. (L. R. 6 Q. B. 97; 35 J. P. 170; 40 L. J. M. C. 17; 23 L. T. 461; 19 W. R. 204), 633.
- Regina v. Lancashire J. J. (54 J. P. 580; 64 L. T. 562), 655.
- Regina v. Langridge (24 L. J. Q. B. 73; 2 C. L. R. 1657), 547.
- Regina v. Lawrence (11 Q. B. Div. 638; 47 J. P. 596; 52 L. J. M. C. 114; 49 L. T. 244; 32 W. R. 20), 681, 708.
- Regina v. Leigh (4 Fost. & F. 915), 2055.
- Regina v. Lennox (26 Up. Can. 141), 468.
- Regina v. Liverpool J. J. (11 Q. B. Div. 644), 678, 704.
- Regina v. Local Government Board (10 Q. B. Div. 231), 658.
- Regina v. London J. J. (55 J. P. 56), 669.
- Regina v. Lyon (62 J. P. 357), 570.
- Regina v. McAuley (14 Ont. 643), 1263, 1370.

[References are to pages.]

- Regina v. McCoy (23 Ont. Rep. 442), 826, 840.
- Regina v. McGarry (24 Ont. Rep. 52), 1053.
- Regina v. McGauley (12 P. R. 259), 1263.
- Regina v. McGregor (20 Ont. Rep. 115), 1370.
- Regina v. McKenzie (6 Ont. 165), 1263.
- Regina v. Mabey (37 Up. Can. 248), 1723.
- Regina v. Manchester J. J. ([1899] 1 Q. B. 571; 63 J. P. 360; 68 L. J. Q. B. 358; 47 W. R. 410; 80 L. T. 531), 547, 676.
- Regina v. Manchester J. J. (20 Q. B. D. 430; 52 J. P. 164; 57 L. J. M. C. 20; 58 L. T. 607; 36 W. R. 600), 655.
- Regina v. Market Bosworth J. J. (51 J. P. 438; 57 L. T. 56; 35 W. R. 734; 56 L. J. M. C. 96), 681.
- Regina v. Marsh (25 N. B. 371), 1716, 1717, 1718.
- Regina v. Marthye Tydvil J. J. (14 Q. B. Div. 584; 49 J. P. 213; 54 L. J. M. C. 78), 656, 679, 680.
- Regina v. Martin (21 Ont. App. 145), 469.
- Regina v. Mellon (4 Terr. L. R. 301), 1262, 1263.
- Regina v. Middlesex (3 B. & Ad. 938), 670.
- Regina v. Miskin, Higher J. J. ([1893] 1 Q. B. 275; 5 R. 121; 67 L. T. 680; 41 W. R. 252; 57 J. P. 263), 604, 623.
- Regina v. Monkhouse (4 Cox C. C. 55), 2039, 2073.
- Regina v. Monteith (15 Ont. 290), 863, 938.
- Regina v. Monmouth (L. R. 5 Q. B. 251; 34 J. P. 566; 39 L. J. Q. B. 77; 21 L. T. 748), 654.
- Regina v. Moore (3 Car. & K. 319; 16 Jur. 750), 2039, 2077.
- Regina v. Mount (30 Ont. Rep. 303; 3 Can. Cr. Cas. 209), 1249.
- Regina v. Munshall (1 N. & M. 277), 683, 685.
- Regina v. Newcastle, J. J. (51 J. P. 244), 658, 678, 681, 710.
- Regina v. Nicholson ([1899] 2 Q. B. 455; 68 L. J. Q. B. 1034; 64 J. P. 388; 48 W. R. 52; 81 L. T. 257; 15 L. T. R. 509), 654, 677.
- Regina v. Nicolson (10 Vict. L. R. 255), 536.
- Regina v. Northumberland J. J. (43 J. P. 271), 711.
- Regina v. Nurse (2 Can. Cr. Cas. 57), 1322.
- Regina v. O'Meare (14 Vict. L. R. 516), 347.
- Regina v. Palmer (46 Up. Can. 262), 691.
- Regina v. Parlee (23 Com. Pl. [Can.] 359), 1479, 1481, 1540.
- Regina v. Patten (20 Ont. App. 516), 1047.
- Regina v. Patton (35 Upp. Can. 442), 686.
- Regina v. Pearson (9 Juta, 261), 1316.
- Regina v. Peckridge (61 L. J. M. C. 132; 66 L. T. 371; 56 J. P. 87), 561.
- Regina v. Pelly (66 L. J. Q. B. 519 [1897] 2 Q. B. 33; 76 L. T. 467; 45 W. R. 504; 61 J. P. 373; 18 Cox C. C. 556), 2028, 2030.
- Regina v. Penkridge (57 J. P. 87; 66 L. T. 371; 61 L. J. M. C. 132), 573.
- Regina v. Pilgrim (L. R. 6 Q. B. 96; 35 J. P. 169; 40 L. J. M. C. 3; 23 L. T. 410; 19 W. R. 99), 599, 622.
- Regina v. Powell ([1891] 1 Q. B. 718; 2 Q. B. 693; 55 J. P. 422; 56 J. P. 52; 65 L. T. 210; 60 L. J. Q. B. 594; 39 W. R. 630), 709.

[References are to pages.]

- Regina v. Powell (62 L. J. M. C. 174 [1893]; 2 Q. B. 158; 5 R. 486; 70 L. T. 138; 57 J. P. 24), 569.
- Regina v. Powell ([1891] 2 Q. B. 693; 55 J. P. 422; 60 L. J. Q. B. 594; 65 L. T. 210; 39 W. R. 630; 56 J. P. 52), 658, 710.
- Regina v. Prince (L. R. 2 C. C. R. 154), 1251.
- Regina v. Radwell (5 Ont. 186), 1132, 1322.
- Regina v. Raffles (1 Q. B. D. 207; 40 J. P. 68; 45 L. J. M. C. 61; 34 L. T. 180; 24 W. R. 536), 1276.
- Regina v. Ramsay (11 Ont. 210), 1739.
- Regina v. Raynor (15 C. L. T. Que. N. 403), 1225, 1230, 1231.
- Regina v. Redditch (50 J. P. 246), 679, 680.
- Regina v. Rice (L. R. 1; C. C. R. 21; 25 L. J. M. C. 93; 13 L. T. 382; 14 W. R. 56), 368, 374, 535, 724.
- Regina v. Richardson (20 Ont. Rep. 514), 1198.
- Regina v. Riley (53 J. P. 452), 570.
- Regina v. Risteen (22 N. B. 51), 954.
- Regina v. Robson (57 J. P. 133), 657.
- Regina v. Roddy (41 U. C. 291), 1322.
- Regina v. Rodds J. J. ([1905] 2 K. B. 40; 69 J. P. 210; 74 L. J. K. B. 599; 53 W. R. 559; 93 L. T. 319; 21 T. L. R. 391), 655.
- Regina v. Roper (63 L. J. M. C. 68; 10 R. 598; 70 L. T. 409; 58 J. P. 512), 531.
- Regina v. Rymer (2 Q. B. Div. 136; 46 L. J. M. C. 108; 41 J. P. 199; 25 W. R. 415), 362, 1159.
- Regina v. Rymer (2 Q. B. Div. 136; 46 L. J. M. C. 108; 41 J. P. 199; 25 W. R. 415), 2028.
- Regina v. Rymer (2 Q. B. Div. p. 140), 1159.
- Regina v. Sainsbury (4 T. R. 451), 657.
- Regina v. Salford (18 Q. B. 687), 547.
- Regina v. Sauer (3 B. C. Rep. 308), 1313.
- Regina v. Scott ([1889] 22 Q. B. D. 481; 53 J. P. 119; 58 L. J. M. C. 78; 37 W. R. 301; 60 L. T. 231), 657.
- Regina v. Scott (34 Up. Can. Rep. 20), 1193.
- Regina v. Sharp (42 Sol. J. 572), 569.
- Regina v. Shavelear (11 Ont. 727), 863, 938.
- Regina v. Sheffield J. J. (63 J. P. 595), 1276.
- Regina v. Sherman ([1898] 1 Q. B. 578; 62 J. P. 296; 67 L. J. Q. B. 460; 46 W. R. 367; 78 L. T. 320; 14 L. T. R. 269), 534, 623, 676.
- Regina v. Shropshire (8 A. & E. 173), 569.
- Regina v. Slattery (20 Ont. Rep. 148), 1340.
- Regina v. Slattery (26 Ont. Rep. 148), 1332.
- Regina v. Sloan (18 Ont. App. 482), 1047.
- Regina v. Smith (31 J. P. 259; 15 L. T. 178), 1276.
- Regina v. Smith (42 J. P. 295), 700, 709.
- Regina v. Southport J. J. (L. R. 8 Q. B. 146; 37 J. P. 214; 28 L. T. 129; 21 W. R. 382; 42 L. J. M. C. 46), 657.
- Regina v. Southwick (21 Ont. Rep. 670), 1311.
- Regina v. Spiero (4 Austr. L. R. [C. N.] 42), 1314.

[References are to pages.]

- Regina v. Sproule (14 Ont. 375), 1579, 1739, 1755.
- Regina v. Stafford (22 C. P. 177), 715.
- Regina v. Staffordshire J. J. R. (14 Q. B. D. 13; 49 J. P. 36; 54 L. J. M. C. 17; 15 L. T. [N. S.] 534; 33 W. R. 205), 655.
- Regina v. Stannard (1 L. & C. 349; 33 L. J. M. C. 61; 9 L. T. 428; 12 W. R. 208; 28 J. P. 20), 724.
- Regina v. Stechlan (20 C. P. [Can.] 182), 799.
- Regina v. Stranahan (20 Can. Cr. Cas. 182), 1188, 1192.
- Regina v. Surry (52 J. P. 423), 670, 1298.
- Regina v. Sykes (1 Q. B. D. 52; 40 J. P. 39; 45 L. J. M. C. 39; 78 L. T. 566; 24 W. R. 141), 655.
- Regina v. Sylvester (31 L. J. M. C. 93; 26 J. P. 151; 2 B. & C. 322; 5 L. T. 794; 8 Jur. [N. S.] 484), 633.
- Regina v. Sylvester (50 J. P. 246), 649.
- Regina v. Templeton (3 Vict. L. R. 24), 711.
- Regina v. Thomas ([1892] 1 Q. B. 426; 56 J. P. 151; 61 L. J. M. C. 141; 66 L. T. 289; 40 W. R. 478), 649, 655, 657, 681, 709, 710.
- Regina v. Thornton (62 J. P. 196), 676.
- Regina v. Tott (25 J. P. 327; 30 L. J. M. C. 177; 4 L. T. 306; 9 W. R. 663), 350, 692, 1146.
- Regina v. Upper Osgoldenross (52 J. P. 823; 62 L. T. 112), 709, 710.
- Regina v. Vine (L. R. 10 Q. B. 195; 39 J. P. 213; 44 L. J. M. C. 60; 31 L. T. 842; 23 W. R. 649), 529, 532, 682, 684, 1572.
- Regina v. Walker (13 Ont. 83), 1048, 1066.
- Regina v. Walsall (24 L. T. [O. S.] 111; 18 J. P. 757; 3 W. R. 69; 3 C. L. R. 100), 633.
- Regina v. Walsh (2 Ont. 206), 1681, 1762.
- Regina v. Walsh (29 Ont. Rep. 36), 1311.
- Regina v. Walton (34 C. L. J. 746), 13, 14, 44.
- Regina v. Welby (54 J. P. 183), 709.
- Regina v. West Riding J. J. (L. R. 5 Q. B. 33; 34 J. P. 44; L. J. M. C. 17; 10 B. & S. 840), 619.
- Regina v. West Riding J. J. (11 Q. B. Div. 917; 48 J. P. 149; 92 L. J. M. C. 99), 671.
- Regina v. West Riding J. J. (21 Q. B. Div. 258; 52 J. P. 455; 57 L. J. M. C. 103; 36 W. R. 258), 684, 708, 709.
- Regina v. West Riding J. J. (59 J. P. 278), 709.
- Regina v. West Riding J. J. ([1898] 1 Q. B. 503; 62 J. P. 197; 67 L. J. Q. B. 279; 78 L. T. 47; 46 W. R. 334; 14 T. L. R. 89; M. & W. Dig. 74), 658, 711.
- Regina v. Westlake (21 Ont. Rep. 619), 1212.
- Regina v. Wharton ([1895] 1 Q. B. 227; 64 L. J. M. C. 74; 72 L. T. 29; 15 Rep. 102; 18 Cox C. C. 70), 378.
- Regina v. White (21 Can. Pr. 354), 1322, 1509.
- Regina v. Wigg (2 Ld. Raym. 1163), 1455.
- Regina v. Wilkinson (10 L. T. 370; 28 J. P. 597), 633.
- Regina v. Williams (42 Up. Can. 462), 1370, 1372.
- Regina v. Williams (8 Man. Rep. 342; 12 Can. L. T. 282), 1132, 1316, 1322.



[References are to pages.]

- Regina v. Woodhouse, *Ex parte* Ryder ([1906] 2 K. B. 501; 70 J. P. 485; 75 L. J. K. B. 745; 95 L. T. 367; 22 T. L. R. 603), 656.
- Regina v. Worcester J. J. ([1899] 1 Q. B. 59; 62 J. P. 836; 68 L. J. Q. B. 109; 47 W. R. 134; 79 L. T. 393; 15 T. L. R. 45; 19 Cox C. C. 198), 558, 667.
- Regina v. Word (C. & P. 366), 1723.
- Regina v. Yeomans (24 J. P. 149), 2169.
- Regina v. Yeoveley (8 A. & E. 806), 1723.
- Regina v. Yorkshire J. J. ([1898] 1 Q. B. 503; 62 J. P. 197; 67 L. J. Q. B. 279; 78 L. T. 47; 46 W. R. 334; 62 J. P. 197; M. & W. Dig. 74), 707.
- Regina v. Young (1 Burr. 556), 657.
- Regina v. Young (5 Ont. Rep. 184a), 1478.
- Regina v. Young (7 Ont. 88), 1263, 1643.
- Regina v. Young (8 Ont. 476), 262, 1270.
- Regit v. Bell (77 Ill. 593), 1387.
- Reich v. State (53 Ga. 73), 270.
- Reich v. State (63 Ga. 616), 1240, 1241, 1515, 1563.
- Reichard v. Manhattan Life Ins. Co. (31 Mo. 518), 2228.
- Reid v. Colorado (187 U. S. 146; 23 Sup. Ct. 29), 1438.
- Reiger v. Commissioners, etc. (70 N. C. 319), 904.
- Reigner, *In re* (11 Pa. Co. Ct. Rep. 401), 622.
- Reilly's Estate, *In re* (6 Pa. Dist. Rep. 252), 701.
- Reinhard v. Mayor, etc. (2 Daly [N. Y.] 243), 470.
- Reinhart v. State (29 Ga. 522), 1246.
- Reinicker v. Smith (2 Harr. & J. 421), 2093.
- Reinskopf v. Rogge (37 Ind. 207), 2092, 2110, 2116.
- Reisenberg v. State ([Tex. Cr. App.] 84 S. W. 585), 965, 971.
- Reithmiller v. People (44 Mich. 280; 6 N. W. 667), 140, 185, 456, 488, 494, 790, 1121, 1304.
- Rencour, *In re* ([N. H.] 52 Atl. 930), 995.
- Renfro v. State ([Tex. Cr. App.] 91 S. W. 576), 1198.
- Renfrow v. U. S. (3 Okla. 170; 41 P. 88), 1262.
- Reniger v. Fogossa (1 Plowd. 19), 2039.
- Rennie's Case (1 Lewin, C. C. 76), 2054.
- Rennie's Case (4 Coke, 76), 2039.
- Reno v. State ([Tex.] 117 S. W. 129), 926.
- Reno v. State ([Tex.] 120 S. W. 429), 1601.
- Renshaw v. Lane (49 Ore. 526; 89 Pac. 147), 934.
- Rerchenbach v. Ruddach (127 Pa. 564; 16 Atl. 432; 24 Wkly. N. C. 476), 2151.
- Republic of Hawaii v. Warbel (11 Hawaii, 221), 953.
- Respublica v. Weidle (2 U. S. 2 Dall. 88; 1 L. Ed. 301), 2040.
- Retsbottom, *In re* (42 Up. Can. 358), 907.
- Reu's Appeal, *In re* ([Pa.] 38 W. N. C. 438), 621.
- Reubottom, *In re* (42 Upp. Can. 358), 894.
- Reusch v. Lincoln (78 Neb. 828; 112 N. W. 377), 525, 849.
- Reuter v. State (43 Tex. Cr. App. 572; 67 S. W. 505), 1320, 1321.
- Rex v. Altenkirch (18 Juta, 338), 1264.
- Rex v. Athay (2 Burr. 653), 689.
- Rex v. Atwood (4 B. & Ad. 481), 294.

[References are to pages.]

- Rex v. Balme (2 Cowp. 650), 2169.
- Rex v. Barlow (18 Juta, 478), 1215.
- Rex v. Bath ([1904] 2 K. B. 570; 68 J. P. 438; 73 L. J. K. B. 848; 91 L. T. 383; 20 T. L. R. 526), 642.
- Rex v. Bell (8 East. Dist. Ct. Rep. 3), 1195.
- Rex v. Bigelow (36 Nov. Sco. 559), 1571, 1786, 1787, 1789.
- Rex v. Boomer ([1908] 15 Ont. App. 321), 1377.
- Rex v. Brien (38 N. B. 381), 1724.
- Rex v. Bristol, J. J. (67 J. P. 375; 89 L. T. 474; 19 T. L. R. 596), 620, 678.
- Rex v. Byron (37 N. B. 383), 1724.
- Rex v. Carroll (7 Car. & P. 145), 2067.
- Rex v. Cohen (21 Juta, 676), 695.
- Rex v. Davis (38 N. B. 335), 1755.
- Rex v. Davis (Sayer, 163), 2169.
- Rex v. J. Deaville ([1903] 1 K. B. 468; 72 L. J. K. B. 272; 67 J. P. 82; 51 W. R. 604; 88 L. T. 32; 19 T. L. R. 223), 379.
- Rex v. Dickenson (1 Sand. Wms. ed. 135, *note*), 1455.
- Rex v. Dixon (3 Maule & S. 11), 1353.
- Rex v. Downs (3 T. R. 560), 682, 684.
- Rex v. Fenkner (2 Keb. 506 pl. 79), 104.
- Rex v. Francis (18 Juta, 57), 1264.
- Rex v. Gillingham (2 Hawaii, 750), 1643.
- Rex v. Gontshe (6 East. Dist. Co. Rep. 280), 1169.
- Rex v. Groom (70 L. J. K. B. 636; [1901] 2 K. B. 157; 84 L. T. 534; 49 W. R. 484; 65 J. P. 452), 670, 677.
- Rex v. Hammerschlag (21 Juta, 399), 348.
- Rex v. Heath (Russand R. 184), 1080.
- Rex v. Hoffman (22 Juta, 32), 518.
- Rex v. Howard, J. J. ([1902] 2 K. B. 363; 66 J. P. 579; 71 L. J. K. B. 754; 51 W. R. 21; 86 L. T. 839; 18 T. L. R. 690), 679.
- Rex v. Huggins (2 Lord Reym. 1574), 1351.
- Rex v. Johnston (75 L. J. K. B. 229; [1906] 1 K. B. 228; 94 L. T. 377; 54 W. R. 347; 30 J. P. 118; 22 T. L. R. 226), 499.
- Rex v. Joplin (19 Juta, 502), 1264.
- Rex v. Kay (38 N. B. 325), 1716, 1763.
- Rex v. Kingston, J. J. (86 L. T. 589; 66 J. P. 547), 648, 679.
- Rex v. Laird ([1903] 6 Ont. L. R. 180), 371.
- Rex v. Logan (6 Collinson, 86), 1154.
- Rex v. MacWilliams (7 East. Dist. Ct. Rep. 15), 1228.
- Rex v. Manchester, J. J. (68 L. J. Q. B. 358 [1899]; 1 Q. B. 571; 8 L. T. 531; 47 W. R. 410; 63 J. P. 360), 534.
- Rex v. Marsh (36 N. B. 186), 1571.
- Rex v. Mathebus (20 Juta, 403), 1176, 1178.
- Rex v. Meakin (7 Car. & P. 297), 2039, 2071.
- Rex v. Medley (6 Car. & P. 292), 1353.
- Rex v. Meehan ([1905] 2 Irish Rep. 577), 2018.
- Rex v. Meikleham ([1906] 11 Ont. App. L. R. 366; 10 Can. Cr. Cas. 382), 1300.
- Rex v. Norman (19 Juta, 200), 2029, 2032.
- Rex v. North (6 D. & Ry. 143), 1540.

[References are to pages.]

- Rex v. O'Brien (38 N. B. 381), 1571.
- Rex v. Parsons (20 Juta, 140), 1357.
- Rex v. Reese (21 Juta, 197), 1192, 1193.
- Rex v. Robinson (2 Burr. 799), 2169.
- Rex v. Rogiers (1 B. & C. 272; 2 D. & Ry. 431), 374.
- Rex v. Stern (20 Juta, 564), 1264.
- Rex v. Sunderland ([1901] 2 K. B. 357; 70 L. J. K. B. 946; 65 J. P. 598; 85 L. T. 183; 17 T. L. R. 551), 676.
- Rex v. The Company, etc. (8 Tenn. R. 356), 294.
- Rex v. Thomas (7 Car. & P. 817), 2039, 2059, 2061, 2067.
- Rex v. Turner (5 M. & S. 506), 1642.
- Rex v. Tyrone Justice ([1901] 2 Irish Rep. 497), 570.
- Rex v. Walker (21 Juta, 195), 1208.
- Rex v. Wall (7 Hawaii, 760), 549.
- Rex v. Ward (21 N. Z. 506), 363, 1257.
- Rex v. Weddell (22 Juta, 261), 1358.
- Rex v. West Riding, J. J. (21 Q. B. Div. 258; 52 J. P. 455; 57 L. J. M. C. 103; 36 W. R. 258), 733.
- Rex v. Wexford, J. J. ([1904] 2 Irish Rep. 251), 718.
- Rex v. Willett (19 Juta, 168), 1264.
- Rex v. Willowby (1 East. P. C. 288), 2028.
- Rex v. Woodhouse ([1906] 2 K. B. 501; 75 L. J. K. B. 745; reversed [1907] App. Cas. 420; 71 J. P. 484; 76 L. J. K. B. 1032; 97 L. T. 261), 547, 676, 677.
- Rex v. Wynne (21 Juta, 679), 1357.
- Reyfelt v. State (73 Miss. 415; 18 So. 925), 5, 967.
- Reyman Brewing Co. v. Bristol (92 Fed. 28), 543, 1270.
- Reyman Brewing Co. v. Brister (179 U. S. 445; 45 L. Ed. 269; 21 Sup. Ct. 201), 537.
- Reynolds, *Ex parte* (87 Ala. 138; 6 So. 335), 431, 432.
- Reynolds v. Commonwealth (106 Ky. 37; 49 S. W. 969; 20 Ky. L. Rep. 1681), 1470.
- Reynolds v. Deary (26 Conn. 179), 1780.
- Reynolds v. Dechaums (24 Tex. 174; 76 Am. Dec. 101), 2094, 2098.
- Reynolds v. Geary (26 Conn. 179), 98, 109, 123, 149, 150, 153, 313, 1800.
- Reynolds v. Reynolds (44 Minn. 132; 46 N. W. 236), 2154.
- Reynolds v. State (73 Ala. 3), 1175.
- Reynolds v. State (52 Fla. 409; 42 So. 373), 1380, 1381, 1602.
- Reynolds v. State (32 Tex. Cr. App. 36; 22 S. W. 18), 1627, 1646.
- Reynolds v. Waller (1 Wash. [Va.] 164), 2094, 2098, 2130.
- Reynoldsville Distilling Co., *In re* (34 Pa. Super. Ct. 269), 664.
- Reznor Hotel Co., *In re* (34 Pa. Super. Ct. 525), 536, 546, 619, 626, 629, 630, 632, 640, 647.
- Rhinehart v. Long (95 Mo. 396), 426.
- Rhoads v. Commonwealth ([Pa.] 6 Atl. 245; reversing 1 Pa. Co. Ct. Rep. 639), 821, 1757.
- Rhode Island, etc., Co. v. Board ([R. I.] 46 Atl. 1063), 616, 618.
- Rhode Island Society v. Budlong (21 R. I. 577; 25 Atl. 657), 675, 677.

[References are to pages.]

- Rhode Island Society v. Cranston (21 R. I. 577; 44 Atl. 223), 677.
- Rhode Island, etc., Co. v. Dwyer (19 R. I. 643; 36 Atl. 2), 603, 604.
- Rhode Island, etc., Co. v. Evaston (21 R. I. 577; 44 Atl. 223), 670.
- Rhodes v. Bowden (26 N. Z. 1097), 1265.
- Rhodes v. Iowa (170 U. S. 412; 18 S. Ct. 664; reversing 90 Iowa, 496; 58 N. W. 887; 24 L. R. A. 245), 323, 324, 327, 1433.
- Rhyner v. Menasche (107 Wis. 201; 83 N. W. 303), 2174, 2186.
- Rice, *In re* (95 N. Y. App. Div. 28; 88 N. Y. Supp. 512), 854, 867, 869, 870, 873, 890.
- Rice v. Commonwealth ([Ky.] 61 S. W. 473; 22 Ky. L. Rep. 1793), 945.
- Rice v. Foster (4 Harr. [Del.] 479), 231, 240.
- Rice v. Peet (16 Johns. 503), 2094.
- Rice v. People (38 Ill. 435), 1505.
- Rice v. Schlopp (78 Iowa, 753; 41 N. W. 603), 991.
- Rice v. State (3 Kan. 135), 216, 271.
- Rice v. State (52 Tex. Cr. App. 359; 107 S. W. 833), 1606, 1701.
- Richard v. Carrie (145 Ind. 49; 43 N. E. 949), 1585.
- Richards v. Banks (58 L. T. 634; 52 J. P. 23), 31.
- Richards v. Bayonne (61 N. J. L. 496; 39 Atl. 708), 460, 1129.
- Richards v. Columbia (55 N. H. 96), 383.
- Richards v. Kirkpatrick (53 Cal. 433), 1027.
- Richards v. Mobile (208 U. S. 480; 28 Sup. Ct. 372; 52 L. Ed. —), 331.
- Richards v. Moore (62 Vt. 217; 19 Atl. 390), 1959.
- Richards v. Richards (19 Ill. App. 465), 65, 2155, 2156, 2157, 2161.
- Richards v. Revitt ([1877] 7 Ch. D. 224; 44 L. J. Ch. 472; 26 W. R. 166; 37 L. T. 632), 1813.
- Richards v. Stogsdel (21 Ind. 74), 798.
- Richards v. Swansea, etc., Co. (9 Ch. Div. 425), 691.
- Richards v. Woodward (113 Mass. 285), 316, 1799.
- Richardson v. Commonwealth (11 Ky. L. Rep. [abstract] 367), 512, 1601.
- Richardson v. Commonwealth (76 Va. 1007), 1190.
- Richardson v. Foster (73 Miss. 12; 18 So. 573; 55 Am. St. 481), 2253, 2254.
- Richardson v. State (3 Ga. App. 313; 59 S. E. 916), 1128.
- Richardson v. Wilmington, etc., R. Co. (8 Rich. L. 120), 2180.
- Richland Co. v. Richland Center (59 Wis. 591; 18 N. W. 497), 201.
- Richler, *Ex parte* (1 L. N. [Can.] 59), 733.
- Richler v. Judah (1 L. N. [Can.] 591) 734.
- Richmond v. Dudley (129 Ind. 112; 28 N. E. 312; 13 L. R. A. 587), 454.
- Richmond v. Shickler (57 Iowa, 486; 10 N. W. 882), 811, 1914, 1916, 1924, 1989.
- Richter v. State (156 Ala. 127; 47 So. 163), 852, 872, 878, 893, 894, 908, 918, 933.
- Richter v. State (63 Miss. 304), 1227.
- Rickert v. People (79 Ill. 85), 1341.

[References are to pages.]

- Riddell v. Neilson (5 F. [J. C.] 57), 353.
- Riden v. Grimm (97 Tenn. 220; 36 S. W. 1097; 35 L. R. A. 587), 1850, 1851, 1853, 1896, 1897, 1939.
- Rider v. State (26 Tex. App. 334; 9 S. W. 688), 2247.
- Ridley v. Greiner (117 Iowa, 679; 91 N. W. 1033), 984.
- Ridley v. Lamb (10 Up. Can. 354), 2186.
- Ridling v. State (56 Ga. 601), 1630.
- Riggs v. State ([Neb.] 121 N. W. 588), 1075, 1082, 1085, 1659, 1756, 1762.
- Riggs v. State ([Tex. Cr. App.] 96 S. W. 25), 1472, 1696.
- Riggs v. State ([Tex. Cr. App.] 97 S. W. 482), 915, 1472.
- Riley v. Bancroft (51 Neb. 864; 71 N. W. 745), 551.
- Riley v. Rowe (112 Ky. 817; 66 S. W. 999; 23 Ky. L. Rep. 2168), 630, 646, 653.
- Riley v. State (43 Miss. 397), 1171, 1178, 1358, 1505, 1598.
- Riley v. Trenton (51 N. J. L. [22 Vroom] 498; 18 Atl. 116), 397, 420.
- Rindskoff v. Curran (34 Iowa, 325), 1790.
- Rineman v. State (24 Ind. 80), 1240, 1241, 1628.
- Ring v. Nichols (91 Me. 478; 40 Atl. 329), 1028, 1037.
- Ring v. Ring (112 Ga. 854; 38 S. E. 330), 63, 64, 67, 68, 2154.
- Rintleman v. Hahn (20 Tex. Civ. App. 244; 49 S. W. 174), 1922.
- Rippey v. State (44 Tex. Civ. App. 72; 73 S. W. 15), 110, 120.
- Rippy v. State (68 S. W. 687), 194.
- Ristine v. Clements (31 Ind. App. 338; 66 N. E. 924), 799.
- Ritchie, *In re* (18 N. Y. Misc. Rep. 341; 40 N. Y. Supp. 1106), 580.
- Ritchie v. Zalesky (98 Iowa, 589; 67 N. W. 399), 341, 344, 995.
- Ritter, Appeal of (59 Pa. St. 9), 2094, 2105, 2106, 2144.
- Ritz v. Lightson ([Cal.] 103 Pac. 303), 424, 429.
- Rizer v. Topper (133 Iowa, 628; 110 N. W. 1038), 977, 980, 986.
- Roach v. Kelly (194 Pa. St. 24; 44 Atl. 1090), 1875.
- Roach v. Springer (75 S. W. 933 [Tex.]), 1889, 1951.
- Roach v. State (47 Tex. Cr. App. 500; 84 S. W. 586), 1211, 1611.
- Robb v. Commonwealth ([Ky.] 101 S. W. 918; 31 Ky. L. Rep. 246), 2038, 2068.
- Robbins v. People (95 Ill. 175), 271.
- Robbins v. Shelby County Taxing District (120 U. S. 489, 493; 7 Sup. Ct. 592), 156, 157, 316, 330.
- Roberson v. Lambertville (38 N. J. L. 69), 1189, 1454, 1478, 1502, 1508, 1521.
- Roberson v. State (100 Ala. 123; 14 So. 869), 962, 1169, 1475.
- Roberson v. State ([Tex. Cr. App.] 91 S. W. 578), 1210.
- Robert's Estate, *In re* (197 Pa. 621; 47 Atl. 987), 2019.
- Roberts v. Clinmire (46 Up. Can. 264), 462, 1249.
- Roberts v. Hopper (55 Neb. 599; 76 N. W. 21), 2008.
- Roberts v. Humphreys (L. R. 8 Q. B. 483; 42 L. J. M. C. 147; 38 J. P. 135; 29 L. T. 387; 21 W. R. 885), 1150.
- Roberts v. O'Connor (33 Me. 496), 1374.
- Roberts v. People (19 Mich. 401), 2051, 2052, 2067, 2070, 2074, 2075.



[References are to pages.]

- Roberts v. State (26 Fla. 360; 7 So. 861), 505, 506, 1533.
- Roberts v. State (114 Ga. 541; 40 S. E. 750), 230, 251.
- Roberts v. State (4 Ga. App. 207; 60 S. E. 1082), 4, 10, 14, 17, 51, 53, 55, 295, 342.
- Roberts v. State (14 Mo. 138), 2035.
- Roberts v. State (52 Tex. Cr. App. 355; 107 S. W. 59), 1128, 1349, 1555, 1616, 1691.
- Roberts v. Taylor (19 Neb. 184; 27 N. W. 87), 1940, 1994.
- Robert Porter Brewing Co. v. Southern Express Co. ([Va.] 63 S. E. 6), 956.
- Robertson v. Moore (15 Ky. L. Rep. [abstract] 240), 926.
- Robertson v. People (20 Colo. 279), 264, 1585.
- Robertson v. State (5 Tex. App. 155), 930, 933.
- Robertson v. State (12 Tex. App. 541), 495, 716, 928, 933.
- Robinius v. State (63 Ind. 235), 1240, 1242, 1627, 1751.
- Robinson, *Ex parte* (12 Neb. 263), 791.
- Robinson v. Americus (121 Ga. 180; 48 S. E. 924), 452.
- Robinson v. Baker (5 Cush. [Mass.] 137), 1070.
- Robinson v. Bank, etc., 18 Ga. 65), 294.
- Robinson v. Barrows (48 Me. 186), 1031, 1776.
- Robinson v. Bidwell (23 Cal. 379), 233.
- Robinson v. Charleston (2 Rich. 317), 811.
- Robinson v. Commonwealth (7 Ky. L. Rep. [abstract] 453), 543.
- Robinson v. Commonwealth (6 Dana, 287), 1746.
- Robinson v. Haug (71 Mich. 38; 46 N. E. 941), 212.
- Robinson v. Mayor, etc. (1 Humph. 156; 34 Am. Dec. 627), 461.
- Robinson v. Miner (68 Mich. 549; 37 N. W. 21), 189, 1016.
- Robinson v. Pioche (5 Cal. 460), 2171, 2172, 2187.
- Robinson v. Randall (82 Ill. 521), 1751, 1974.
- Robinson v. Riffey (111 Ind. 112; 12 N. E. 141), 467.
- Robinson v. Rockland, etc., St. R. Co. (87 Me. 387; 32 Atl. 994; 29 L. R. A. 531), 2207.
- Roberson v. State (99 Ala. 189; 13 So. 532), 1197.
- Robinson v. State (38 Ark. 548), 1567.
- Robinson v. State (38 Ark. 641), 1365, 1366.
- Robinson v. State (59 Ark. 341; 27 S. W. 233), 1167.
- Robinson v. State (130 Ga. 361; 60 S. E. 1005), 2068.
- Robinson v. State (84 Ind. 452), 225, 226.
- Robinson v. State (113 Ind. 510; 16 N. E. 184), 2040, 2080.
- Robinson v. State (24 Tex. App. 4; 5 S. W. 509), 369, 389, 1575.
- Robinson v. State ([Tex. Cr. App.] 75 S. W. 526), 954, 1558, 1705.
- Robinson v. State (53 Tex. Cr. App. 565; 110 S. W. 908), 178, 1717, 1722, 1723.
- Robinson v. State (53 Tex. Cr. App. 567; 110 S. W. 905), 1202, 1558, 1654.
- Robinson v. Waddington (13 Q. B. 753), 569.
- Robinson v. Weingale (36 Tex. Civ. App. 65; 83 S. W. 182), 925.
- Robson v. Doyle (191 Ill. 566; 61 N. E. 435), 426.
- Robison v. Haug (71 Mich. 38; 38 N. W. 668), 110, 195.
- Roblin v. Roblin (28 Grant. Ch. [U. C.] 439), 2109, 2114.
- Roby v. State ([Tex. Cr. App.] 57 S. W. 651), 957.

[References are to pages.]

- Roche, *In re* (7 N. Z. L. R. 206), 536.  
 Rochester v. Harrington (10 Wend. [N. Y.] 547), 394.  
 Rochester v. Upman (19 Minn. 108), 418, 549.  
 Rock Island v. Vanlandschoot (78 Ill. 485), 2171, 2187.  
 Rock Co. v. Edgerton (90 Wis. 288; 63 N. W. 291), 808.  
 Rodden v. License Commissioners ([R. I.] 21 Atl. 1020), 747.  
 Roden v. State (136 Ala. 89; 34 So. 351), 2032.  
 Rodericks v. Jones (3 W. N. C. [N. S. W.] 116), 1313.  
 Rogers v. Hahn (63 Miss. 578), 601.  
 Rodgers v. People (15 How. Pr. 557; 3 Park. Cr. Rep. 632), 2084, 2068.  
 Rodman v. Rodman (20 Grant Ch. [U. C.] 428), 2167.  
 Rodman v. Zilley (1 N. J. Eq. 320), 2099.  
 Roesch v. Henry ([Ore.] 103 Pac. 439), 861, 891, 892, 902.  
 Roethke v. Phillips Best Brewing Co. (33 Mich. 340), 1786.  
 Rogers, *In re* (4 N. Y. Misc. Rep. 389; 84 N. Y. Supp. 1024), 854.  
 Rogers, *In re* (75 Vt. 329; 55 Atl. 661), 2033.  
 Rogers v. Johns (42 Tex. 340), 925.  
 Rogers v. Jones (1 Wend. [N. Y.] 261), 271.  
 Rogers v. Maddocks ([1892] 3 Ch. 346), 1826.  
 Rogers v. People (3 Park. Crim. Rep. 633), 2039, 2060, 2084.  
 Rogers v. State (33 Ind. 543), 2036.  
 Rogers v. State (58 N. J. L. 220; 33 Atl. 283), 1556.  
 Rogers v. State ([Tex. Cr. App.] 101 S. W. 803), 1473.  
 Rogle v. Mattox (159 Ind. 584; 65 N. E. 743), 606.  
 Rohlf v. Bise ([Neb.] 120 N. W. 904), 1805.  
 Rohr v. Gray (80 Md. 274; 30 Atl. 632), 789.  
 Rohrbacker v. Jackson (51 Miss. 735), 138, 206, 208, 240.  
 Roland v. State ([Ala.] 41 So. 963), 1455.  
 Rollestone v. T. Cassireo & Co. (3 Ga. App. 161; 59 S. E. 442), 2176, 2217.  
 Rollins v. Rich (27 Me. 561), 1058.  
 Roman v. State (41 Wis. 312), 2247.  
 Rome v. Duke (19 Ga. 93), 627, 634.  
 Rome v. Knox (14 How. Pr. 268), 499, 504.  
 Rome v. Lumpkin (5 Ca. 447), 495, 496.  
 Rome v. McWilliam (52 Ga. 251), 791.  
 Rommel v. Schombacker (120 Pa. 579; 11 Atl. 779), 2187.  
 Rood v. McCargar (49 Cal. 117), 294.  
 Rooney v. Augusta (117 Ga. 709; 45 S. E. 72), 110, 127, 1083, 1129.  
 Roose v. Perkins (9 Neb. 304; 2 N. W. 715; 31 Am. Rep. 409), 1882, 1885, 1897, 1910, 1912, 1936, 1990.  
 Root v. Alexander (63 Hun, 557; 28 Abb. N. C. 390; 8 N. Y. Supp. 632; 142 N. Y. 663; 37 N. E. 570), 1743.  
 Roper v. McKay (29 Tex. Civ. App. 470; 69 S. W. 459), 940.  
 Roper v. Scurlock (29 Tex. Civ. App. 464; 69 S. W. 456), 875, 878, 890, 891.  
 Roquemore v. State (19 Atl. 528), 371.  
 Rose, *Ex parte* (2 S. R. [N. S. W.] 268; 19 W. N. [N. S. W.] 202), 670.

[References are to pages.]

- Rose v. Commonwealth (106 Va. 850; 56 S. E. 151), 21, 1763.
- Rose v. Commonwealth (106 Va. 850; 56 S. E. 151), 1491, 1505.
- Rose v. Frogley (57 J. P. 376; 62 L. J. M. C. 181; 5 Rep. 530; 69 L. T. 346; 9 T. L. R. 466; 17 Cox C. C. 685), 700.
- Rose v. Lampley (146 Ala. 445; 41 So. 521), 381.
- Rose v. Mitchell (6 Colo. 102), 1801.
- Rose v. Rose (9 Ark. 507), 2154.
- Rose v. State (1 Ga. App. 596; 58 S. E. 20), 954.
- Rose v. State (107 Ga. 697; 33 S. E. 439), 1320.
- Rose v. State (4 Ga. App. 588; 62 S. E. 117), 91, 333, 382, 953, 1170, 1378.
- Rose v. State (171 Ind. 662; 87 N. E. 103), 125, 255, 291.
- Rosecrants v. Shoemaker (60 Mich. 4; 26 N. W. 794), 1886, 1981, 1991.
- Roseman v. Carolina Cent. R. Co. (112 N. C. 709; 16 S. E. 766; 19 L. R. A. 327), 2203, 2204, 2209, 2212, 2217.
- Rosenbarger v. State (154 Ind. 425; 56 N. E. 914), 1444.
- Rosenbaum v. State (4 Ind. 599), 1305, 1441.
- Rosenbaum v. State (24 Ind. App. 510; 57 N. E. 1050), 1353.
- Rosenbaum v. Dunston (16 Neb. 111; 19 N. W. 610), 2014.
- Rosenfield Bros. Co. v. Commonwealth ([Ky.] 29 Ky. L. Rep. 1179; 96 S. W. 134), 199.
- Rosenham v. Commonwealth (7 Ky. L. Rep. [abstract] 602), 826.
- Rosenham v. Commonwealth (7 Ky. L. Rep. 590), 190.
- Rossenham v. Commonwealth (9 Ky. L. 519), 822.
- Rosenham v. Commonwealth ([Ky.] 2 S. W. 230; 3 Ky. L. Rep. 519), 503.
- Rosenstein v. State (9 Ind. App. 290; 36 N. E. 652), 2025, 2026.
- Rosenthal v. Hobson ([Iowa] 77 N. W. 488), 1002, 1127.
- Rosewater v. Pinzenham (38 Neb. 335; 57 N. W. 563), 568.
- Ross, *In re* (14 Can. Prac. 171), 460, 1225, 1258.
- Ross's Case (2 Pick. [Mass.] 165), 261.
- Ross v. Crow (9 Baxt. 420), 1789.
- Ross v. People (17 Hun, 591), 1226, 1227.
- Ross v. State (62 Ala. 224), 2041, 2049, 2054.
- Ross v. State (116 Ind. 495; 18 N. E. 451), 1240, 1241, 1242, 1628.
- Ross v. State (9 Ind. App. 35; 36 N. E. 167), 1242.
- Ross v. State (52 Tex. Cr. App. 295; 109 S. W. 152), 1691.
- Ross v. State (52 Tex. Cr. App. 604; 108 S. W. 375), 14.
- Ross v. State (53 Tex. Cr. App. 162; 109 S. W. 153), 1607, 1696.
- Rossell v. Garon (50 N. J. L. 358; 13 Atl. 26), 432, 433.
- Roth v. Eppy (80 Ill. 283), 1848, 1868, 1942, 1951, 1964, 1990, 2006.
- Rothwell, *In re* (44 Mo. App. 215), 907, 1687, 1688.
- Rottman v. State (64 Neb. 875; 88 N. W. 857), 1531.
- Rouse v. Catskill & N. Y. Steamboat Co. (133 N. Y. 679; 31 N. E. 623; affirming 61 Hun, 622; 15 N. Y. Supp. 971), 1927.
- Rouse v. Melsheimer (82 Mich. 172; 46 N. W. 372), 1861, 1883, 1984.
- Rout v. Feemster (7 J. J. Marsh [Ky.] 131), 1767.

[References are to pages.]

- Rowe v. Commonwealth ([Ky.] 70 S. W. 407; 24 Ky. L. Rep. 974), 840, 845, 1198, 1589, 1649.  
 Rowe v. Edmunds (3 Allen, 334), 383.  
 Rowe v. State (30 Tenn. [11 Humph.] 491), 2247.  
 Rowels v. State (39 Neb. 659; 58 N. W. 197), 110, 168, 502.  
 Rowland v. Collingwood ([1909] 16 Ont. L. R. 272), 889.  
 Rowland v. Greencastle (157 Ind. 591; 62 N. E. 474), 132, 183, 184, 186, 188, 423, 597.  
 Rowland v. State (12 Tex. App. 418), 488, 490.  
 Rowley, *In re* (34 N. Y. Misc. Rep. 662; 70 N. Y. Supp. 208), 891.  
 Rows v. American, etc., L. Ins. Co. (27 N. Y. 282; 84 Am. Dec. 280), 2220.  
 Roy v. Paroisse de St. Paschal (9 L. N. [Can.] 275), 628.  
 Roy v. State (91 Ind. 417), 1486, 1566.  
 Royal v. State (78 Ala. 410), 968.  
 Royal v. State (9 Tex. 449), 1575.  
 Royall v. Virginia (116 U. S. 572), 426.  
 Roywadosfskie v. International, etc., R. Co. (1 Tex. Civ. App. 487; 20 S. W. 872), 2188, 2205.  
 Rubinstein v. Kahn (5 N. Y. Misc. Rep. 408; 25 N. Y. Supp. 760), 695, 2188.  
 Ruble v. State (51 Ark. 170; 10 S. W. 262), 1720.  
 Rucker v. State ([Tex.] 24 S. W. 902), 9, 17, 1233.  
 Rucker v. State ([Tex. Cr. App.] 101 S. W. 902), 1465, 1473.  
 Ruddick v. Liverpool (42 J. P. 406), 679.  
 Rude v. Faker (143 Ill. App. 456), 1878, 1991.  
 Rude v. Nass (79 Wis. 321; 48 N. W. 555; 24 Am. St. 717), 66.  
 Ruemmeli v. Cravens (13 Okla. 342; 74 Pac. 908; 76 Pac. 188), 515, 543, 1789.  
 Ruffner v. Lather (19 Pa. Co. Ct. Rep. 349), 2021.  
 Ruge v. State (62 Ind. 388), 1121, 1122, 1304, 1318, 1566.  
 Ruhland v. Waterman ([R. I.] 71 Atl. 1), 235, 892.  
 Ruland, *In re* (21 N. Y. Misc. Rep. 504; 47 N. Y. Supp. 561), 582, 583, 584.  
 Runde v. Commonwealth (108 Va. 873; 61 S. E. 792), 1505, 1584, 1730, 1731.  
 Runyan v. State (52 Ind. 320), 510, 514, 531, 694.  
 Rupp, *In re* (122 N. Y. App. Div. 891; 106 N. Y. Supp. 1163; affirming 55 N. Y. Misc. Rep. 313; 106 N. Y. Supp. 483), 583.  
 Rupp, *In re* (54 N. Y. Misc. Rep. 1; 105 N. Y. Supp. 467), 582, 589, 590, 736.  
 Rupp, *In re* (55 N. Y. Misc. Rep. 313; 106 N. Y. Supp. 483; affirmed 122 N. Y. App. Div. 891; 106 N. Y. Supp. 1143), 731.  
 Rush v. Commonwealth ([Ky.] 47 S. W. 586; 20 Ky. L. Rep. 775), 935, 1108, 1678.  
 Rushton v. Bromley J. J. (52 J. P. 760), 563.  
 Rushworth, *Ex parte* (23 L. T. 120; 34 J. P. 676), 620.  
 Russell, *In re* (11 Pa. Co. Ct. Rep. 505), 639.  
 Russell, *Ex parte* (20 N. B. 536), 954.  
 Russell v. Blackheath J. J. (61 J. P. 696), 681.  
 Russell v. Sloan (33 Vt. 656), 79.  
 Russell v. State (77 Ala. 89), 567, 682.

[References are to pages.]

- Russell v. State (53 Miss. 367), 2247.  
 Russell v. State (33 Vt. 656), 969.  
 Russell v. Tippin (12 Ohio Cir. Ct. 521), 1848.  
 Russellville, *Ex parte* (95 Ala. 19; 11 So. 18), 431.  
 Ruston v. Fountaine (118 La. 53; 42 So. 644), 110, 441.  
 Ruth, *In re* (32 Iowa, 250), 189.  
 Rutherford, *In re* (2 Pa. Co. Ct. Rep. 78), 637.  
 Rutherford v. Ruff (4 Desaus. Eq. [S. C.] 365), 2094, 2106.  
 Rutherford v. State (48 Tex. Cr. App. 431; 88 S. W. 810), 964, 972, 1496, 1690.  
 Rutherford v. State (49 Tex. Cr. App. 21; 90 S. W. 172), 1466, 1693.  
 Rutland v. Gleaves (1 Swan, 198), 2149, 2150.  
 Rütledge v. Elendorf ([Tex.] 116 S. W. 156), 2250.  
 Rutter v. Daniel ([1882] 46 L. T. 684; 30 W. R. 801), 1821, 1831.  
 Rutter v. Sullivan (25 W. Va. 427), 233.  
 Ryall v. State (78 Ala. 410), 11, 24, 36, 1711.  
 Ryan, *Ex parte* (1 W. N. C. 122), 1158, 1368, 1370.  
 Ryan, *In re* (85 N. Y. Misc. Rep. 621; 83 N. Y. Supp. 123; affirming 80 N. Y. Supp. 1114), 584, 730, 1192.  
 Ryan, *In re* ([Neb.] 112 N. W. 599), 559.  
 Ryan v. Harrow (27 Iowa, 494), 2251.  
 Ryan v. Ryan (9 Mo. 539), 2153, 2161.  
 Ryan v. State (32 Tex. 280), 1625.  
 Ryan v. United States (26 App. D. C. 74), 2038, 2078, 2079.  
 Ryland v. Crawford (17 N. Y. 79), 1818.  
 Ryland v. Foley (16 N. Z. L. R. 670), 1310.  
 Ryon, *In re* (39 N. Y. Misc. Rep. 698; 80 N. Y. Supp. 1114; affirmed 85 N. Y. App. 621; 83 N. Y. Supp. 123), 545.
- S**
- Sachs v. Garner (111 Iowa, 424; 82 N. W. 1007), 1779, 1788, 1800.  
 Sackett v. Rudder (152 Mass. 397; 25 N. E. 736; 9 L. R. A. 391), 1850, 1851, 1939, 1943, 1955, 1956.  
 Saco v. Wentworth (37 Me. 165), 270, 1010, 1748.  
 Sacramento v. Dillman (102 Cal. 107; 36 Pac. 385), 802.  
 Sadler v. Sheahan (92 Mich. 630; 52 N. W. 1030), 1739.  
 Sadler v. State (48 Tex. Cr. App. 507; 89 S. W. 974), 1321.  
 Saffroi v. Cobun (32 Tex. Civ. App. 79; 73 S. W. 828), 774.  
 Safler v. Fisher (121 Mich. P. 62; 79 N. W. 934), 2003.  
 Sage v. State (127 Ind. 15; 26 N. E. 667), 225.  
 Sah Quah, *In re* (31 Fed. 327), 1260.  
 St. Albans [Bishop] v. Batterxby ([1878] 3 Q. B. D. 359; 42 J. P. 581; 47 L. J. Q. B. 571; 26 W. R. 679; 38 L. T. 685), 1821.  
 St. Amour v. St. Francis de Sales (7 Q. B. [Que.] 479), 648.  
 St. Ames v. St. Francis de Sales (1 Quebec S. C. 463), 628.  
 St. Anthony v. Brandon (10 Idaho, 205; 77 Pac. 322), 289.  
 St. Aubin v. Lafrance (8 Quebec L. R. [Can.] 190), 434.  
 St. Charles v. Elener (155 Mo. 671; 56 S. W. 291), 483.  
 St. Goddard v. Burnham (124 Mass. 578), 1228.



[References are to pages.]

- St. James v. Hingtgen (47 Minn. 521; 50 N. W. 700), 758.  
 St. Joseph v. Ernst (95 Mo. 360; 8 S. W. 558), 483.  
 St. Joseph Tp. v. Rogers (16 Wall. [U. S.] 644), 904.  
 St. Louis v. Allen (13 Mo. 414), 394.  
 St. Louis v. Bentz (11 Mo. 62), 216, 271.  
 St. Louis v. Cafferata (24 Mo. 94), 215, 271.  
 St. Louis v. Gerardi (90 Mo. 640; 3 S. W. 408), 509, 691, 1267, 1268.  
 St. Louis v. Green (7 Mo. App. 468), 791.  
 St. Louis v. Knox (6 Mo. App. 247), 426.  
 St. Louis v. Shields (62 Mo. 247), 228.  
 St. Louis v. Siegrist (46 Mo. 593), 72.  
 St. Louis v. Smith (2 Mo. 113), 412, 418, 441.  
 St. Louis v. Spiegel (75 Mo. 145), 789.  
 St. Louis v. Wehring (46 Ill. 393), 788.  
 St. Louis v. Weitzel (130 Mo. 600; 31 S. W. 1045), 648.  
 St. Louis v. Western U. T. Co. (148 U. S. 92; 37 L. Ed. 380; 13 Sup. Ct. Rep. 485), 789.  
 St. Louis, etc., R. Co. v. Carr (47 Ill. App. 353), 2204, 2213, 2218.  
 St. Louis S. W. Ry. Co. v. Gans (69 Ark. 252; 62 S. W. 738), 1022.  
 St. Louis, etc., R. Co. v. Wilkerson (46 Ark. 513), 2174, 2178.  
 St. Louis S. W. R. Co. v. Wright ([Tex. Civ. App.] 84 S. W. 270), 1735.  
 St. Mary's Ben. Soc. v. Burford (70 Pa. St. 321), 2232.  
 St. Paul v. Troyer (3 Minn. 291 [Gil. 200]), 167, 395, 397, 400.  
 St. Paul v. Upham (12 Minn. 49), 404.  
 St. Paul Fire & Marine Ins. Co. v. Kelly (43 Kan. 741; 23 Pac. 1046), 2253, 2256.  
 Sale of Intoxicating Liquors, *In re* ([Iowa] 79 N. W. 260), 623.  
 Salford, *Ex parte* (16 J. P. 649), 547.  
 Salina v. Seitz (16 Kan. 163), 402, 822, 835.  
 Salina v. Tropper (27 Kan. 545), 2171, 2172, 2197.  
 Salisbury, *In re* (19 N. Y. Misc. Rep. 340; 44 N. Y. Supp. 291), 581.  
 Salter, *In re* ([1902] 4 Ont. L. R. —), 870, 883, 894.  
 Salter v. Columbus (121 Ga. 829; 49 S. E. 734), 1179.  
 Saltfleet, *In re* ([1909] 16 App. Ont. L. R. 293), 889.  
 Sampson, *In re* (19 Pa. Co. Ct. Rep. 1; 5 Pa. Dist. Rep. 717), 2017, 2020.  
 Sampson v. State (107 Ala. 76; 18 So. 207), 38, 1756.  
 Samuel v. Agnew (80 Ill. 553), 1027.  
 Samuel v. Westheimer (131 Iowa, 643; 109 N. W. 189), 298, 1280.  
 Sanasack v. Aden (168 Ind. 559; 78 N. E. 675; 79 N. E. 457; 80 N. E. 151), 601, 613, 662, 663.  
 Sanderfur-Julian Co. v. State (72 Ark. 11; 77 S. W. 596), 954.  
 Sanderlin v. State (2 Humph. 315), 1459.  
 Sanders v. Elberton (50 Ga. 178), 691, 1267.  
 Sanders v. State (74 Ga. 82), 215, 1303, 1594.  
 Sanders v. State (94 Ind. 147), 2040.  
 Sanders v. State (2 Iowa, 230), 1017.  
 Sanders v. State ([Tex. Cr. Rep.] 20 S. W. 360), 1463.

[References are to pages.]

- Sanders v. Town Commissioners (30 Ga. 679), 396.
- Sanders v. Town Council (50 Ga. 178), 68.
- Sanderson, *In re* (34 N. Y. Misc. Rep. 375; 69 N. Y. Supp. 928), 582.
- Sanderson v. Goodrich (46 Barb. 616), 694, 1783.
- Sanderson v. Sanderson (52 N. J. Eq. 243; 30 Atl. 326), 2149.
- Sandford v. Court (7 Vroom, 72; 13 Am. Rep. 422), 232.
- Sandoval v. Meyers (8 N. M. 636; 45 Pac. 1128), 801, 809.
- Sandys v. Williams (46 Ore. 327; 80 Pac. 642), 250, 467, 1558.
- San Francisco v. Canavan (42 Cal. 541), 393.
- San Francisco v. Liverpool, etc., Co. (74 Cal. 113; 15 Pac. 380; 7 Am. St. 425), 479.
- Sanitary Dist. of Chicago v. Culbertson (147 Ill. 385; 35 N. E. 723), 2253.
- San Jose v. San Jose, etc., R. Co. (53 Cal. 475), 483.
- San Luis Obispo Co. v. Greenberg (120 Cal. 300; 52 Pac. 797), 446.
- Santo v. State (2 Iowa, 165; 63 Am. Dec. 487), 98, 109, 231, 253, 264, 265, 294, 1008, 1047, 1050.
- Sapp v. State (116 Ga. 182; 42 S. E. 410), 62.
- Sappington v. Carter (67 Ill. 482), 1637.
- Sarbecker v. State (65 Wis. 171; 26 W. N. 541; 56 Am. Rep. 624), 1280, 1281.
- Sargeant, *In re* (13 Nat. Bank Reg. 144), 610.
- Sargeant v. Little (72 N. H. 555; 58 Atl. 44), 797, 813.
- Sarle v. Pulaski Co. (76 Ark. 336; 98 S. W. 953), 628, 714.
- Sarlo, *In re* (76 Ark. 336; 88 S. W. 953), 689.
- Sarris v Commonwealth (83 Ky. 327), 842.
- Sarrls v. Commonwealth (83 Ky. 327; 7 Ky. L. Rep. 473), 190.
- Sarrls v. Commonwealth (7 Ky. L. Rep. 299), 110.
- Sarlls v. United States (152 U. S. 570; 38 L. Ed. 556; 14 Sup. Ct. Rep. 720), 24, 25, 39, 43, 1263.
- Sasser v. Martin ([Ga.] 29 S. E. 278), 139, 249, 250.
- Sate v. Frost (103 Tenn. 685; 54 S. W. 986), 136.
- Sate v. Keen (34 Me. 500), 383.
- Satterfield v. State ([Tex. Cr. App.] 44 S. W. 291), 1699.
- Saunders v. Alvido ([Tex. Civ. App.] 113 S. W. 992), 1903.
- Saunders v. Saunders (Ch. D. [March 7, 1907] [not reported]), 1832.
- Saunders v. State (2 Iowa, 230), 1046.
- Saunders v. Thorney (63 J. P. 404; 78 L. T. 627; 14 T. L. R. 346), 1135, 1138.
- Sauer, *In re* (23 Pa. Super. Ct. Rep. 463), 647.
- Sauer v. Walker (2 B. C. 93), 263.
- Sauvage v. Trouillet (3 Mon. S. C. 276), 1839, 1981.
- Savage v. Commonwealth (84 Va. 582; 5 S. E. 565), 87, 125, 1469, 1483, 1491, 1699, 1713, 1714.
- Savage v. Commonwealth (84 Va. 619; 5 S. E. 565), 228, 233, 235, 248, 1465, 1478, 1484, 1555, 1556.
- Savage v. Mallory (4 Allen, 492), 1800.
- Savage v. State ([Tex. Cr. App.] 88 S. W. 351), 1309, 1323, 1621, 1681.
- Savage v. Umphries ([Tex. Civ. App.] 118 S. W. 893), 903, 924, 926.
- Savage v. Wolf (69 Ala. 569), 920, 939.

[References are to pages.]

- Savalot v. Populus (31 La. Ann. 854; 1 Bishop Mar. Div. & Sep. §§ 614, 624), 2114.
- Savannah v. Hussey (21 Ga. 80), 270.
- Savannah v. Weed (84 Ga. 683; 11 S. E. 235), 793.
- Savner v. Chipman (15 Wend. 260), 72.
- Savill Bros., Limited, v. Langman ([1898] 79 L. T. 44; 14 T. L. 504), 1817.
- Sawtelle v. Jones (23 N. S. W. 165), 1270.
- Sawyer v. Blakely (2 Ga. App. 159; 58 S. E. 399), 1659.
- Sawyer v. Mould ([Iowa] 112 N. W. 813), 1003.
- Sawyer v. Oliver ([Iowa] 122 N. W. 950), 1001, 1003.
- Sawyer v. Sanderson (113 Mo. App. 233; 88 S. W. 151), 511, 694.
- Sawyer v. Sauer (10 Kan. 466), 2198, 2201.
- Sawyer v. State (52 Tex. Cr. App. 597; 108 S. W. 394), 1471.
- Sawyer v. Termohland ([Iowa] 122 N. W. 924), 982, 984, 1000.
- Say v. Berwick (1 Ves. & B. 195), 2099, 2102, 2103.
- Sayers v. Collyer ([1884] 28 Ch. D. 103; 54 L. J. Ch. 1; 53 L. T. 723; 33 W. R. 91; 49 J. P. 244), 1814.
- Sayles Ann. Civ. St. (1897 Art. 5060g), 1231.
- Saylor v. Duel (236 Ill. 429; 86 N. E. 119), 249, 925.
- Scales v. State (47 Ark. 476; 1 S. W. 769; 58 Am. Rep. 768), 1441, 1694.
- Scalzo v. Sackett (30 N. Y. Misc. Rep. 543; 63 N. Y. Supp. 820), 814.
- Scanlan v. Childs (33 Wis. 663), 1194.
- Scanlon v. Denver (38 Colo. 401; 88 Pac. 156), 415.
- Searritt v. Jackson (89 Mo. App. 585), 585.
- Scatchard v. Johnson (52 J. P. 389; 57 L. J. M. C. 41), 361, 1247, 1248, 1249, 1252, 1295, 1313.
- Schab v. People (4 Hun, 520), 46.
- Schade v. Russell ([Mo. App.] 110 S. W. 667), 645, 647, 648, 649.
- Schafer v. State (49 Ind. 460), 1844.
- Schafer v. Smith (63 Ind. 226), 1989.
- Schafer v. Mumma (17 Md. 331), 216.
- Schaffner v. State (8 Ohio St. 642), 844, 1162.
- Schaller v. State (14 Mo. 502), 2040.
- Schaps v. Lehner (54 Minn. 208; 55 N. W. 911), 2106.
- Schaub v. Schaub (117 La. 727; 42 So. 249), 2158.
- Scheffler v. Minneapolis, etc., R. Co. (32 Minn. 518; 12 N. W. 711), 2182.
- Schenck v. Saunders (13 Gray, 37), 1162.
- Schencker v. State (9 Neb. 241; 1 N. W. 857), 2040.
- Schendler Bottling Co. v. Welch (42 Fed. 561), 327.
- Schiek v. Sanders ([Neb.] 74 N. W. 39), 1882, 1992.
- Schiller v. State ([S. C.] 38 So. 706), 291, 1322, 1558.
- Schilling v. State (116 Ind. 200), 18 N. E. 682), 1292, 1488, 1635.
- Schilling, *Ex parte* (38 Tex. Cr. App. 287; 42 S. W. 553), 907, 912.
- Schlachter v. Stokes (63 N. J. L. 138; 43 Atl. 571), 410.
- Schlandecker v. Marshall (72 Pa. 200), 628, 629, 648.
- Schlencker v. State (9 Neb. 241; 1 N. W. 857), 2043, 2053.
- Schlesinger v. Stratton (9 R. I. 578), 310, 1787.

[References are to pages.]

- Schliet v. State (31 Ind. 246), 500, 1306.
- Schlicht v. State (56 Ind. 173), 12, 32, 80, 1488, 1496, 1554.
- Schlosser v. Mould ([Iowa] 121 N. W. 520), 341, 343, 1002.
- Schlosser v. State (55 Ind. 82), 83, 1592, 1871, 1976.
- Schmeltz v. State (8 Ohio Cir. Ct. Rep. 82), 132.
- Schmidt's License, *In re* (37 Pa. Sup. Ct. 420), 563.
- Schmidt v. Cobb (119 U. S. 286; 7 Sup. Ct. 1373), 258.
- Schmidt v. Indianapolis (168 Ind. 631; 80 N. E. 632), 91, 144, 199, 425, 426, 427, 796.
- Schmidt v. Mitchell (84 Ill. 195), 1874.
- Schmidt v. State (14 Mo. 137), 1348, 1349, 1643.
- Schmidt v. State (53 Tex. Cr. App. 465; 110 S. W. 897), 1211.
- Schmitker, *Ex parte* (6 Neb. 108), 522.
- Schneider, *Ex parte* (11 Ore. 288; 8 Pac. 289), 73, 75, 410, 412, 414, 418, 439.
- Schneider v. Commonwealth ([Ky.] 111 S. W. 303; 33 Ky. L. Rep. 770), 545.
- Schneider v. Hosier (21 Ohio State, 98), 296, 1843, 1859, 1864, 1897.
- Schober v. Rosefield (75 Iowa, 455; 39 N. W. 706), 1803, 1804.
- Schollenberger v. Pennsylvania (171 U. S. 1; 43 L. Ed. 49; 18 Sup. Ct. 1), 309, 1427, 1433.
- Schomaker, *In re* (15 N. Y. Misc. Rep. 648; 38 N. Y. Supp. 167), 636.
- Schomp v. Schenck (40 N. J. Law, 195-200; 29 Am. Rep. 219), 2095.
- School District v. Thompson (51 Neb. 857; 71 N. W. 728), 816.
- School District v. Twin Falls (13 Idaho, 471; 90 Pac. 735), 808.
- Schoonmaker v. Kelly (42 Hun, 299), 2127.
- Schopp, *In re* (119 N. Y. App. Div. 192; 104 N. Y. Supp. 307), 735, 736, 738.
- Schramm v. O'Connor (98 Ill. 539), 2099, 2103, 2105.
- Schreiber, *In re* (22 N. Y. St. Rep. 892), 2143.
- Schroeder v. Charleston (2 Const. Rep. 726), 442.
- Schroder v. Crawford (94 Ill. 357; 34 Am. Rep. 236), 1872, 1924, 1943, 2001.
- Schuck v. State (50 Ohio St. 493; 34 N. E. 663), 1125.
- Schuenke v. Pine River (84 Wis. 669; 54 N. W. 1007), 2198.
- Schulenberg v. State (79 Neb. 65; 112 N. W. 304), 1703.
- Schuler v. Bordeaux (64 Miss. 59; 8 So. 201), 138, 232, 235.
- Schulherr v. State (68 Miss. 227; 8 So. 328), 780, 1248.
- Schulte v. Schleeper (210 Ill. 357; 71 N. E. 323), 1843, 1856.
- Schultheis v. Wilson (13 N. Y. L. R. 295), 1211.
- Schultz v. Mut. L. Ins. Co. (6 Fed. 672; 14 Ins. L. Jr. 171), 2229, 2230, 2231.
- Schultz v. State (32 Ohio St. 276), 987, 998, 1000, 1374.
- Schumm v. Gardener (25 Ill. App. 633), 520, 1189.
- Schuneman v. Sherman (118 Iowa, 230; 91 N. W. 1064), 944.
- Schurzer v. State ([Tex. Cr. App.] 25 S. W. 23), 1628.
- Schusler, Appeal of (81 Conn. 276; 70 Atl. 1029), 594.
- Schusler's Estate, *In re* (198 Pa. 81; 47 Atl. 966), 2135, 2141, 2147, 2148, 2149.
- Schuyler, *In re* (63 N. Y. App. Div. 206; 71 N. Y. Supp. 437), 742, 1297, 1312.

[References are to pages.]

- Schuyler, *In re* (32 N. Y. Misc. Rep. 221; 66 N. Y. Supp. 251), 742, 746.
- Schuylkill Co., *In re* (24 Pa. Co. Ct. Rep. 571), 762.
- Schwab v. People 4 Hun, 520), 24, 1480, 1489.
- Schwabacher v. People (165 Ill. 618; 46 N. E. 809), 2077.
- Schwarm v. Osborn (59 Ind. 245), 1936.
- Schwarm v. State (82 Ind. 470), 525.
- Schwarting, *Ex parte* (76 Neb. 773; 108 N. W. 125), 277, 2023.
- Schwartz v. State (32 Tex. Cr. Rep. 387; 24 S. W. 28), 352.
- Schwarz v. Dover (72 N. J. L. 311; 62 Atl. 1135; affirming 70 N. J. L. 502; 57 Atl. 394), 197.
- Schwedes v. State (1 Okla. Cr. 245; 99 Pac. 804), 317, 323, 327, 328, 330.
- Schwedes v. State ([Okla.] 104 Pac. 765), 325.
- Schweirman v. Highland Park ([Ky.] 113 S. W. 507), 183, 388, 479, 627.
- Schweitzer v. Liberty (82 Mo. 309), 439.
- Schwenyer v. Oberkoelter (25 Ill. App. 183), 1112.
- Schwerman v. Commonwealth (99 Ky. 296; 38 S. W. 146), 401.
- Schwulst v. State (52 Tex. Civ. App. 426; 108 S. W. 698), 87, 225, 1378, 1615.
- Schwuchow v. Chicago (68 Ill. 444), 69, 91, 103, 111, 138, 143, 167, 182, 185, 189, 316, 395, 398, 420, 437, 456, 471, 472, 496.
- Scotland Life Ass'n v. McBlane 9 Irish Eq. 176), 2243.
- Scott v. Chope (33 Neb. 41; 49 N. W. 940), 1873, 1876, 1911, 1952.
- Scott v. Donald (165 U. S. 58; 17 Sup. Ct. 265; 41 L. Ed. 632), 174, 179, 323.
- Scott v. Gilmore (3 Taunt. 226),
- Scott v. Naacke ([Iowa] 122 N. W. 824), 576, 579, 585.
- Scott v. Paquitt (17 Low. Can. Rep. 283), 2109, 2114.
- Scott v. Scott (29 L. J. Mat. [N. S.] 64), 2164.
- Scott v. State (150 Ala. 59; 43 So. 181), 1455, 1482, 1518, 1613.
- Scott v. State (25 Tex. Supp. 168), 1591, 1638, 1754.
- Scott v. State (12 Tex. App. 31), 2039, 2073, 2090.
- Scott v. State ([Tex. Cr. App.] 44 S. W. 495), 1694.
- Scott v. State (46 Tex. Cr. App. 176; 82 S. W. 656), 1364.
- Scott v. State (47 Tex. Cr. App. 176; 82 S. W. 656), 1737, 1761.
- Scott v. State (52 Tex. Cr. App. 164; 105 S. W. 796), 1174.
- Scottish, etc., Soc. v. Buist (4 Ct. Sess. Cas. [4th series] 1078), 2221.
- Seavern v. State (6 Ohio St. 288), 1743.
- Seoville v. Calloun (76 Ga. 263), 927.
- Seaboard, etc., Ry. Co. v. Chapman (4 Ga. App. 706; 62 S. E. 488), 2188.
- Seaborn v. Commonwealth ([Ky.] 80 S. W. 223; 25 Ky. L. Rep. 2203), 2068.
- Seagar v. White (48 J. P. 436; 51 L. T. 261), 1275, 1370.
- Seagin v. Ehmke (120 Iowa, 464; 94 N. W. 938), 1844, 1846.
- Sealy v. Tandry ([1902] 1 K. B. 296; 66 J. P. 19; 71 L. J. K. B. 41; 50 W. R. 347; 85 L. T. 459; 18 T. L. R. 38; 20 Cox C. C. 57), 363, 2028.



[References are to pages.]

- Searcy v. Lawrenceburg (20 Ky. L. Rep. 1920; 50 S. W. 534), 798.
- Searcy v. State (51 Tex. Cr. App. 444; 102 S. W. 1127), 917, 942.
- Searcy v. Turner ([Ark.] 114 S. W. 472), 441.
- Searle v. McArdle (15 N. Z. L. R. 613), 689.
- Sears v. State (35 Tex. Cr. Rep. 442; 34 S. W. 124), 1188, 1628.
- Seaton v. Higgins (50 Iowa, 305), 1027.
- Seattle v. Clark (28 Wash. 717; 69 Pac. 407), 401, 419, 446, 689.
- Seattle v. Foster (47 Wash. 172; 91 Pac. 642), 188, 220, 295.
- Seaver v. Phelps (11 Pick. 304), 2094.
- Sebastian v. State (44 Tex. Civ. App. 508; 72 S. W. 849), 9, 972, 1210, 1686, 1690.
- Secor v. Taylor (41 Hun, 421), 1953.
- Seddon v. State (100 Iowa, 378; 69 N. W. 671), 999.
- Sedgwick v. State (47 Tex. Cr. App. 627; 85 S. W. 813), 298, 307, 1214, 1280.
- Sefried v. Commonwealth (101 Pa. St. 200), 1456.
- Segars, *Ex parte* (32 Tex. Cr. Rep. 553; 25 S. W. 26), 852.
- Segars v. State (35 Tex. Cr. Rep. 45; 31 S. W. 370), 888, 1447, 1550.
- Segars v. State (40 Tex. Cr. App. 577; 51 S. W. 211), 958, 1443, 1456.
- Segur v. State (6 Ind. 451), 1501.
- Seibert v. State (40 Ala. 60), 1367.
- Seick v. State (94 Md. 71; 50 Atl. 436), 1572.
- Scim v. State (55 Md. 566; 39 Am. Rep. 419), 1330.
- Seitz, *In re* (32 N. Y. Misc. Rep. 108; 65 N. Y. Supp. 462), 818.
- Selah v. Selah (23 N. J. 185), 2103.
- Sellers v. Arie ([Iowa] 38 N. W. 814), 1803, 1805.
- Sellers v. Foster (27 Neb. 118; 42 N. W. 907), 1872, 1980.
- Selm v. State (55 Ind. 566; 39 Am. Rep. 419), 1339.
- Selma v. Brewer (9 Cal. App. 70; 98 Pac. 61), 439, 441, 462, 831.
- Sells v. State (76 Ala. 92), 1581.
- Semones v. Needles (137 Iowa, 177; 114 N. W. 904), 659.
- Semple v. Flynn ([N. J. Eq.] 10 Atl. 177), 694, 701, 1783.
- Senate of the Happy Home Club v. Board (99 Mich. 117; 57 N. W. 1110; 23 L. R. A. 142), 2022.
- Senderoft, *In re* (168 Pa. 45; 31 Atl. 948), 665.
- Senior v. Pierce (31 Fed. Rep. 625), 1013.
- Senior v. Ratterman (44 Ohio St. 661; 11 N. E. 321; affirming 17 Wkly. L. Bull. 115), 121, 147, 198, 202, 542, 790, 792.
- Sentance v. Poole (3 C. & P. 1), 2108, 2110.
- Seollings v. Lee (123 Ala. 464; 26 So. 211), 1780.
- Seranelly, *In re* (40 N. Y. Supp. 1106; 18 N. Y. Misc. Rep. 341), 580.
- Sessions v. State ([Tex. Cr. App.] 98 S. W. 243), 1624.
- Seube, *Ex parte* (115 Cal. 629; 47 Pac. 596), 416.
- Seven, *In re* (2 Pa. Co. Ct. Rep. 75), 622.
- Severance v. Kelly (86 Ky. 522; 6 S. W. 386), 800.
- Severance v. Murphy (67 S. C. 409; 46 S. E. 635), 381.

[References are to pages.]

- Sewell v. Taylor (7 C. B. [N. S.] 160; 23 J. P. 792; 29 L. J. M. C. 50; 1 L. T. 37), 1301, 2025, 1027.
- Sexson v. Kelley (3 Neb. 104), 758.
- Sexton v. Board ([N. J. L.] 69 Atl. 470), 138, 589, 590.
- Sexton v. Goodwine (33 Ind. App. 329; 68 N. E. 929; 70 N. E. 999), 601, 610, 611, 612, 613.
- Sexton v. Lelievre (4 Cold. 11), 2255.
- Seymer v. Lake (66 Wis. 651; 29 N. W. 554), 2177, 2190, 2191, 2192, 2193.
- Seymour, *In re* (47 N. Y. App. Div. 320; 62 N. Y. Supp. 25), 751.
- Seymour v. De Lancey (3 Cow. 445), 2093.
- Shackelford v. State ([Tex. Cr. App.] 22 S. W. 26), 1515.
- Shackleton v. Sebree (86 Ill. 616), 2094, 2098, 2103.
- Shader v. Railway Passenger's Assur. Co. (66 N. Y. 441; 23 Am. Rep. 65; 5 Ins. L. Jr. 749; affirming 3 Hun, 424; 5 T. & C. 543), 2232, 2238, 2244.
- Shafer v. Miamma (17 Md. 336), 271.
- Shafer v. Patterson (4 Ohio Dec. 157; 1 Cleve. Law. Rep. 84), 1991.
- Shaffer v. Stern (160 Ind. 375; 66 N. E. 1004), 666.
- Shaffer v. State (106 Ind. 319; 6 N. E. 818), 1560, 1562.
- Shaffer v. Stern (160 Ind. 375; 66 N. E. 1004), 601, 605, 606, 611, 613, 614, 856.
- Shafter v. State (114 Ind. 194; 16 N. E. 521), 1719.
- Shain v. Maxwell (115 Cal. 208; 46 Pac. 1069), 1780, 1783.
- Shanley v. Wells (71 Ill. 78), 2034.
- Shannahan v. Commonwealth (8 Bush, 464; 8 Am. Rep. 465), 2041, 2046, 2057, 2061, 2085.
- Shannon v. State (39 Neb. 658; 58 N. W. 196), 108, 110, 502.
- Sharpe v. Arnold (108 Iowa, 203; 78 N. W. 819), 981, 992.
- Sharon Borough v. Mercer Co. (20 Pa. Ct. Rep. 507), 400.
- Sharp v. Hughes (57 J. P. 104), 367, 535.
- Sharp v. State (17 Ga. 290), 1643.
- Sharpe v. Wakefield (22 Q. B. Div. 242), 678.
- Sharpless v. Mayer, etc., 21 Pa. St. 147), 105.
- Sharpley v. Brown (43 Hun, [N. Y.] 374), 1968.
- Shaw v. Carpenter (54 Vt. 155; 41 Am. Rep. 837), 9, 10, 17.
- Shaw v. Morley (L. R. 3 Exch. 137; 32 J. P. 391), 379.
- Shaw v. Pickett (26 Vt. 486), 276.
- Shaw v. State (3 Ga. App. 607; 60 S. E. 326), 1181, 1589.
- Shaw v. State (56 Ind. 88), 39, 82, 510, 516, 517, 539, 1364, 1496.
- Shaw v. Thackrah (17 Jur. 1045), 2111.
- Shaw v. Thackray (1 Sm. & Giff. 537), 2099.
- Shea v. Fidelity, etc., Co. (83 N. Y. App. Div. 305; 82 N. Y. Supp. 39), 776.
- Shea v. Muncie (148 Ind. 14; 46 N. E. 138), 98, 138, 168, 169, 172, 183, 409, 423, 424, 488, 496, 597, 1213, 1558, 1649.
- Shear v. Bolinger (74 Iowa, 757; 37 N. W. 164), 125.
- Shear v. Brinkman (72 Iowa, 698; 34 N. W. 483), 982.
- Shear v. Green (73 Iowa, 688; 36 N. W. 642), 986, 990, 992, 1589.
- Shearer, *In re* (26 Pa. Super. Ct. 34), 666.

[References are to pages.]

- Shearer v. State (7 Blackf. 99), 1642.  
 Sheasby v. Oldham (55 J. P. 214; 60 L. J. M. C. 812), 1149.  
 Shedlinsky v. Budweiser Brewing Co. (17 N. Y. App. Div. 470; 45 N. Y. Supp. 174), 1811.  
 Sheehan v. Louisville, etc., R. Co. ([Ky.] 101 S. W. 380; 31 Ky. L. Rep. 113), 935.  
 Shelbyville v. Cleveland, etc., R. Co. (146 Ind. 66; 44 N. E. 929), 409.  
 Sheldon v. Clark (1 Johns. 513), 1642.  
 Shelling v. Commonwealth (11 Ky. L. Rep. [abstract] 675), 1459, 1508.  
 Shelton v. Mayor, etc., 30 Ala. 540), 294.  
 Shelton v. State ([Ind.] 89 Ind. 860), 554.  
 Shepard v. New Orleans (51 La. Ann. 847; 25 So. 542), 586.  
 Shephard v. Walker ([1876] 34 L. T. 230), 1819.  
 Shepler v. State (114 Ind. 194; 16 N. E. 521), 1305, 1323, 1567, 1740.  
 Sheppard v. Dowling (127 Ala. 1; 28 So. 791), 382.  
 Sheppelman v. People (134 Ill. App. 556), 64.  
 Sherlock v. Stuart (96 Mich. 123; 55 N. W. 845; 21 L. R. A. 580), 94, 99, 397, 400, 424, 440, 634, 1840.  
 Sherry, *In re* (25 N. Y. Misc. Rep. 361; 55 N. Y. Supp. 421), 589.  
 Sherry, *In re* (12 Pa. Co. Ct. Rep. 129), 563.  
 Sherwood, *In re* (21 Fed. Cas. 1285), 71.  
 Sherar v. State (30 Tex. App. 349; 17 S. W. 621), 2090.  
 Sheritt, *Ex parte* (L. R. 5 Q. B. 174), 1572.  
 Sherras v. De Rutzen ([1895] 1 Q. B. 918; 59 J. P. 440; 64 L. J. M. C. 218; 72 L. T. 839; 43 W. R. 526), 1221.  
 Sheilds v. State (95 Ind. 299), 1291, 1751.  
 Shields v. State (38 Tex. Cr. App. 252; 42 S. W. 398), 872, 894, 1686.  
 Shiflet v. Grimsley (104 Va. 424; 51 S. E. 838), 797.  
 Shihagen v. State (9 Tex. 430), 369, 371.  
 Shilling, *Ex parte* (38 Tex. Cr. App. 287; 42 S. W. 553), 865.  
 Shilling v. State (5 Ind. 443), 1545, 1552.  
 Shilling v. State ([Tex. Cr. App.] 51 S. W. 240), 958, 1466.  
 Shiretzki v. Julius Kessler & Co. ([Ala.] 37 So. 423), 1787, 1788.  
 Shonkwiler v. Stewart (104 Iowa, 67; 73 N. W. 479), 552.  
 Shorb v. Webber (188 Ill. 126; 58 N. E. 949, affirming 89 Ill. App. 474), 2007.  
 Short v. People (96 Ill. App. 638), 1228.  
 Short v. State (49 Tex. Cr. App. 244; 91 S. W. 1087), 1380.  
 Shover v. State (5 Eng. [Ark.] 529), 214.  
 Showalter v. State (84 Ind. 562), 1618.  
 Showyer v. Chamberlain (113 Iowa, 742; 84 N. W. 661), 1805.  
 Shreveport v. Draiss & Co. 111 La. 511; 35 So. 727), 432, 463, 470.  
 Shreveport v. Roos (35 La. Ann. 1010), 469.  
 Shuch v. State (50 Ohio, 493; 34 N. E. 663), 1319.  
 Shuck v. Shuck (7 Bush, 306), 2155, 2156, 2160.  
 Shuler v. State (125 Ga. 778; 54 S. E. 689), 1322, 1479, 1501, 1505.

[References are to pages.]

- Shultz v. Cambridge (38 Ohio St. 659), 213, 345.
- Shultz v. Wall (134 Pa. 262; 19 Atl. 742; 8 L. R. A. 97), 2187.
- Shurman v. Ft. Wayne (127 Ind. 109; 26 N. E. 560; 11 L. R. A. 378), 479.
- Shuster v. State (62 N. J. L. 521; 41 Atl. 701), 1285, 1286, 1372, 1376.
- Shutt v. Shutt (71 Md. 193; 17 Atl. 1024), 2153, 2165, 2166.
- Shuttleworth v. State (35 Ala. 415), 1246.
- Sibila v. Bahney (34 Ohio State, 399), 223, 224, 1840, 1841, 1882.
- Siceluff v. State (52 Ark. 56; 11 S. W. 964), 1227.
- Sickinger v. State (45 Kan. 414; 25 Pac. 868), 991, 1003.
- Siebold v. People (86 Ill. 33), 215.
- Siegel v. People (106 Ill. 89), 1173, 1176, 1220, 1224, 1225, 1230, 1844, 1846.
- Siegle v. Rush (173 Ill. 559; 50 N. E. 1008, affirming 72 Ill. App. 485), 1954.
- Sifred v. Commonwealth (104 Pa. 179), 1304, 1307, 1308.
- Sights v. Yarnells (12 Gratt. 292), 714.
- Sigmore v. Commonwealth ([Ky.] 102 S. W. 277; 31 Ky. L. Rep. 310), 1173.
- Sikes, *Ex parte* (102 Ala. 173; 15 So. 522; 24 L. R. A. 774), 431, 432, 444, 447, 480.
- Sill v. McKnight (7 Watts & S. 244), 2121.
- Sills v. State (76 Ala. 92) 1517, 1713.
- Siloam Springs v. Thompson (41 Ark. 456), 906, 1160.
- Silver v. State (105 Ga. 838; 32 S. E. 22), 1379, 1380, 1381.
- Silver v. Sparta (107 Ga. 275; 33 S. E. 31), 173, 188, 479.
- Silvers v. Traverse (82 Iowa, 52; 47 N. W. 888; 11 L. R. A. 804), 1001.
- Silvey v. State ([Tex. Cr. App.] 98 S. W. 1058), 1472.
- Silverman v. Rumbarger (4 Pa. Super. Ct. 439), 1805.
- Simmons, *Ex parte* (76 Neb. 639; 107 N. W. 863), 2017, 2018, 2020.
- Simmons v. Blackheath (17 Q. B. Div. 765; 50 J. P. 742; 55 L. J. M. C. 166; 35 W. R. 167), 701, 709.
- Simms, *Ex parte* (41 Fla. 316; 25 So. 280), 401.
- Simons v. State (25 Ind. 331), 1223.
- Simons v. State ([Tex. Cr. App.] 67 S. W. 502), 1646.
- Simonton v. Colbourne (3 Terr. L. R. 372), 750.
- Simpkins v. Marlatt (9 Ind. 543), 1019.
- Simpson v. Commonwealth ([Ky.] 97 S. W. 404; 30 Ky. L. Rep. 132), 535, 610, 615.
- Simpson v. Commonwealth ([Ky.] 104 S. W. 269; 31 Ky. L. Rep. 821; 104 S. W. 270; 31 Ky. L. Rep. 851), 747.
- Simpson v. Seuriss (2 Ohio C. D. 246), 797, 804.
- Simpson v. State (93 Ga. 196; 18 S. E. 526), 1250.
- Simpson v. State (17 Ind. 444), 1491.
- Sims v. Pottawottamie County (91 Iowa, 442; 59 N. W. 68), 1004.
- Sims v. State (135 Ala. 61; 33 So. 162), 1451, 1511.
- Sims v. State (10 Tex. App. 131), 1746.
- Sims v. State ([Tex. Cr. App.] 87 S. W. 689), 1282.
- Sinclair v. State (69 N. C. 47), 152, 331.
- Sinclair v. State ([Tex. Cr. App.] 70 S. W. 218), 1235.

[References are to pages.]

- Sinclair v. State (45 Tex. Cr. App. 487; 77 S. W. 621), 914, 916, 1284, 1690.
- Singer Mfg. Co. v. Wright (33 Fed. Rep. 121), 793.
- Singleton v. Ellison ([1895] 1 Q. B. 607; 64 L. J. M. C. 123; 59 J. P. 119; 72 L. T. 236; 43 W. R. 426; 18 Cox, 79), 368, 724.
- Sinking Fund Cases (99 U. S. 700), 114.
- Sinnot v. Davenport (22 How. 227; 16 L. Ed. 243), 479.
- Sires v. State (73 Wis. 251; 41 N. W. 81), 1523.
- Sis v. Boorman (11 App. D. C. 116), 1771.
- Sisson v. Conger (1 T. & C. [N. Y.] 564), 2258.
- Sisson, Potter & Co. v. Hill (18 R. I. 212; 26 Atl. 196; 21 L. R. A. 266), 2127.
- Sizemore v. Commonwealth ([Ky.] 102 S. W. 277; 31 Ky. L. Rep. 310), 1176.
- Sizer v. Syracuse, etc., R. Co. (7 Lans. 67), 2199.
- Sjoblom v. Mark (103 Minn. 193; 114 N. W. 746), 1809.
- Skelton v. State ([Ind.] 89 N. E. 860), 1193.
- Skidmore v. Commonwealth ([Ky.] 57 S. W. 468; 22 Ky. L. Rep. 409), 1186, 1380, 1381.
- Skinner v. State (97 Ga. 690; 25 S. E. 364), 1166, 1167.
- Skinner v. State (120 Ind. 127; 22 N. E. 115), 1109, 1549.
- Skipwith v. State ([Tex. Cr. App.] 68 S. W. 278), 1682.
- Skyles v. State ([Neb.] 123 Pac. 447), 1187.
- Slack, *Ex parte* (8 Vict. L. R. 144), 626, 711, 712.
- Slack, *Ex parte* (7 Vict. L. R. 28), 539.
- Slack v. Jacob (8 W. Va. 612), 106.
- Slater v. Fire & Police Board (43 Colo. 225; 96 Pac. 554), 560, 569, 577.
- Slattery, *Ex parte* (3 Ark. 484), 270.
- Slaughter v. Commonwealth (13 Gratt. [Va.] 776), 428, 793.
- Slaughter v. People (2 Doug. [Mich.] 334), 270.
- Slaughter v. State ([Tex. Cr. App.] 21 S. W. 247), 1629, 1630.
- Slaughter House Case (16 Wall. 36), 100.
- Slavens v. Wood (54 J. P. 742), 1220.
- Slavin, *In re* (36 Up. Can. 159), 424.
- Sleenburgh, *In re* (24 N. Y. Misc. Rep. 1; 53 N. Y. Supp. 197), 796.
- Slentz v. State (27 Ind. App. 700; 61 N. E. 956), 346, 1486, 1536.
- Sleeth v. Hurlbert (25 S. C. [Ont.] 620), 1050.
- Sleith v. Hurlbert (25 S. C. [Ont.] 620), 1059.
- Sliger v. State (48 Tex. Cr. App. 341; 88 S. W. 243), 1207.
- Slinger's Will, *In re* (72 Wis. 22; 37 N. W. 236), 2145, 2151.
- Slinger v. Henneman (38 Wis. 504), 228.
- Sloan v. Johnson (86 Iowa 750; 53 N. W. 268), 1002.
- Sloan v. State (8 Blackf. [Ind.] 35 L.), 393, 466, 521, 523.
- Slocum v. Mayberry (2 Wheat. [U. S.] 1), 1012.
- Sloman v. William D. Moebs Co. (139 Mich. 334; 102 N. W. 854; 11 Det. Leg. N. 857), 299, 307, 333, 334.
- Slymer v. State (62 Md. 240), 235, 1469.
- Smart v. Hochelaga (4 Leg. News [Can.] 255), 648.



[References are to pages.]

- Smart v. State (49 Tex. Cr. App. 373; 92 S. W. 810), 1202, 1380, 1381, 1613, 1758.
- Smeltzer, *Ex parte* (17 W. N. [N. S. W.] 190), 568.
- Smiser v. State (17 Ind. App. 519; 47 N. E. 229), 1855, 1869, 1882, 1941.
- Smith, In Appeal of (65 Conn. 135; 51 Atl. 529), 532.
- Smith, *Ex parte* (38 Cal. 702), 164, 218.
- Smith *In re* (104 Iowa 199; 73 N. W. 605) 805.
- Smith, *In re* (126 Iowa, 128; 101 N. W. 875), 669, 670, 826.
- Smith, *In re* (53 N. Y. St. Rep. 658), 2141.
- Smith, *In re* (44 N. Y. Misc. Rep. 384; 89 N. Y. Supp. 1006), 880, 889.
- Smith, *In re* (48 N. Y. App. Div. 423; 63 N. Y. Supp. 255), 730, 1312.
- Smith, *In re* (2 Pa. Co. Ct. Rep. 74), 639.
- Smith, *Ex parte* (48 Tex. Cr. App. 356; 88 S. W. 245), 939.
- Smith, *Ex parte* (1 Hemstead [9 U. S. C. C.] 201), 270.
- Smith v. Adrian (Man. [Mich.] 495), 502, 1366, 1509, 1644.
- Smith v. Alabama (124 U. S. 465; 8 Sup. Ct. 564), 315.
- Smith v. Anderson (82 Mich. 492; 45 N. W. 729), 1952.
- Smith v. Benton (20 Ont. 344), 919, 1779, 1807.
- Smith v. Board (46 N. J. L. 312), 586.
- Smith v. Butler ([1900] 1 Q. B. 694; 69 L. J. Q. B. 521; 48 W. R. 583; 82 L. T. 281; 16 T. L. R. 208), 1833.
- Smith v. Commonwealth (1 Duv. [Ky.] 224), 2048, 2060, 2061, 2067, 2073, 2081.
- Smith v. Commonwealth (6 B. Mon. 21), 1094, 1102, 1107, 1110.
- Smith v. Commonwealth (4 Ky. L. Rep. 261), 1639.
- Smith v. Commonwealth ([Ky.] 48 S. W. 1081), 1370.
- Smith v. Grable (14 Iowa 429), 1779, 1780, 1785.
- Smith v. Heneman ([Ala.] 24 So. 364), 1169.
- Smith v. Hickman (68 Ill. 314), 1802.
- Smith v. Huntington (3 N. H. 76; 14 Am. Dec. 33), 1027.
- Smith v. Janesville (26 Wis. 291), 240.
- Smith v. Jeffries (9 Price 257), 1642.
- Smith v. Joyce (12 Barb. 21), 1643, 1805.
- Smith v. Kibbee (9 Ohio St. 563), 1385.
- Smith v. Knights of Father Mathew (36 Mo. App. 184), 2231, 2232.
- Smith v. Knoxville (3 Head 245), 165, 183, 184, 263, 454, 459, 461.
- Smith v. Land Corporation ([1884] 28 Ch. D. 7; 49 J. P. 182; 51 L. T. 718), 1832.
- Smith v. Lapar (67 S. C. 491; 46 S. E. 332), 1033.
- Smith v. McCarthy (56 Pa. St. 359), 233.
- Smith v. McCormick (2 Vict. L. R. 93), 1299.
- Smith v. City of Madison (7 Ind. 86), 396.
- Smith v. Newburn (70 N. C. 14), 396.
- Smith v. New York, etc., R. Co. (38 Hun 33), 2188.
- Smith v. Norfolk, etc., R. Co. (114 N. C. 728; 19 S. E. 863; 25 L. R. A. 287), 2173, 2174, 2178, 2182.
- Smith v. Patton (103 Ky. 444; 45 S. W. 459; 20 Ky. L. Rep. 165), 853, 865, 872, 931, 942.
- Smith v. People (32 Colo. 251; 75 Pac. 914), 288, 291.

[References are to pages.]

- Smith v. People (141 Ill. 447; 31 N. E. 425; affirming 38 Ill. App. 630), 62, 1869, 1972, 1976, 1998, 1999, 2005.
- Smith v. People (1 Parker Cr. Rep. 583), 111, 139.
- Smith v. People (9 Hun, 446), 508.
- Smith v. Portsmouth J. J. ([1906] 2 K. B. 229; 75 L. J. K. B. 851; 95 L. T. 5; 54 W. R. 598; 22 T. L. R. 650; reversing 70 J. P. 157), 642.
- Smith v. Reynolds (8 Hun [N. Y.] 128), 1350, 1907.
- Smith v. Rheimstrom (65 Fed. 989; 13 C. C. A. 261), 18.
- Smith v. San Antonio (7 Tex. 646), 270.
- Smith v. Shann ([1898] 2 Q. B. 347; 62 J. P. 354; 67 L. J. Q. B. 819; 79 L. T. 77; 14 T. L. R. 443), 623.
- Smith v. Skow (97 Iowa, 640; 66 N. W. 893), 2263.
- Smith v. Smith (11 Ky. L. Rep. 859), 2161.
- Smith v. Smith (67 Vt. 443), 2145.
- Smith v. State (23 Ala. 39), 369, 371.
- Smith v. State (55 Ala. 1), 64, 1632, 1754.
- Smith v. State (132 Ala. 38; 31 So. 552), 1232, 1234.
- Smith v. State ([Ala.] 46 So. 753), 1516.
- Smith v. State (54 Ark. 248; 15 S. W. 882), 309.
- Smith v. State ([Ark.] 16 S. W. 2), 1280, 1288.
- Smith v. State (19 Conn. 493), 1255, 1493, 1632.
- Smith v. State (90 Ga. 133; 15 S. E. 682), 201.
- Smith v. State (105 Ga. 724; 32 S. E. 127), 1083, 1722.
- Smith v. State (109 Ga. 227; 34 S. E. 325), 333, 551.
- Smith v. State (112 Ga. 291; 37 S. E. 441), 1475.
- Smith v. State (3 Ga. App. 326; 59 S. E. 934), 1602, 1662.
- Smith v. State (23 Ind. 132), 1497, 1499.
- Smith v. State (24 Ind. App. 688; 57 N. E. 572), 1749, 1751.
- Smith v. State (4 Neb. 277), 2040, 2062.
- Smith v. State (32 Neb. 105; 48 N. W. 823), 1445, 1446, 1449.
- Smith v. State (1 Humph. 396), 2024.
- Smith v. State (18 Tex. App. 454), 1304, 1320, 1570.
- Smith v. State (24 Tex. 547), 1246.
- Smith v. State (19 Tex. App. 444), 886, 888.
- Smith v. State ([Tex. Cr. App.] 49 S. W. 373), 1466, 1478.
- Smith v. State (42 Tex. Cr. App. 414; 57 S. W. 815), 225, 1212.
- Smith v. State ([Tex. Cr. App.] 66 S. W. 780), 1235, 1237, 1627.
- Smith v. State (47 Tex. Cr. App. 509; 90 S. W. 37), 1122.
- Smith v. State ([Tex. Cr. App.] 91 S. W. 592), 1179.
- Smith v. State ([Tex. Cr. App.] 100 S. W. 953), 1473, 1611.
- Smith v. State ([Tex. Cr. App.] 103 C. W. 953), 1465.
- Smith v. State (52 Tex. Cr. App. 357; 107 S. W. 353), 1128.
- Smith v. State (52 Tex. Cr. App. 507; 107 S. W. 819), 1695.
- Smith v. State ([Tex.] 116 S. W. 593), 1111.
- Smith v. State ([Tex.] 120 S. W. 801), 10.
- Smith v. State (120 N. W. 881), 33, 1697, 1702, 1708.
- Smith v. Toronto (16 C. P. [Ont.] 200), 472.
- Smith v. Vaux (26 J. P. 134; 6 L. T. 46), 1141.

[References are to pages.]

- Smith v. Warrior (99 Ala. 481; 12 So. 418), 432.
- Smith v. Wilcox (47 Vt. 537), 1843.
- Smith v. Young (13 Okla. 134; 74 Pac. 104), 568, 621.
- Smitham v. State (53 Tex. Cr. App. 173; 108 S. W. 118), 917, 1685.
- Smithers v. Commonwealth (12 Ky. L. Rep. 636), 1484, 1485.
- Smithville v. Lee County (125 Ga. 559; 54 S. E. 539), 382.
- Smithy, *Ex parte* (33 Pac. 338), 432.
- Smothers v. Jackson ([Miss.] 45 So. 982), 1602.
- Smurr v. State (88 Ind. 504), 2040.
- Snead v. State (40 Tex. Civ. App. 262; 40 S. W. 597), 829, 832, 835, 845, 896, 958.
- Snearly v. State (40 Tex. Cr. App. 507; 52 S. W. 547; 53 S. W. 696), 933.
- Snider v. Koehler (17 Kan. 432), 310, 1787, 1788.
- Snider v. State (81 Ga. 753; 7 S. E. 631; 12 Am. St. 350), 9, 11, 12, 18, 81, 1349, 1357, 1358.
- Snider v. State (78 Miss. 366; 29 So. 78), 1729, 1730, 1732.
- Snider v. Thompson (134 Iowa 725; 112 N. W. 239), 2033.
- Snow v. Hill (14 Q. B. Div. 588; 54 L. J. M. C. 95; 52 L. T. 859; 33 W. R. 475; 49 J. P. 440), 380.
- Snow v. State (50 Ark. 557; 9 S. W. 306), 69, 73.
- Snyder, *In re* (2 Pa. Dist. 785), 638, 664.
- Snyder's Lease, *In re* (2 Pa. Dist. Rep. 785), 1808, 1809.
- Snyder v. Launt (1 App. Div. 142; 37 N. Y. Supp. 408), 1850, 1852.
- Snyder v. State (5 Ind. 194), 1501.
- Snyder v. State (40 Kan. 543; 20 Pac. Rep. 123), 222, 1768.
- Society, etc., v. Wheeler (2 Gall. [U. S.] 105), 261.
- Soehl v. State (39 Neb. 695; 58 N. W. 196), 110, 168, 502.
- Sohn v. State (18 Ind. 389), 1304, 1714.
- Solomon v. Dreschler (4 Minn. 278), 1780, 1783.
- Somers v. Newman (31 App. D. C. 193), 2263.
- Somers v. Vlasney (64 Neb. 383; 89 N. W. 1036), 565, 586, 609.
- Somerset v. Hart (12 Q. B. Div. 360; 48 J. P. 327; 53 L. J. M. C. 77), 375, 376.
- Somerset v. Wade ([1894] 1 Q. B. 574; 58 J. P. 231; 63 L. J. M. C. 126; 70 L. T. 452; 42 W. R. 399), 359, 366, 725, 2027, 2028.
- Sommer v. Cate (22 Iowa 585), 1771.
- Sonora v. Curtin (137 Cal. 583; 70 Pac. 674), 478.
- Sopher v. State (157 Ind. 360; 61 N. E. 785), 497.
- Sopher v. State (169 Ind. 177; 81 N. E. 912; 14 L. R. A. [N. S.] 172), 104, 105, 106, 144, 486, 1106, 1549, 1676.
- Sortwell v. Hughes (1 Curt. 244; Fed. Cas. No. 13177), 1161, 1164, 1795.
- Sothman v. State (66 Neb. 302; 92 N. W. 303), 83, 253, 254, 1341, 1342, 1343, 1749.
- South v. Commonwealth (79 Ky. 493; 3 Ky. L. Rep. 276), 1220, 1487, 1516.
- South v. State (86 Ala. 617; 6 So. 52), 225.
- Southcombe v. Merrian (1 C. & M. 286; 41 E. C. L. 159), 2229, 2232.
- South Bethlehem v. Hemingway (16 Pa. Co. Ct. Rep. 103), 807.

[References are to pages.]

- South Carolina v. United States (199 U. S. 437; 26 Sup. Ct. 110; affirming 39 Ct. of Cl. 257), 175.
- South Shore Country Club v. People (228 Ill. 74; 81 N. E. 805; 12 L. R. A. [N. S.] 519), 1325, 1338.
- Southern Exp. Co. v. State (107 Ga. 670; 33 S. E. 637), 956.
- Southern Express Co. v. State (1 Ga. App. 700; 58 S. E. 67), 1234, 1350, 1359, 1623, 1630, 1714.
- Southern Express Co. v. State (114 Ga. 226; 39 S. E. 899), 1281, 1283.
- Southern Ry. Co. v. Heyman (119 Ga. 616; 45 S. E. 491), 324.
- Southwestern R. Co. v. Hankerson (72 Ga. 182), 2197.
- Southwestern R. Co. v. Hankerson (61 Ga. 114), 2180, 2184.
- Southworth v. State (52 Tex. Cr. App. 532; 109 S. W. 133), 1690.
- Spake v. People (89 Ill. 617), 688, 689, 799, 827.
- Spann v. Lowndes Co. (141 Ala. 314; 34 So. 369), 796.
- Sparks v. State ([Tex. Cr. App.] 45 S. W. 493), 249, 1689, 1707.
- Sparks v. State ([Tex. Cr. App.] 99 S. W. 546), 1167.
- Sparrow, *In re* (138 Pa. 116; 20 Atl. 711; 27 W. N. C. 47), 400, 632, 648, 649, 651.
- Sparta v. Boorum (129 Mich. 555; 89 N. W. 435; 90 S. W. 681; 8 Det. L. N. 1100), 70, 453, 1554, 1742.
- Spaulding v. Nathan (21 Ind. App. 122; 51 N. E. 742), 520.
- Spaulding v. Nathan (21 Ind. App. 122; 51 N. E. 472), 520, 538.
- Spears v. State (18 Tex. App. 467), 1759.
- Specht v. Commonwealth (8 Penn. St. 312), 215, 216.
- Speckert v. Louisville (78 Ky. 287), 929.
- Speigle v. Meredith (22 Fed. Cas. 910), 1166.
- Spencer v. State (15 Lea 539), 2058.
- Spencer v. Washington Co. ([Miss.] 45 So. 863), 879.
- Speogle, *Ex parte* (34 Tex. Cr. Rep. 465; 31 S. W. 171), 887.
- Sperrig, *In re* (7 Pa. Super. Ct. Rep. 131; 42 W. N. C. 37), 628.
- Spicer v. Martin ([1888] 14 App. Cas. 12), 1821.
- Spickler, *In re* (43 Fed. 653; 10 L. R. A. 446), 321, 325, 328.
- Spiegler v. City of Chicago (216 Ill. 114; 74 N. E. 718), 428.
- Spira v. State (146 Ala. 177; 41 So. 465), 415.
- Spohn v. Missouri Pac. R. Co. (87 Mo. 74), 2216.
- Spokane v. Baughman ([Wash.] 103 Pac. 14), 1325, 1338.
- Spoonheim v. Spoonheim (14 N. D. 380; 104 N. W. 845), 2095, 2108.
- Spratt, *Ex parte* (2 S. C. N. S. W. 254), 1048.
- Sprayberry v. Atlanta (87 Ga. 120; 13 S. E. 197), 182, 471, 472, 488, 490, 714, 740.
- Springfield v. Starke (93 Mo. App. 70), 408.
- Springfield v. State ([Tex.] 13 S. W. 752), 69, 372.
- Springfield v. State (125 Ga. 281; 54 S. E. 172), 1380, 1381.
- Spring Valley v. Henning (42 Ill. App. 159), 1285.
- Squires v. State (3 Ind. App. 114; 28 N. E. 708), 1746.
- Staats v. Freeman (6 N. J. Eq. 490), 2098, 2131.
- Staats v. Washington (44 N. J. L. 605; 43 Am Rep. 402), 433, 457, 458.

[References are to pages.]

- Staats v. Washington (45 N. J. L. 418), 447, 453, 457, 458, 460.
- Staats v. Washington (36 La. Ann. 912), 457.
- Stacy v. Portland Pub. Co. (68 Me. 279), 1735.
- Stackberry v. Spencer (55 L. J. M. C. 141; 51 J. P. 181), 1275.
- Stahel v. Commonwealth (7 Bush, 387), 369.
- Stahl v. Lee ([Kan.] 80 Pac. 983), 256, 258, 931, 2257.
- Stahuka v. Krieth (66 Neb. 829; 92 N. W. 1042), 1979.
- Staley v. Columbus (36 Mich. 38), 798.
- Stallings v. Lee (123 Ala. 464; 26 So. 211), 1779.
- Stallings v. State (33 Ala. 425), 1632.
- Stallworth v. State (16 Tex. App. 345), 231, 1489, 1560.
- Stambaugh, *In re* (31 Pa. Super. Ct. 243), 542.
- Stamper v. Commonwealth ([Ky.] 103 S. W. 286; 31 Ky. L. Rep. 707), 936, 949, 957, 1170, 1200.
- Stancilffe v. Clarke ([1852] 7 Ex. 439), 1818.
- Standard, etc., Co. v. Attorney-General (46 N. J. Eq. 270), 791.
- Standard Life, etc., Ins. Co. v. Jones (94 Ala. 434; 10 So. 530), 61, 62, 2032, 2189, 2232, 2238, 2239.
- Standard, etc., Ins. Co. v. Lauderdale (94 Tenn. 635; 30 S. W. 732), 2221, 2230.
- Standard Oil Co. v. Angevine (60 Kan. 167; 55 Pac. 879), 123.
- Standard Oil Co. v. Commonwealth (119 Ky. 75; 82 S. W. 1020; 26 Ky. L. Rep. 985), 479.
- Stanford v. State (16 Tex. App. 331), 1111.
- Stanley v. Monnet (34 Kan. 708; 9 Pac. 755), 627, 628, 648.
- Stanley v. State (26 Ala. 26), 64, 1631, 1632.
- Stanley v. State (89 Miss. 63; 42 So. 284), 1662.
- Stanley v. State (43 Tex. Cr. App. 270; 64 S. W. 1051), 1167, 1168.
- Stansfield v. Kunz (62 Kan. 797; 64 Pac. 614), 1785, 1792.
- Stanstead v. Beach ([1899] 8 Quebec Q. B. 276; overruling 8 Quebec C. S. 178), 631.
- Stanton v. James (19 N. Z. 392), 1153.
- Stanton v. Simpson (48 Vt. 628), 223, 224, 1840.
- Stapf v. State (33 Ind. App. 255; 71 N. E. 165), 1488, 1502.
- Staples v. State (114 Ind. 194; 16 N. E. 521), 1524.
- Starace v. Rossi (69 Vt. 303; 37 Atl. 1109), 1789.
- Starbeck v. State (53 Tex. Cr. App. 192; 109 S. W. 162), 1471, 1694.
- Starke v. State (49 Fla. 41; 37 So. 850), 2038, 2068, 2082.
- Starkey v. Palm (80 Neb. 393; 114 N. W. 287), 588.
- Starling v. State (34 Tex. App. 295; 30 S. W. 445), 1230, 1231.
- Starnes v. State (52 Tex. Cr. App. 403; 107 S. W. 550), 1464, 1471, 1691, 1696.
- Starnes v. State ([Tex. Cr. App.] 107 S. W. 555), 1680, 1694.
- Starr v. State (149 Ind. 592; 49 N. E. 591), 1740.
- Starrett v. Douglas (2 Yeates [Pa.] 48), 2135, 2149.
- State Bank v. McCoy (69 Pa. St. 204; 8 Am. Rep. 246), 2106, 2108, 2110, 2112, 2116.
- State Board v. Aberdeen (56 Miss. 518), 807.



[References are to pages.]

- State Brewery Co. v. Primer (59 Ill. App. 581; affirmed 163 Ill. 652; 45 N. E. 144), 1808.
- Stavolo, Appeal of (81 Conn. 454; 71 Atl. 549), 667, 682.
- State v. ——— (87 N. Car. 560), 448.
- State v. Abbey (29 Vt. 60; 67 Am. Dec. 754), 1510.
- State v. Abbott (31 N. H. 434), 1460, 1489, 1525.
- State v. Abrahams (4 Ia. 541; 6 Ia. 116), 390.
- State v. Achert (95 Iowa 210; 63 N. W. 557), 577.
- State v. Adams (16 Ark. 497), 1541.
- State v. Adams ([Del.] 65 Atl. 510), 2038, 2068, 2069.
- State v. Adams (20 Iowa 486), 508.
- State v. Adams (81 Iowa 593; 47 N. W. 770), 1548.
- State v. Adams (44 Kan. 135; 24 Pac. 71), 1698, 1702.
- State v. Adams (6 N. H. 532), 1517, 1518.
- State v. Adams (51 N. H. 568), 12, 15, 19, 25, 262.
- State v. Adams (49 S. C. 518; 27 S. E. 523), 1086, 1104.
- State v. Adamson (14 Ind. 296), 211, 289, 439.
- State v. Adler (68 Miss. 487; 9 So. 645), 426, 793, 802.
- State v. Agnew (10 N. J. L. Jr. 165), 2060, 2063, 2067, 2068.
- State v. Ah Chew (16 Nev. 55), 110.
- State v. Ah Jum (9 Mont. 167; 23 Pac. 76), 225.
- State v. Ah Sam (14 Ore. 347; 13 Pac. 303), 1655.
- State v. Ahern (54 Minn. 195; 55 N. W. 959), 1643.
- State v. Aiken (42 S. C. 222; 20 S. E. 221; 26 L. R. A. 345), 111, 149, 150, 168, 1017.
- State v. Ainsworth (11 Vt. 91), 1716.
- State v. Alcorn (137 Mo. 121; 38 S. W. 548), 2039, 2076.
- State v. Alderton (50 W. Va. 101; 40 S. E. 350), 1256.
- State v. Alexander (73 Mo. App. 605), 831.
- State v. Allen (12 Ind. App. 528; 40 N. E. 705), 1502, 1560, 1561.
- State v. Allen (32 Iowa 491), 1502.
- State v. Allen (71 Iowa 216; 32 N. W. 267), 1017.
- State v. Allen (63 Kan. 598; 66 Pac. 628), 1478.
- State v. Alliance (65 Neb. 524; 91 N. W. 387), 662, 664, 669.
- State v. Allmond (2 Houst. [Del.] 612), 91, 101, 110, 126, 152, 211, 307, 313, 316.
- State v. Ambs (20 Mo. 24), 215, 216, 456, 1121, 1134, 1304, 1308.
- State v. American Express Co. 118 Iowa 447; 92 N. W. 66), 253, 256, 307, 324, 326.
- State v. Amery (12 R. I. 64), 121, 294, 307, 316.
- State v. Amor (77 Mo. 568), 1220, 1224.
- State v. Anderson (81 Mo. 78), 833.
- State v. Anderson (3 Rich. [S. C.] 172), 1649.
- State v. Andre ([S. D.] 84 N. W. 783), 2251.
- State v. Andrews (26 Mo. 171), 185, 495, 1457, 1637.
- State v. Andrews (27 Mo. 267), 1716.
- State v. Andrews (28 Mo. 14), 183.
- State v. Andrews (11 Neb. 523; 10 N. W. 410), 397, 401, 419.
- State v. Andrews (82 Tex. 73; 18 S. W. 554), 345.
- State v. Anthony (25 Mo. App. 507), 845.
- State v. Anthony (52 Mo. App. 507), 838.

[References are to pages.]

- State v. Apperger (80 Mo. 173), 1600.  
 State v. Arbogast (24 Mo. 363), 1499.  
 State v. Arie (95 Iowa 375; 34 N. W. 268), 1089, 1658.  
 State v. Arien (71 Iowa 216; 32 N. W. 267), 1739.  
 State v. Arlen (71 Iowa 216; 32 N. W. 267), 1016.  
 State v. Arles ([Minn.] 73 N. W. 403), 957.  
 State v. Arnold (98 Iowa 253; 67 N. W. 252), 1610, 1650, 1673, 1674.  
 State v. Arnold (80 S. C. 383; 61 S. E. 891), 268, 955, 959, 1465, 1528.  
 State v. Ascher (54 Conn. 299; 7 Atl. 822), 1283, 1800.  
 State v. Ashcraft (11 Ind. App. 406; 39 N. E. 199), 1519.  
 State v. Ashley (45 La. Ann. 1036), 2062.  
 State v. Atkins (40 Mo. App. 344), 1556.  
 State v. Atkinson (139 Ind. 426; 39 N. E. 51), 1121, 1122, 1304, 1318.  
 State v. Atkinson (33 S. C. 100; 11 S. E. 93), 844, 1452.  
 State v. Atlantic City (48 N. J. L. 118; 3 Atl. 65), 669, 677.  
 State v. Auberry (7 Mo. 304), 1442, 1488.  
 State v. Aulman (76 Iowa 624; 41 N. W. 379), 825, 1752, 1754.  
 State v. Austin (74 Minn. 463; 77 N. W. 301), 1609.  
 State v. Austin (114 N. C. 855; 19 S. E. 919; 25 L. R. A. 283), 462, 463.  
 State v. Austin Club (89 Tex. 20; 33 S. W. 113; 30 L. R. A. 500), 1330, 1331, 1332, 1338, 1339.  
 State v. Aydelott (7 Blackf. 157), 1443.  
 State v. Baber (74 Mo. 292; 41 Am. Rep. 314), 2247.  
 State v. Bach (36 Minn. 234; 30 N. W. 764), 500, 505, 1499, 1643, 1739.  
 State v. Bach Liquor Co. (67 Ark. 163; 55 S. W. 854), 1211.  
 State v. Back (59 Mo. App. 34; 72 S. W. 466), 1505, 1615.  
 State v. Backer (3 S. Dak. 29; 51 N. W. 1088), 110.  
 State v. Bacon (41 Vt. 526; 98 Am. Dec. 616), 1747.  
 State v. Bacon Club (44 Mo. App. 86), 1342.  
 State v. Baden (37 Minn. 212; 34 N. W. 24), 1188, 1218, 1221, 1308, 1578.  
 State v. Badworth ([Minn.] 116 N. W. 486), 1499.  
 State v. Baer (37 W. Va. 1; 16 S. E. 368), 1237.  
 State v. Bahnenkamp (88 Mo. App. 172), 555.  
 State v. Bailer (91 Minn. 186; 97 N. W. 670), 807.  
 State v. Bailey (43 Ark. 150), 1504, 1505.  
 State v. Bailey (74 Kan. 873; 87 Pac. 189), 1654.  
 State v. Bailey (73 Mo. App. 576), 833, 834.  
 State v. Bailey (57 Neb. 204; 77 N. W. 654), 1261, 1264.  
 State v. Bailey (100 N. C. 528; 6 S. E. 372), 2247.  
 State v. Bailey 63 W. Va. 668; 60 S. E. 785), 1773, 1774.  
 State v. Baker (74 Iowa 760; 38 N. W. 380), 1763.  
 State v. Baker (71 Mo. 475), 1367.  
 State v. Baker (36 Mo. App. 38), 885.  
 State v. Baker (36 Mo. App. 63), 885.  
 State v. Baker (32 Mo. App. 98), 183, 188, 495, 650.

[References are to pages.]

- State v. Baker ([Ore.] 92 Pac. 1076; 13 L. R. A. [N. S.] 1040), 219, 358, 401, 1724.
- State v. Baldwin (109 Mo. App. 573; 83 S. W. 266), 870.
- State v. Baldwin (56 Mo. App. 423), 1499.
- State v. Baldy (17 Iowa 39), 2247.
- State v. Ball (27 Neb. 601; 43 N. W. 398), 1553, 1445.
- State v. Ballard (6 N. C. 186), 1476.
- State v. Ball ([N. D.] 123 N. W. 826), 1169, 1708.
- State v. Ballingall (42 Ia. 87), 389.
- State v. Bane (1 Kan. App. 537; 42 Pac. 376), 1674.
- State v. Barber [(S. D.) 101 N. W. 1078), 233, 249, 283, 881.
- State v. Barge (82 Minn. 256; 84 N. W. 911), 342, 465.
- State v. Barker (3 R. I. 280), 1513, 1533.
- State v. Barker (4 Sneed. 554), 1306.
- State v. Barnett (111 Mo. App. 552; 86 S. W. 460), 349, 723, 750, 1160, 1354, 1372, 1373, 1457, 1639, 1640, 1641, 1650.
- State v. Barnett (111 Mo. App. 688; 86 S. W. 572), 1374.
- State v. Barr (39 Conn. 40), 70, 1124.
- State v. Barr (78 Vt. 97; 62 Atl. 43), 281, 1491, 1652.
- State v. Barrels of Liquor (47 N. H. 369), 1015, 1016, 1029, 1071.
- State v. Barrett (138 N. C. 130; 50 S. E. 506), 129, 265, 1084.
- State v. Barringer (110 N. C. 525; 14 S. E. 781), 131, 210, 247, 249.
- State v. Barron (37 Vt. 57), 10, 48, 82, 1594, 1604, 1712, 1713, 1753.
- State v. Bartlett (47 Me. 388), 1038, 1039, 1051, 1057, 1063, 1068, 1098.
- State v. Bartley (92 Me. 422; 43 Atl. 19), 1532, 1572.
- State v. Barton (138 N. C. 575; 50 S. E. 214), 1512.
- State v. Baskett (52 Mo. App. 389), 1458, 1499.
- State v. Baskins (82 Iowa 761; 48 N. W. 800), 1670.
- State v. Bass (104 Me. 288; 71 Atl. 894), 336.
- State v. Basserman (54 Conn. 88; 6 Atl. 185), 1348, 1349.
- State v. Bassett (133 Mo. App. 366; 112 S. W. 764), 892.
- State v. Batchellor (66 N. H. 145; 20 Atl. 931), 989.
- State v. Bates (96 Minn. 110; 104 N. W. 709), 197.
- State v. Bates (62 Vt. 184; 19 Atl. Rep. 229), 389.
- State v. Baughman (20 Iowa 497), 452, 523, 525, 1447, 1531, 1589.
- State v. Baughmer (5 S. D. 461; 59 N. W. 736), 1508.
- State v. Baum (33 La. Ann. 981), 171, 263.
- State v. Bauserman (54 Conn. 88; 6 Atl. 185), 1559.
- State v. Bayne (100 Wis. 35; 75 N. W. 403), 694, 697.
- State v. Bayonne (44 N. J. L. 114), 566.
- State v. Bays (31 Neb. 514; 48 N. W. 270; 31 Neb. 516; 48 N. W. 271), 672.
- State v. Beach (147 Ind. 74; 43 N. E. 949), 166, 264, 268, 1443.
- State v. Beam (51 Mo. App. 360), 928, 934.
- State v. Bean ([N. H.] 71 Atl. 216), 1460.
- State v. Bearden (94 Mo. App. 134; 67 S. W. 973), 1322, 1323.

[References are to pages.]

- State v. Beardsley (43 Kan. 641; 23 Pac. 1070), 1605.  
 State v. Beartheol (6 Blackf. 474; 39 Am. Dec. 442), 104.  
 State v. Beasley (21 W. Va. 777), 1712.  
 State v. Beattie (16 Mo. App. 131), 409.  
 State v. Beaumier (87 Me. 214; 32 Atl. 881), 1647, 1656.  
 State v. Becker (20 Iowa 438), 1447, 1479, 1505, 1531, 1550, 1589.  
 State v. Becker (3 S. D. 29; 51 N. W. 1018), 294, 1455, 1744.  
 State v. Beech (147 Ind. 74; 46 N. E. 145), 1585, 1586.  
 State v. Behrmans (Riley [S. C.] 82), 1246.  
 State v. Bell (29 Iowa 316), 2041, 2077.  
 State v. Bell (2 Jones [N. C.] 337), 1190.  
 State v. Bellow (42 La. Ann. 586; 7 South 782), 2247.  
 State v. Beloit (74 Wis. 267; 42 N. W. 110), 749, 1615.  
 State v. Benadom (79 Iowa 90; 44 N. W. 218), 842, 844.  
 State v. Beneke (9 Iowa 203), 231, 1511, 1525.  
 State v. Benghmen (20 Iowa 497), 110.  
 State v. Bengschs (170 Mo. 81; 70 S. W. 710), 199, 224, 250, 282, 286, 294, 332, 789, 1574.  
 State v. Benjamin (49 Vt. 101), 1462.  
 State v. Bennett (3 Harr. [Del.] 565), 6, 24, 25, 33, 55, 57, 81.  
 State v. Bennett (128 Iowa 713; 105 N. W. 324), 2084.  
 State v. Bennett (95 Me. 197; 49 Atl. 867), 1050, 1059, 1481, 1531.  
 State v. Bennett (101 Mo. App. 224; 73 S. W. 737), 676, 756, 762.  
 State v. Bennett (19 Neb. 191; 26 N. W. 714), 201.  
 State v. Benz (41 Minn. 30; 42 N. W. 547), 1189.  
 State v. Bergman (6 Ore. 341), 271.  
 State v. Berkeley (41 W. Va. 455; 23 S. E. 608), 845.  
 State v. Berlin (21 S. C. 292; 53 Am. Rep. 677), 132, 149, 150.  
 State v. Bernstein (129 Iowa 520; 105 S. W. 1015), 1623.  
 State v. Berry (12 Iowa 58), 467.  
 State v. Berry (50 La. 1309; 24 So. 329), 1583.  
 State v. Bertheol (6 Blackf. 474; 39 Am. Dec. 442), 485, 1106, 1109.  
 State v. Berton (27 Neb. 476; 43 N. W. 249), 673.  
 State v. Bertrand (72 Miss. 516; 17 So. 235), 1468.  
 State v. Besheer (69 Mo. App. 72), 43, 964.  
 State v. Best (106 N. C. 747; 12 S. E. 907), 1225.  
 State v. Best (108 N. C. 747; 12 S. E. 907), 1231, 1234, 1845.  
 State v. Beswick (13 R. I. 211), 46, 83, 267.  
 State v. Bevans (51 Mo. App. 368), 928, 930.  
 State v. Beverly (45 N. J. L. 288), 439.  
 State v. Biddle (54 N. H. 379), 10, 11, 19, 44, 48, 51, 82, 1753.  
 State v. Bielby (21 Wis. 204), 1505, 1506, 1553.  
 State v. Bierman (1 Strob. [S. C.] 256), 1246, 1365.  
 State v. Binder (38 Mo. 450), 904.  
 State v. Bindle (28 Iowa 512), 8.  
 State v. Binnard (21 Wash. 349; 58 Pac. 210), 1128, 1133.

[References are to pages.]

- State v. Binswanger (122 Mo. App. 78; 988 S. W. 103), 400.
- State v. Bird (108 Mo. App. 163; 83 S. W. 284), 870.
- State v. Bissell (67 Ia. 616; 25 N. W. 831), 822, 830, 835.
- State v. Bixman (162 Mo. 1; 62 S. W. 828), 139, 225, 331, 789, 1382, 1383, 1384.
- State v. Black ([Ark.] 111 S. W. 993), 1098.
- State v. Black (9 Ind. [N. C.] 378), 370.
- State v. Blackman (134 N. C. 683; 47 S. E. 16), 1084, 1454.
- State v. Blackwell (65 Me. 556), 307, 316, 325.
- State v. Blair (72 Iowa 591; 34 N. W. 432), 827, 828, 1026, 1073, 1044, 1065, 1756.
- State v. Blaisdell (33 N. H. 388), 23, 1492, 1519, 1527.
- State v. Bland (121 Ind. 514), 294.
- State v. Blands (101 Mo. App. 618; 74 S. W. 3), 1300, 1491, 1637.
- State v. Blankeney (96 Md. 711; 54 Atl. 614), 1453.
- State v. Blodgett (50 Ore. 329; 92 Pac. 820), 2068.
- State v. Blount (48 Ark. 34; 2 S. W. 190), 1716.
- State v. Bluefield Drug Co. (43 W. Va. 144; 27 S. E. 350), 839.
- State v. Board (70 S. C. 509; 50 S. E. 203), 175.
- State v. Board (78 S. C. 461; 59 S. E. 145), 902.
- State v. Board, etc. (45 Ind. 501), 627, 675, 662, 1015.
- State v. Board ([Neb.] 108 N. W. 122), 618, 662, 665.
- State v. Board of Corrections (16 Utah 478; 52 P. 1090), 2261.
- State v. Board ([Wyo.] 105 Pac. 295), 103, 105, 158.
- State v. Bock (167 Ind. 559; 79 N. E. 493), 192, 293, 543, 831.
- State v. Bodeckar (11 Wash. 417; 39 Pac. 645), 1508.
- State v. Bogan (2 La. Ann. 838), 1446, 1459.
- State v. Boggess (36 W. Va. 713; 15 S. E. 423), 1461, 1483, 1562.
- State v. Bohen ([Del.] 74 Atl. 1), 1161.
- State v. Boice (Cleves [S. C.] 77), 1515.
- State v. Bollenbach ([Minn.] 108 N. W. 3), 958), 1587.
- State v. Boncher (59 Wis. 477; 18 N. W. 35), 1492, 1561.
- State v. Bonnell (119 Ind. 494; 22 N. E. 301), 179, 183, 450, 490, 639, 649.
- State v. Bonner (2 Head 135), 1221.
- State v. Bonney (30 N. H. 206), 1615.
- State v. Bonsfield (24 Neb. 517; 39 N. W. 427), 196, 662, 671.
- State v. Boston Club (45 La. Ann. 585; 12 So. 895; 20 L. R. A. 185), 139, 1333.
- State v. Bott (31 La. Ann. 663; 34 Am. Rep. 224), 124, 127, 163, 164, 167, 168, 183, 184, 215, 216, 217, 263, 299, 431.
- State v. Bougher (3 Blackf. 307), 1443.
- State v. Bowden ([Kan.] 101 Pac. 654), 1742, 1744.
- State v. Bowen (1 Houst. Cr. Rep. ([Del.] 91), 2085.
- State v. Bowen (17 S. C. 58), 2034.
- State v. Bowen (4 Cranch C. C. 404), 2073.
- State v. Bowerman ([Mo. App.] 124 S. W. 41), 1179.
- State v. Bowerman (40 Mo. App. 576), 886, 893.
- State v. Bowers (65 Mo. App. 639; 2 Mo. App. Rep. 1181), 839.



[References are to pages.]

- State v. Bowman (79 Iowa 566;  
 44 N. W. 813), 1001.  
 State v. Bowman ([Iowa] 82 N.  
 W. 493), 1003.  
 State v. Brackett (41 Minn. 33;  
 42 N. W. 548), 549, 1189.  
 State v. Bradford (2 Mo. App.  
 Repr. 425; 79 Mo. App. 346),  
 1525.  
 State v. Bradford (79 Mo. App.  
 346; 2 Mo. App. Rep. 425),  
 1641, 1650.  
 State v. Bradford (13 S. D. 201;  
 83 N. W. 47; 80 N. W. 143),  
 1457.  
 State v. Bradish (95 Wis. 205; 70  
 N. W. 172), 734.  
 State v. Bradley (96 Me. 121; 51  
 Atl. 816), 1047, 1048, 1062,  
 1662.  
 State v. Bradley (132 N. C. 1060;  
 44 S. E. 122), 757, 1575.  
 State v. Bradley (10 N. D. 157;  
 86 N. W. 354), 985.  
 State v. Bradley (15 S. D. 148; 87  
 N. W. 590), 1241, 1446.  
 State v. Bradshaw (2 Swan 627),  
 1246, 1457.  
 State v. Brady (41 Conn. 588),  
 473, 1315, 1643.  
 State v. Brady (6 R. I. 76), 1445.  
 State v. Brady (14 R. I. 508),  
 505, 551.  
 State v. Brady (16 R. I. 51; 12  
 Atl. 238), 1445, 1545, 1552.  
 State v. Brandon (28 Ark. 410),  
 688.  
 State v. Brattleboro (68 Vt. 520;  
 35 Atl. 472), 382, 809.  
 State v. Braun (96 Minn. 521; 105  
 N. W. 975), 391, 1559.  
 State v. Brawn (130 Mo. App.  
 214; 109 S. W. 99), 890.  
 State v. Breaux ([La.] 47 So.  
 876), 291, 844, 1526.  
 State v. Brennen's Liquors (25  
 Conn. 278), 120, 175, 192, 255,  
 270, 319, 1008, 1010, 1036,  
 1043, 1047, 1058, 1059, 1068,  
 1748.  
 State v. Brennan (2 S. D. 384; 50  
 N. W. 625), 148, 149, 240,  
 1455.  
 State v. Brennan ([Iowa] 117 N.  
 W. 279), 999.  
 State v. Brennan (6 Kan. App.  
 765; 50 Pac. 986), 1556.  
 State v. Briggs (81 Iowa 585; 47  
 N. W. 865), 1176.  
 State v. Brindle (28 Iowa 512),  
 965, 966, 967.  
 State v. Brittain (89 N. C. 574),  
 214, 270, 273, 396, 437.  
 State v. Broeder (90 Mo. App.  
 169), 1384, 1720, 1723.  
 State v. Brooks (33 Kan. 708; 7  
 Pac. 591), 1491, 1739, 1743.  
 State v. Brooks (74 Kan. 175; 85  
 Pac. 1013), 287, 1677.  
 State v. Brooks (94 Mo. App. 57;  
 67 S. W. 933), 500.  
 State v. Brosius (39 Mo. 534),  
 1189, 1637.  
 State v. Broussard (41 La. Ann.  
 81; 5 So. 647), 2246, 2248.  
 State v. Brown ([Ark.] 102 S.  
 W. 394), 1168.  
 State v. Brown (51 Conn. —),  
 24, 1494, 1495, 1496.  
 State v. Brown (19 Fla. 563),  
 208.  
 State v. Brown (4 Iowa 349),  
 1016.  
 State v. Brown (58 Iowa, 298),  
 1746.  
 State v. Brown (75 Iowa 768; 39  
 N. W. 829), 1723.  
 State v. Brown ([Iowa] 109 N.  
 W. 1011), 526, 527, 688,  
 1512, 1695, 1741.  
 State v. Brown (41 La. Ann. 771;  
 6 So. 638), 502, 1160, 1505,  
 1506.  
 State v. Brown (31 Me. 522), 53,  
 822, 1503, 1510, 1527, 1554,  
 1756.  
 State v. Brown (107 Minn. 175;  
 119 N. W. 657), 1098.  
 State v. Brown (83 Mo. 480),  
 1567.

[References are to pages.]

- State v. Brown (181 Mo. 192; 79 S. W. 1111), 2038, 2056.  
 State v. Brown (18 Mo. App. 620), 831.  
 State v. Brown (93 Mo. App. 543; 67 S. W. 711), 1372, 1373.  
 State v. Brown (130 Mo. App. 214; 109 S. W. 99), 1686.  
 State v. Brown (60 N. H. 205), 829.  
 State v. Brown (14 N. D. 529; 104 S. W. 1112), 1103, 1481.  
 State v. Brown ([Okla.] 103 Pac. 762), 2261.  
 State v. Brown (36 Vt. 560), 1445; 1446.  
 State v. Brown (49 Vt. 437), 1723.  
 State v. Bruce (48 Iowa 530; 30 Am. Rep. 403), 2247.  
 State v. Bruce (26 W. Va. 123), 1483, 1484, 1485.  
 State v. Bruder (35 Mo. App. 475), 1233, 1237.  
 State v. Brunswick (2 N. J. Law J. 240), 467.  
 State v. Bryant (97 Minn. 8; 105 N. W. 974), 1105, 1108.  
 State v. Bryant (14 Mo. 340), 513, 1372.  
 State v. Bryon (74 N. C. 351), 1583, 1633.  
 State v. Buck (78 Me. 193; 3 Atl. 573), 1484, 1552.  
 State v. Buck (120 Mo. 479; 25 S. W. 573), 264, 1585.  
 State v. Buckley (40 Conn. 246), 1094.  
 State v. Buckley (5 Har. [Del.] 508), 1107, 1109.  
 State v. Buckner (52 Ind. 278), 1518.  
 State v. Buckner (20 Mo. App. 420), 1489.  
 State v. Budwig (21 Minn. 202), 271.  
 State v. Buechler (10 S. D. 156; 72 N. W. 114), 139, 201, 808, 816.  
 State v. Buford (10 Mo. 703), 1510, 1521.  
 State v. Bugbee (22 Vt. 32), 513, 1111, 1372.  
 State v. Bullard (16 N. H. 139), 2247.  
 State v. Bullock (13 Ala. 413). 2041, 2045, 2052, 2071, 2072, 2074.  
 State v. Bundy (24 S. C. 439; 58 Am. Rep. 262), 2040, 2046.  
 State v. Burchard (4 S. D. 548; 57 N. W. 491), 1502.  
 State v. Burchfield (149 N. C. 537; 63 S. E. 89), 1620.  
 State v. Burchinal (4 Harr. [Del.] 572), 1106, 1109, 1354.  
 State v. Burgess (4 Ind. 606), 1502.  
 State v. Burgoyne (7 Lea 173), 182.  
 State v. Burk (66 Me. 127), 1051, 154.  
 State v. Burkett (51 Kan. 175; 32 Pac. 125), 1476.  
 State v. Burkhalter (118 La. 657; 43 So. 268), 1479, 1505.  
 State v. Burks (33 Kan. 708; 7 Pac. 591), 1505.  
 State v. Burnett (77 Mo. 570), 1303, 1305.  
 State v. Burns (44 Conn. 149), 1445.  
 State v. Burns (20 N. H. 550), 1519.  
 State v. Burr (10 Me. 438), 77.  
 State v. Burrow (37 Conn. 425), 1015, 1074.  
 State v. Bursaw (74 Kan. 473; 87 Pac. 183), 1558.  
 State v. Burton (138 N. C. 575; 50 S. E. 214), 1469, 1650, 1651.  
 State v. Busby (44 N. J. L. 627), 555.  
 State v. Bush ([Mo.] 118 S. W. 670), 917, 1714.  
 State v. Buskirk (18 Ind. App. 629; 48 N. E. 872), 1509, 1520.  
 State v. Buskirk (20 Ind. App. 496; 48 N. E. 871), 1740.

[References are to pages]

- State v. Bussamus (108 Iowa 11; 78 N. W. 700), 341, 972.  
 State v. Butcher (40 Ark. 362), 1459.  
 State v. Butler ([Me.] 43 Atl. 560), 1744.  
 State v. Butcher (1 S. D. 401; 47 N. W. 406), 1454.  
 State v. Cady (47 Conn. 44), 1125, 1304, 1320.  
 State v. Cain (78 S. C. 348; 58 N. E. 937), 424.  
 State v. Cain (8 W. Va. 720), 1516, 1567.  
 State v. Cain (9 W. Va. 559), 1237, 1460, 1537, 1645.  
 State v. Cairns (64 Kan. 782; 68 Pac. 621), 949.  
 State v. Caldwell ([Miss.] 17 So. 372), 1505.  
 State v. Calloway (11 Idaho 719; 84 Pac. 27), 91, 103, 164, 184, 192, 289, 408, 415, 455, 1129, 1303.  
 State v. Calvin (127 Iowa 632; 103 N. W. 968), 963.  
 State v. Camden (40 N. J. L. 156), 170.  
 State v. Camp (64 Vt. 295; 24 Atl. 1114), 1299.  
 State v. Campbell (76 Iowa 122; 40 N. W. 100), 386, 955, 956.  
 State v. Campbell (214 Mo. 362; 113 S. W. 1081; 119 S. W. 494), 891, 1463, 1466, 1688.  
 State v. Campbell (12 R. I. 147), 1530.  
 State v. Camper (91 Md. 672; 47 Atl. 1027), 1558.  
 State v. Capdeville (104 La. 561; 29 So. 515), 426.  
 Stae v. Capitol Brewing & Ice Co. ([Ala.] 50 So. 312), 544.  
 State v. Cappy (50 Ind. 291), 133, 247.  
 State v. Cardozo (5 S. C. 297), 106.  
 State v. Carins (64 Kan. 782; 68 Pac. 621), 1218.  
 State v. Carl (43 Ark. 353; 51 Am. Rep. 565), 1280, 1281.  
 State v. Carlyle (33 Kan. 716; 7 Pac. 623), 1763.  
 State v. Carmody (50 Ore. 1; 91 Pac. 446, 1081), 83, 1682, 1684.  
 State v. Carnahan (63 Mo. App. Rep. 766), 833, 1650.  
 State v. Carney (20 Iowa 82), 110, 183, 316, 523, 525.  
 State v. Carpenter (20 Ind. 219), 1490, 1491, 1516.  
 State v. Carron (73 N. H. 434; 62 Atl. 1044), 490, 733, 1359, 1742, 1767.  
 State v. Carson (2 Ohio Dec. 81), 1461.  
 State v. Carter (98 Mo. 176; 11 S. W. 624), 2041.  
 State v. Carter (28 S. C. 1; 4 S. E. 790), 928.  
 State v. Carter (7 Humph. 158), 1508.  
 State v. Carver (12 R. I. 285), 1503.  
 State v. Carver Co. (60 Minn. 510; 62 N. W. 1135), 635.  
 State v. Casey (45 Me. 435), 1542.  
 State v. Casey (54 Me. 435), 1550.  
 State v. Cass Co. (12 Neb. 54; 10 N. W. 571), 637, 648, 600.  
 State v. Cass Co. Ct. ([Mo.] 119 S. W. 1010), 283.  
 State v. Cass County Ct. ([Mo.] 119 S. W. 1010, 1014), 648, 937.  
 State v. Cassety (1 Rich. L. [S. C.] 90), 1111, 1504.  
 State v. Cassidy (22 Minn. 312; 21 Am. Rep. 765), 192, 277.  
 State v. Cassity (49 Mo. App. 300, 302), 1502.  
 State v. Castello (62 Iowa 404; 17 N. W. 605), 2258.  
 State v. Caswell (2 Humph. 399), 1377.  
 State v. Cate (58 N. H. 241), 110.

[References are to pages.]

- State v. Cather (121 Iowa 106; 96 N. W. 722), 1736.  
 State v. Cathey (41 Ark. 308), 1571.  
 State v. Cattle (15 Me. 473), 1486.  
 State v. Caulfield (23 La. Ann. 148 ([1887]), 2247.  
 State v. Cauthorn (40 Mo. App. 94), 563, 564.  
 State v. Certain Liquors ([R. I.] 45 Atl. 552), 1074.  
 State v. Chamberlain (74 Iowa 266; 37 N. W. 326), 220, 355, 840, 841.  
 State v. Chambers (93 N. C. 600), 1463, 1468, 1476.  
 State v. Chambers (2 Ohio Dec. 647), 1290.  
 State v. Chambless (45 Ark. 349), 1498.  
 State v. Chamblyss (1 Cleves 220; 34 Am. Dec. 593), 72, 508.  
 State v. Chandler (15 Vt. 425), 1111.  
 State v. Chapman (94 Iowa 67; 62 N. W. 659), 1449.  
 State v. Chapman (1 S. D. 414; 47 N. W. 411; 10 L. R. A. 432), 309, 336, 1101.  
 State v. Chapman (25 W. Va. 408), 1557.  
 State v. Charles (16 Minn 478), 271.  
 State v. Charleston (12 Rich. L. 702), 97.  
 State v. Charleston, etc. Co. (80 S. C. 116; 61 S. E. 209), 980.  
 State v. Charlton (11 W. Va. 332; 27 Am. Rep. 603), 1488.  
 State v. Chartrand (86 Me. 547; 30 Atl. 10), 1057.  
 State v. Chastain (19 Ore. 176; 26 Pac. 963), 513, 514, 1238, 1372, 1373.  
 State v. Chastain (49 S. C. 171; 27 S. E. 2), 1086.  
 State v. Chester (18 S. C. 464), 124.  
 State v. Chester (39 S. C. 367; 17 S. E. 752), 1, 185.  
 State v. Cheyenne (7 Wyo. 417; 52 Pac. 975), 400, 424, 448, 627.  
 State v. Chico ([S. C.] 64 S. E. 306), 1480.  
 State v. Chiles (64 Kan. 453; 67 Pac. 884), 1549.  
 State v. Chilton (26 Mo. 170), 1457.  
 State v. Chipp (121 Mo. App. 556; 97 S. W. 236), 825, 1634.  
 State v. Chiswell (36 W. Va. 659; 15 S. E. 412), 1505.  
 State v. Christian ([Mo. App.] 114 S. W. 549), 1677.  
 State v. Church (199 Mo. 605), 2038.  
 State v. Church (6 S. D. 89; 60 N. W. 143), 12, 83.  
 State v. Churchill (25 Me. 306) 1447, 1534.  
 State v. Cicault (1 Daily [N. Y.] 23), 1727.  
 State v. Circuit Court (50 N. J. L. 585; 15 Atl. 272), 186, 235, 237, 238, 289, 867, 868, 893.  
 State v. City Council of Aiken (42 S. C. 222; 20 S. E. 221; 26 L. R. A. 345), 174, 476.  
 State v. Clark (3 Ind. 451), 23, 1492.  
 State v. Clark ([La.] 50 So. 811), 1700.  
 State v. Clarke (54 Mo. 17; 14 Am. Rep. 471), 294, 437, 449, 488, 490.  
 State v. Clark (18 Mo. App. 531), 1752.  
 State v. Clarke (8 Fost. 176; 61 Am. Dec. 611), 165, 168, 169.  
 State v. Clark (28 N. H. 176), 432, 439, 457.  
 State v. Clark (15 R. I. 383; 5 Atl. 635), 121, 147, 294, 491, 1194.  
 State v. Clark (23 Vt. 293), 1519.  
 State v. Clark (44 Vt. 636), 1445.

[References are to pages.]

- State v. Cleary (97 Iowa 413; 66 N. W. 724), 1670.
- State v. Clemmensen (92 Minn. 191; 99 N. W. 640), 1540.
- State v. Clevenger (25 Mo. App. 653), 838.
- State v. Clevenger (156 Mo. 190; 56 S. W. 1078), 2038, 2056.
- State v. Clinkenbeard ([Mo.] 115 S. W. 1059), 1556.
- State v. Clotter (33 Ind. 409) 1233.
- State v. Cloud (6 Ala. 628), 72.
- State v. Cloughly (73 Iowa 626; 35 N. W. 652), 11, 43, 828, 843, 1587, 1589, 1643, 1701, 1712.
- State v. Clow (131 Mo. App. 548; 110 S. W. 632), 1211, 1376.
- State v. Cloyd (34 Neb. 600; 52 N. W. 579), 1088.
- State v. Cobaugh (78 Me. 401; 6 Atl. 4), 1070.
- State v. Cochran ([Ore.] 104 Pac. 419), 121, 400, 936.
- State v. Coday (69 Mo. App. 70), 832.
- State v. Coffeyville (78 Kan. 599; 97 Pac. 372), 418.
- State v. Cofield (22 S. C. 301), 493, 498.
- State v. Cofran (48 Me. 364), 1487, 1651.
- State v. Cohen (65 Kan. 849; 70 Pac. 600), 1203.
- State v. Cohen (35 Md. 236), 508.
- State v. Colby (92 Iowa 463; 61 N. W. 187), 1280.
- State v. Colby (55 N. H. 72), 1615, 1616.
- State v. Coleman (3 Ala. 14), 1575.
- State v. Coleman (27 La. Ann. 691), 2041, 2051, 2056.
- State v. Coleman (34 Neb. 440; 51 N. W. 1025), 610, 616, 617.
- State v. Collins (11 Iowa 141), 1516, 1517.
- State v. Collins (8 Kan. App. 398; 57 Pac. 38), 1609, 1652.
- State v. Collins (48 Me. 217), 1542, 1550.
- State v. Collins (68 N. H. 46; 36 Atl. 550), 989, 991, 993, 994, 1907.
- State v. Collins ([Minn.] 120 N. W. 1081), 1739.
- State v. Collins (28 R. I. 439; 67 Atl. 796), 171, 824, 1171, 1374, 1376, 1589, 1655, 1660, 1662, 1663.
- State v. Collins (74 Vt. 43; 52 Atl. 69), 976, 987, 989.
- State v. Colnen (48 Iowa 567), 1233.
- State v. Columbia (6 S. C. 8), 793.
- State v. Columbia (17 S. C. 80), 394, 395, 398, 400, 558, 645.
- State v. Colvin (127 Iowa 632; 103 N. W. 968), 1697, 1698.
- State v. Colwell (3 R. I. 284), 1451.
- State v. Combs (32 Me. 529), 1722.
- State v. Combs (19 Ore. 295; 24 Pac. 235), 1759.
- State v. Comolli (101 Me. 47; 63 Atl. 326), 1048, 1050.
- State v. Common Council (41 Minn. 211; 42 N. W. 1058), 746.
- State v. Common Pleas, etc. (36 N. J. L. 72), 240.
- State v. Commonwealth (28 Vt. 508), 1287.
- State v. Comstock (27 Vt. 553), 1444, 1748.
- State v. Conega (121 La. 522; 46 So. 614), 1483.
- State v. Conley (22 R. I. 397; 48 Atl. 200), 642.
- State v. Conlin (27 Vt. 318), 110, 1744, 1748.
- State v. Connell (38 N. H. 81), 1637.
- State v. Connolly (63 Me. 212), 1081, 1082, 1087.



[References are to pages.]

- State v. Connolly (96 Me. 405; 52 Atl. 908), 1009, 1062.  
 State v. Connor (30 Ohio St. 405), 1447.  
 State v. Conway (38 Mont. 42; 98 Pac. 654), 1444, 1724.  
 State v. Constantine (43 Wash. 102; 86 Pac. 384), 1236, 1357.  
 State v. Constantino (76 Vt. 192; 56 Atl. 1101), 1520.  
 State v. Cook (30 Kan. 82; 1 Pac. 32), 1673.  
 State v. Cooke (24 Minn. 247; 31 Am. Rep. 344), 228, 232, 235, 236, 240, 495, 716, 928, 933.  
 State v. Cool ([W. Va.] 66 S. E. 740), 1700.  
 State v. Cooler (30 S. C. 105), 226.  
 State v. Coonan (82 Iowa 400; 48 N. W. 921), 309, 310, 327.  
 State v. Cooper (114 Ind. 12; 16 N. E. 518), 1849.  
 State v. Cooper (16 Mo. 551), 1637.  
 State v. Cooper (35 Mo. App. 532), 1245.  
 State v. Cooper (101 N. C. 684; 8 S. E. 134), 908, 920.  
 State v. Cooper (26 W. Va. 338), 1197, 1622.  
 State v. Cooper County (66 Mo. App. 96), 600, 601.  
 State v. Cooster (10 Iowa 453), 369.  
 State v. Copland (3 R. I. 33), 233, 294.  
 State v. Copp (34 Kan. 522; 9 Pac. 233), 827.  
 State v. Corcoran (70 Minn. 12; 72 N. W. 732), 1523.  
 State v. Coren (35 Md. 236), 520.  
 State v. Corn (76 Kan. 416; 91 Pac. 1067), 1679.  
 State v. Corn76 Kan. 416; 91 Pac. 1067), 1679.  
 State v. Cornwell (12 Neb. 470; 11 N. W. 729), 799.  
 State v. Corrick (82 Iowa 451; 48 N. W. 808), 324, 327.  
 State v. Corrivau (93 Minn. 176; 100 N. W. 638), 2038, 2069.  
 State v. Corron (73 N. H. 434; 62 Atl. 1044), 103, 718, 750, 768, 778.  
 State v. Cosgrove (16 R. I. 411; 16 Atl. 900), 1749, 1751.  
 State v. Costa (78 Vt. 198; 62 Atl. 38), 969, 970, 971, 1086, 1660, 1662, 1663, 1697, 1998, 1706, 1710.  
 State v. Cottle (15 Me. 473), 1446, 1537.  
 State v. Cottrill (31 W. Va. 162; 6 S. E. 428), 1483.  
 State v. Couch (54 S. C. 256; 32 S. E. 408), 1506.  
 State v. Coulter (40 Kan. 87; 19 Pac. 368), 53, 1610, 1626, 1701.  
 State v. County Court, etc. (50 Mo. 317), 228, 248.  
 State v. Courtney (73 Iowa 619; 35 N. W. 685), 286, 756, 825, 830, 831.  
 State v. Coval ([W. Va.] 66 S. E. 740), 1483.  
 State v. Cowan (29 Mo. 330), 270, 271, 394.  
 State v. Cox (82 Me. 417; 19 Atl. 857), 1479, 1551.  
 State v. Cox (29 Mo. 475), 1441, 1442, 1557.  
 State v. Cox (23 W. Va. 797), 837, 839.  
 State v. Crabtree (27 Mo. 232), 1305, 1308, 1310, 1567.  
 State v. Cragg ([Mo. App.] 111 S. W. 856), 1566.  
 State v. Craig (132 Ind. 54; 31 N. E. 352), 643.  
 State v. Crawford (9 Kan. App. 886; 61 Pac. 316), 1698.  
 State v. Crawford (28 Kan. 726; 42 Am. Rep. 182), 256, 977.  
 State v. Crawley (75 Miss. 919; 23 So. 625), 968.

[References are to pages.]

- State v. Creden (78 Iowa 556; 43 N. W. 673; 7 L. R. A. 295), 111, 1021, 1070.
- State v. Crimmins (31 Kan. 576; 2 Pac. 574), 1740, 1746.
- State v. Cron (23 Minn. 140), 505, 550, 1160.
- State v. Cronin (39 Tex. 171), 1458.
- State v. Crooker (95 Mo. 389; 8 S. W. 422), 1143.
- State v. Cross (27 Mo. 332), 2041.
- State v. Cross (42 W. Va. 253; 24 S. E. 996), 2056, 2063.
- State v. Crotean (23 Vt. 14; 54 Am. Dec. 90), 1609.
- State v. Crow (53 Kan. 662; 37 Pac. 170), 1643.
- State v. Crowell (25 Me. 171), 1643.
- State v. Crowell (30 Me. 115), 1492, 1527.
- State v. Crowley (37 Mo. 369), 1537.
- State v. Cucuel (24 N. J. L. 249), 2250.
- State v. Cucuel (31 N. J. Law [2 Vroom] 249), 2247.
- State v. Cummins (76 Iowa 333; 40 N. W. 124), 828, 840, 1646.
- State v. Cummings (17 Neb. 311; 22 N. W. 545), 541, 551.
- State v. Cunningham (25 Conn. 195), 264, 265, 314, 1089, 1592, 1659.
- State v. Curley (33 Iowa 359), 1510, 1649.
- State v. Currie (8 N. D. 545; 80 N. W. 475), 43, 964, 1703.
- State v. Currier ([N. H.] 19 Atl. 1000), 258.
- State v. Curtiss (69 Conn. 86; 90 S. W. 1014), 1349, 1555.
- State v. Curtis (8 Tex. Civ. App. 506; 28 S. W. 134), 768, 781.
- State v. Curtis (130 Wis. 357; 110 N. W. 189), 742.
- State v. Curtright ([Mo.] 114 S. W. 1146), 1505.
- State v. Cutting (3 Ore. 260), 1171, 1172, 1598, 1643.
- State v. Dahlquist ([N. D.] 115 N. W. 81), 1606, 1691, 1701.
- State v. D'Alemberte (30 Fla. 545; 11 So. 905), 429, 441, 573, 585.
- State v. Dalton (101 N. C. 680; 8 S. E. 154), 822.
- State v. Danforth (62 Vt. 188; 19 Atl. 229), 1175, 1299.
- State v. Dannenberg ([N. C.] 66 S. E. 301), 162, 433, 440, 796.
- State v. Darling (77 Vt. 67; 58 Atl. 974), 957, 1558.
- State v. Darlington (153 Ind. 1; 53 N. E. 925), 1443.
- State v. Davis (130 Ala. 148; 30 So. 344), 292, 294, 295.
- State v. Davis (9 Houst. [Del.] 407), 2041, 2045, 2052, 2072.
- State v. Davis (44 Kan. 60; 24 Pac. 73), 986.
- State v. Davis (119 La. 247; 44 So. 4), 652.
- State v. Davis (23 Me. 403), 1115.
- State v. Davis (108 Mo. 666; 18 S. W. 894; 32 Am. St. Rep. 640; 117 Mo. 614; 23 S. W. 759), 268.
- State v. Davis (126 Mo. App. 235; 102 S. W. 1103), 1525.
- State v. Davis (129 Mo. App. 129; 108 S. W. 127), 838.
- State v. Davis (76 Mo. App. 586), 831, 838, 1649.
- State v. Davis (69 N. H. 350; 41 Atl. 267), 993, 996, 1003.
- State v. Davis (109 N. C. 780; 14 S. E. 55), 1476.
- State v. Davis ([S. C.] 66 S. E. 875), 333.
- State v. Davis (52 W. Va. 224; 43 S. E. 99), 2068, 2082.
- State v. Davis (62 W. Va. 500; 60 N. E. 584), 1598.
- State v. Day (37 Me. 244), 265, 1114, 1113, 1666, 1667.
- State v. Dean. (44 Iowa 648), 1448, 1549.

[References are to pages.]

- State v. Dearing (65 Mo. 533), 2041, 2072.  
 State v. Deberry (5 Iowa 371), 2024.  
 State v. De Gress (53 Tex. 387), 925.  
 State v. DeKruif (72 Iowa 488; 34 N. W. 607), 777.  
 State v. Delancey (76 N. J. L. 462; 69 Atl. 958), 1504.  
 State v. Delano (54 Me. 501), 452, 523, 525.  
 State v. Dellaire (4 N. D. 312; 60 N. W. 988), 1505, 1507.  
 State v. Delemater (20 S. D. 23; 104 N. W. 537), 1372, 1376, 1379.  
 State v. Demarest (41 La. Ann. 413; 6 So. 654), 2248.  
 State v. Dengolensky (82 Mo. 44), 32, 33, 81, 1496.  
 State v. Dennie (51 La. Ann. 608; 25 So. 394), 1299.  
 State v. Denoon (31 W. Va. 122; 5 S. E. 315), 1358.  
 State v. Denton (128 Mo. App. 304; 107 S. W. 446), 667, 677.  
 State v. De Paoli (24 Wash. 71; 63 Pac. 1102), 1462.  
 State v. Depeder (65 Miss. 26; 3 So. 80), 777.  
 State v. Devers (38 Ark. 517), 513, 1372, 1517.  
 State v. Devine ([Me.] 13 Atl. 128), 1046.  
 State v. Deschamp (53 Ark. 490; 14 S. W. 653), 151, 157, 158.  
 State v. Dick (47 Minn. 475; 50 N. W. 362), 43, 1712.  
 State v. Dieffenbach (47 Iowa 638), 1102.  
 State v. Di Guglielmo ([Del.] 55 Atl. 350), 2038.  
 State v. Dillahunt (3 Harr. [Del.] 551), 2041, 2051, 2054.  
 State v. Dillard (59 W. Va. 197; 53 S. E. 117), 2038, 2062, 2068.  
 State v. Dittfurth ([Tex. Civ. App.] 79 S. W. 52), 357, 771, 772.  
 State v. Dixon (104 Iowa 741; 74 N. W. 692), 1451, 1482.  
 State v. Dobbins (116 Mo. App. 29; 92 S. W. 136), 887.  
 State v. Dobbins (149 N. C. 465; 62 S. E. 645), 1089.  
 State v. Dodge (78 Me. 439; 6 Atl. 875), 1542, 1548.  
 State v. Doe (79 Ind. 9), 788.  
 State v. Doherty (2 Idaho 1105; 29 Pac. 855), 170, 187.  
 State v. Dolan (13 Idaho 693; 92 Pac. 995), 164, 193, 215, 287.  
 State v. Dolan (122 Ind. 141; 23 N. E. 761), 1248, 1253, 1256, 1564.  
 State v. Dolan (17 Wash. 499; 50 Pac. 472), 1736.  
 State v. Dominissee ([Iowa] 99 N. W. 561), 977.  
 State v. Donahue (120 Iowa 154; 94 N. W. 503), 1269, 1512.  
 State v. Donaldson (12 S. D. 259; 81 N. W. 299), 1449, 1538.  
 State v. Donehey (8 Iowa 396), 110.  
 State v. Donnenberg ([N. C.] 66 S. E. 301), 795.  
 State v. Donner (21 Wis. 274), 1501.  
 State v. Donovan (41 Iowa 587), 1098.  
 State v. Donovan (61 Iowa 369; 16 N. W. 206), 2041, 2048, 2076.  
 State v. Donovan (10 N. D. 203; 86 N. W. 709), 977, 984, 986, 1004, 1253, 1257.  
 State v. Dorr (82 Me. 212; 19 Atl. 171), 121, 491, 1491, 1542, 1548, 1572.  
 State v. Doss (70 Ark. 312; 67 S. W. 867), 124, 183, 186.  
 State v. Dougherty (2 Idaho 1105; 29 Pac. 855), 168.

[References are to pages.]

- State v. Dougherty (1 Ohio Dec. 37; 1 West. Law J. 271), 2247.  
 State v. Douglass (73 Iowa 279; 34 N. W. 856), 830.  
 State v. Dow (74 Iowa 141; 37 N. W. 114), 1747.  
 State v. Douglass (75 Iowa 432; 39 N. W. 686), 986, 987, 999, 1003, 1004.  
 State v. Dougher (49 Mo. 409), 1559.  
 State v. Douglass (28 W. Va. 297) 2069, 2071.  
 State v. Dow (21 Vt. 484), 1353, 1354.  
 State v. Dowdell (98 Me. 460; 57 Atl. 846), 253.  
 State v. Dowdy (145 N. C. 432; 58 S. E. 1002), 264, 1508, 1732.  
 State v. Downer (21 Wis. 274), 503, 504, 1159, 1554.  
 State v. Downs (7 Ind. 237), 1501.  
 State v. Downs (116 N. C. 1064; 21 S. E. 689), 1185.  
 State v. Doyle (11 R. I. 574), 1502, 1508.  
 State v. Doyle (15 R. I. 527; 19 Atl. 900), 212, 1505, 1507, 1545.  
 State v. Drake (69 N. C. 589), 1566.  
 State v. Drake (83 Wis. 257; 53 N. W. 496), 896.  
 State v. Drischel (26 Ind. 154, 180), 1307, 1308.  
 State v. Drug Co. (43 W. Va. 144; 27 S. E. 350), 844.  
 State v. Duane (100 Me. 447; 62 Atl. 80), 1035.  
 State v. Dudley (33 Ind. App. 640; 71 N. E. 975), 511, 514, 530, 531.  
 State v. Duesting (33 Minn. 102; 22 N. W. 442; 53 Am. Rep. 12), 1171, 1177, 1178.  
 State v. Dugan (52 Kan. 23; 34 Pac. 409), 1674.  
 State v. Dugan (110 Mo. 138; 19 S. W. 195), 233, 875, 885, 1466, 1468, 1687, 1688.  
 State v. Duggan (15 R. I. 403; 6 Atl. 787), 831, 1521, 1525.  
 State v. Dunlap (81 Me. 389; 17 Atl. 313), 1489.  
 State v. Dunning (14 S. D. 316; 85 N. W. 589), 501, 824, 834.  
 State v. Dunphy (79 Me. 104; 8 Atl. 344), 1077, 1078.  
 State v. Dupries (18 Ore. 372; 23 Pac. 255), 1223, 1224.  
 State v. Durein (46 Kan. 695; 27 Pac. 148), 1002.  
 State v. Durein (70 Kan. 13; 78 Pac. 152), 111, 662, 1211, 1583, 1652.  
 State v. Durein (70 Kan. 13; 80 Pac. 987, affirming 78 Pac. 152; 70 Kan. 1), 111, 247, 632, 662, 987, 1211, 1583, 1652.  
 State v. Durein (70 Kan. 1; 78 Pac. 182; affirmed 208 U. S. 613; 28 Sup. Ct. 567; 52 L. Ed.), 997.  
 State v. Durkem (23 Mo. App. 387), 1353, 1358, 1361.  
 State v. Durnam (73 Minn. 150; 75 N. W. 1127), 259.  
 State v. Dwyer (21 Minn. 512), 395, 397, 472, 723, 727.  
 State v. Easton Social Club (73 Md. 97; 20 Atl. 783; 10 L. R. A. 64), 1325, 1337, 1339.  
 State v. Eaves (106 N. C. 752; 11 S. E. 370; 8 L. R. A. 259), 131, 593, 1278.  
 State v. Ebby (170 Mo. 497; 71 S. W. 52), 199.  
 State v. Edmunds ([Ore.] 104 Pac. 430), 1443.  
 State v. Edwards (109 La. 236; 33 So. 209), 259.  
 State v. Edwards (60 Mo. 490), 1365.  
 State v. Elder (65 Ind. 282; 32 Am. Rep. 32), 1716, 1722.  
 State v. Eldred (8 Kan. App. 625; 56 Pac. 153), 1742.

[References are to pages.]

- State v. Elliott (34 Tex. 148), 1484.  
 State v. Elwood (37 Neb. 473; 55 N. W. 1074), 672.  
 State v. Ely ([S. D.] 118 N. W. 687), 1486, 1697.  
 State v. Emmons ([Ore.] 104 Pac. 282), 1444, 1466.  
 State v. Engleman (66 Kan. 340; 71 Pac. 859), 1679.  
 State v. Ensley (10 Iowa 149), 1747.  
 State v. Erickson (13 N. D. 139; 103 S. W. 389), 1455.  
 State v. Essex Club (53 N. J. L. 99; 20 Atl. 769), 1325, 1338.  
 State v. Essman (112 Mo. App. 132; 85 S. W. 955), 1482.  
 State v. Estlinbaum ([Kan.] 27 Pac. 996), 1749.  
 State v. Etzel (2 Kan. App. 673; 43 Pac. 798), 1454.  
 State v. Evans (83 Mo. 319), 683.  
 State v. Faber (28 Neb. 803; 44 N. W. 1137), 1759, 1764.  
 State v. Fagan ([Del.] 74 Atl. 692), 1354.  
 State v. Fagan (22 La. Ann. 545), 106.  
 State v. Fagan (64 N. H. 431; 4 Atl. 727), 1719, 1724.  
 State v. Fahey (5 Penn. [Del.] 585; 65 Atl. 260), 1241, 1242.  
 State v. Faino (2 Hardesty 153; 1 Marb. [Del.] 492; 41 Atl. 134), 2038, 2060, 2068, 2069.  
 State v. Fairchild ([S. D.] 117 S. W. 506), 1538.  
 State v. Fairfield (37 Me. 517), 383, 1226, 1227, 1234.  
 State v. Fairgrieve (29 Mo. App. 641), 1451.  
 State v. Falk (51 Kan. 298; 32 Pac. 1122), 1349.  
 State v. Falkenheimer ([La.] 49 So. 214), 278, 388, 521.  
 State v. Fanning (38 Mo. 409), 1457, 1499, 1501, 1505, 1556, 1557.  
 State v. Fant (2 La. Ann. 837), 1446, 1459, 1554.  
 State v. Fargo Bottling Works Co. ([N. D.] 124 N. W. 387), 13, 1708.  
 State v. Farley (87 Iowa 22; 53 N. W. 1089), 1581, 1670.  
 State v. Farmer (104 N. C. 887; 10 S. E. 563), 1746, 1458.  
 State v. Farming (38 Mo. 410), 1502.  
 State v. Farnum (73 S. C. 165; 53 S. E. 83), 381.  
 State v. Farr (34 W. Va. 84; 11 S. E. 737), 1253.  
 State v. Farrell (22 W. Va. 759), 1651.  
 State v. Farrington (141 N. C. 844; 53 S. E. 954), 1761.  
 State v. Faucett (4 Dev. & B. L. 107), 1502.  
 State v. Fawcett (20 N. C. 239), 1508.  
 State v. Fay (44 N. J. L. [15 Vroom] 474), 397, 435, 436, 436.  
 State v. Feagan (70 Mo. App. 406), 834.  
 State v. Fearson (2 Md. 310), 215, 1303, 1308.  
 State v. Feeney (13 R. I. 623), 1623.  
 State v. Fell (42 Md. 7 L.), 95, 129.  
 State v. Felter (51 Iowa 495; 1 N. W. 755), 1583.  
 State v. Fenton (29 Neb. 348; 45 N. W. 464), 807.  
 State v. Ferguson (8 Kan. App. 810; 57 Pac. 555), 1653.  
 State v. Ferguson (72 Mo. 297), 756, 824, 1385.  
 State v. Ferguson (33 N. H. 424), 397, 438.  
 State v. Ferrell (22 W. Va. 759), 1198.  
 State v. Ferrell (30 W. Va. 363; 5 S. E. 155), 1505.



[References are to pages.]

- State v. Fertig (70 Iowa 272; 30 N. W. 633), 1065, 1591, 1670, 1763.
- State v. Fertig (98 Iowa 139; 67 N. W. 87), 1369, 1371.
- State v. Fezzette (103 Me. 467; 69 Atl. 1073), 1038.
- State v. Field (89 Iowa 34; 56 N. W. 276), 1754.
- State v. Field ([Mo.] 119 S. W. 499), 1210, 1238, 1444.
- State v. Fierline (19 Mo. 380), 1608.
- State v. Finan (10 Iowa 19), 1372, 1374, 1554, 1560, 1623.
- State v. Findley (77 Mo. 338), 1484.
- State v. Finn (38 Mo. App. 504), 1590.
- State v. Finney (178 Mo. 385; 77 S. W. 992), 835.
- State v. Fisher (35 Vt. 584), 383, 384.
- State v. Fisher (33 Wis. 155), 498, 756.
- State v. Fiske (63 Conn. 388), 2075.
- State v. Fitzpatrick (16 R. I. 54; 11 Atl. 767), 111, 119, 120, 161, 253, 256, 270, 298, 486, 1043, 1748.
- State v. Flanagan (38 W. Va. 53; 17 E. E. 792; 22 L. R. A. 430; 45 Am. St. 832), 1281.
- State v. Flanders ([La.] 49 So. 169), 183.
- State v. Fleming (112 Ala. 179; 20 So. 846), 802.
- State v. Fleming (86 Iowa 294; 53 N. W. 234), 1632, 1670.
- State v. Fleming (32 Kan. 588; 5 Pac. 19), 842.
- State v. Fleming (107 N. C. 905; 12 S. E. 131), 1476.
- State v. Fletcher (74 Kan. 620; 87 Pac. 729), 1224.
- State v. Fletcher (1 R. I. 193), 929.
- State v. Fletcher (13 R. I. 522), 1485.
- State v. Flusche (79 Iowa 765; 44 N. W. 698), 827.
- State v. Fragiercomo (70 Miss. 799; 14 So. 21), 802.
- State v. Frahm (109 Iowa 101; 80 N. W. 209), 994.
- State v. Frame (39 Ohio St. 399), 110, 120, 147, 479.
- State v. Francis (95 Mo. 44; 8 S. W. 1), 448.
- State v. Franklin (40 Kan. 410; 19 Pac. 801), 167.
- State v. Franklin Co. (49 Wash 268), 94 Pac. 1086), 422, 432, 662.
- State v. Frapport (31 La. Ann. 340), 1299.
- State v. Fraser (1 N. D. 425; 48 N. W. 343), 321, 325, 328, 978, 1093, 1095, 1103.
- State v. Fredericks (16 Mo. 382), 509, 691, 1267.
- State v. Frederickson (101 Me. 37; 63 Atl. 535), 4, 13, 49, 159, 162, 1094.
- State v. Freight Tax (15 Wall. 232), 316.
- State v. Freeman (6 Blackf. 248), 1488.
- State v. Freeman (27 Iowa 333), 1546.
- State v. Freeman (38 N. H. 426), 408, 457.
- State v. Freeman (86 N. C. 683), 2035.
- State v. Freeman (27 Vt. 520), 1177, 1521, 1748.
- State v. French (17 Mont. 54; 14 Pac. 1078; 30 L. R. A. 415), 788.
- State v. Froehlich (118 Wis. 129; 94 N. W. 50; 61 L. R. A. 345), 2023.
- State v. Fromer (14 Ohio Cir. Ct. Rep. 289; 6 Ohio Dec. 374), 1462, 1502.
- State v. Frudie ([Neb.] 92 N. W. 320), 1729.
- State v. Foley (45 N. H. 466), 1678.

[References are to pages.]

- State v. Forcier (65 N. H. 42; 17 Atl. 577), 188.  
 State v. Ford (76 Kan. 424; 91 Pac. 1066), 1691, 1701.  
 State v. Ford (47 Mo. App. 601), 1505, 1507, 1521.  
 State v. Ford (6 S. D. 228; 92 N. W. 18), 2077.  
 State v. Foreman (121 Mo. App. 502; 97 S. W. 269), 861, 941, 1687, 1688.  
 State v. Forkner (94 Iowa 1; 62 N. W. 683), 232.  
 State v. Forman (66 N. J. L. 397; 52 Atl. 956), 1490.  
 State v. Fort (75 Mo. App. 214), 557, 559.  
 State v. Fort (107 Mo. App. 328; 81 S. W. 476), 557, 559, 566, 587, 645.  
 State v. Foster (22 R. I. 163), 426.  
 State v. Foster (3 Fost. [N. H.] 348; 5 Am. Dec. 191), 1643.  
 State v. Fountain ([Del.] 69 Atl. 926), 111, 226, 229, 234, 240, 244, 246, 284.  
 State v. Four Jugs (58 Vt. 240; 2 Atl. 586), 17.  
 State v. Fowler (74 Kan. 896; 87 Pac. 731), 1224.  
 State v. Fox (1 Harr. [N. J.] 152), 1492.  
 State v. Fulker (43 Kan. 237; 22 Pac. 1020; 7 L. R. A. 183), 309, 328.  
 State v. Fulkerson (73 Ark. 163; 83 S. W. 934; 86 S. W. 817), 919, 1048.  
 State v. Fulks (207 Mo. 26; 105 S. W. 733), 293.  
 State v. Fuller (33 N. H. 259), 316, 328, 1527.  
 State v. Fullman ([Del.] 74 Atl. 1), 1220, 1664.  
 State v. Funk (27 Minn. 318; 7 N. W. 359), 451, 503, 523, 525, 1160.  
 State v. Furney (178 Mo. 385; 77 S. W. 992), 833.  
 State v. Gaffeny (66 Iowa 262; 23 N. W. 659), 1746.  
 State v. Gallagher (126 Mo. App. 729; 106 S. W. 111), 1374, 1574.  
 State v. Gapen (17 Ind. App. 524; 45 N. E. 678; 47 N. E. 25), 1716, 1720, 1721.  
 State v. Garlock (14 Iowa 444), 467.  
 State v. Garm (50 N. J. L. 358); 13 Atl. 26), 436.  
 State v. Garrand (5 Ore. 216), 2067.  
 State v. Garrigan (36 Kan. 327; 13 Pac. 545), 1443.  
 State v. Garvey (11 Minn. 154), 2041, 2067, 2073.  
 State v. Gary (124 Mo. App. 175; 101 S. W. 614), 1233, 1630.  
 State v. Gazette (11 R. I. 592), 39.  
 State v. Gear (29 Minn. 221; 13 N. W. 140), 2082.  
 State v. Gegner (88 Iowa 748; 56 N. W. 182), 994.  
 State v. Geise (39 Mo. App. 189), 1643.  
 State v. Gening (1 McCord [S. C.] 573), 1643.  
 State v. George (93 N. C. 567), 1476.  
 State v. Gerhardt (145 Ind. 439; 44 N. E. 469; 33 L. R. A. 313), 94, 101, 143, 144, 164, 166, 209, 239, 264, 268, 281, 456, 488, 489, 496, 594, 602, 610, 611, 612, 622, 630, 858, 859, 860, 1315, 1728, 1840.  
 State v. Gerhardt (3 Jones [N. C.] 178), 518, 539, 688, 1364.  
 State v. German Rifle Club (80 S. C. 126; 61 S. E. 208), 980.  
 State v. Gibbs ([Minn.] 123 N. W. 810), 1187, 1579, 1697, 1703.  
 State v. Gibbs ([Vt.] 74 Atl. 229), 163, 481.  
 State v. Gibson ([Ga.] 28 S. E. 487), 1311, 1321.

[References are to pages.]

- State v. Gibson (114 Mo. App. 652; 90 S. W. 400), 1607.
- State v. Gibson (61 Mo. App. 768; 1 Mo. App. Rep. 656), 827.
- State v. Giersch (98 N. C. 720; 4 S. E. 193), 965.
- State v. Gifford (111 Iowa 648; 82 N. W. 1034), 980, 983, 1003, 1004.
- State v. Gilbert (21 S. W. 209; 111 S. W. 538), 1458, 1762.
- State v. Gill (89 Minn. 502; 95 N. W. 449), 19, 38, 431, 1185.
- State v. Gillilen (51 W. Va. 278; 41 S. E. 131; 57 L. R. A. 426), 1158.
- State v. Gillispie (63 W. Va. 152; 59 S. W. 957), 963, 1612, 1700.
- State v. Gilman (33 W. Va. 146; 10 S. E. 283; 6 L. R. A. 847), 126, 127, 1349.
- State v. Gilmore (9 W. Va. 641), 1237 1483.
- State v. Gilmore (80 Vt. 514; 68 Atl. 658), 1237, 1350.
- State v. Giroux (75 Kan. 695; 90 Pac. 249), 1098, 1447, 1670, 1676.
- State v. Glasgow (Dud. L. [S. C.] 40), 1111.
- State v. Gloucester (50 N. J. L. 585), 232.
- State v. Gluck (41 Minn. 553; 43 N. W. 483), 1539.
- State v. Goff (62 Kan. 104; 61 Pac. 683; reversing 10 Kan. App. 286; 61 Pac. 680), 997, 1644.
- State v. Goff (66 Mo. App. 491; 70 Mo. App. 295), 826, 831, 832.
- State v. Golding (28 Ind. App. 233; 62 N. E. 502), 520, 539, 760, 765, 780.
- State v. Gomes (9 Kan. App. 63; 57 Pac. 262), 1653.
- State v. Good (56 W. Va. 215; 49 S. E. 121), 963, 1699, 1700.
- State v. Gordon (10 Mo. 383), 271.
- State v. Gorham (65 Me. 270), 262, 1572, 1639, 1732.
- State v. Gorman (171 Ind. 58; 85 N. E. 763), 557, 559, 601, 647, 662.
- State v. Gorman (58 N. H. 77), 1610, 1661.
- State v. Goss (59 Vt. 206; 9 Atl. 829; 59 Am. Rep. 706), 386, 956, 1281, 1283.
- State v. Gowgill (75 Ind. 599), 1516.
- State v. Goyette (11 R. I. 592), 45, 83, 85, 1592.
- State v. Graeter (6 Blackf. 105), 1477.
- State v. Graham (73 Iowa 553; 35 N. W. 628), 1723.
- State v. Grames (68 Me. 618), 1037, 1088, 1112, 1114.
- State v. Grant (97 M. 113; 49 Am. Rep. 218), 2258, 2259.
- State v. Grant (20 S. D. 164; 105 N. W. 97), 1129, 1133, 1727.
- State v. Gravelin (16 R. I. 407; 16 Atl. 914), 10, 12, 110, 162, 987, 1753.
- State v. Graves (135 Mo. App. 171; 115 S. W. 1054), 957.
- State v. Gray (61 Conn. 39; 22 Atl. 675), 21, 25, 52, 150, 195, 822, 829, 834.
- State v. Green (69 Kan. 865; 77 Pac. 95), 1163, 1198.
- State v. Green (61 S. C. 12; 39 S. E. 185), 1602.
- State v. Greenhagen (36 Mo. App. 24), 1499.
- State v. Greenleaf (31 Me. 517), 1171, 1581, 1754.
- State v. Greenway (92 Iowa 472; 61 N. W. 239), 578, 585, 977, 1278.
- State v. Grear (29 Mich. 221), 2075.
- State v. Grear (28 Minn. 426; 10 N. W. 472; 41 Am. Rep. 296), 1583, 2068.
- State v. Greer (22 W. Va. 800), 2249, 2252.

[References are to pages.]

- State v. Gregory (47 Conn. 276), 1126.  
 State v. Gregory (110 Iowa 624; 82 N. W. 335), 832, 835, 969, 970, 1608.  
 State v. Gregory (74 Kan. 467; 87 Pac. 370), 835.  
 State v. Gregory (27 Mo. 231), 1556.  
 State v. Grime (85 Iowa 415; 52 N. W. 351), 993.  
 State v. Grosman (214 Mo. 233; 113 S. W. 1074), 263.  
 State v. Groves (121 N. C. 632; 28 S. E. 403), 1281.  
 State v. Grunald ([La.] 49 So. 162), 183.  
 State v. Gruner (25 R. I. 129; 54 Atl. 1058), 1084.  
 State v. Guettler (34 Kan. 582; 9 Pac. 200), 1747.  
 State v. Guinness (16 R. I. 401; 16 Atl. 910), 6, 10, 110, 162, 1083, 1530.  
 State v. Guisenhouse (20 Iowa 227), 1589.  
 State v. Gulley (41 Ore. 318; 70 Pac. 385), 359, 1237, 1239.  
 State v. Gumber (37 Wis. 298), 1544.  
 State v. Gummer (22 Wis. 441), 1505.  
 State v. Gurlagh (76 Iowa 141; 40 N. W. 141), 1715.  
 State v. Gurlock (14 Iowa 444), 402.  
 State v. Gurney (33 Me. 527), 1044, 1079.  
 State v. Gurney (37 Me. 149), 1527.  
 State v. Gurney (37 Me. 156; 58 Am. Dec. 156), 91.  
 State v. Gut (13 Minn. 341), 2062, 2071.  
 State v. Gutekunst (24 Kan. 252), 1257.  
 State v. Guthrie (90 Me. 448; 38 Atl. 368), 1059.  
 State v. Earles (84 Ark. 479; 106 S. W. 941), 954.  
 State v. Eastbrook (6 Ala. 653), 448, 449.  
 State v. Eaton (97 Me. 289; 54 Atl. 723), 1185.  
 State v. Eby (170 Mo. 71 S. W. 52), 2261.  
 State v. Eckert (74 Minn. 463; 77 N. W. 294), 1133.  
 State v. Edlavitch (77 Md. 144; 26 Atl. 406), 1459.  
 State v. Edmunds ([Ore.] 104 Pac. 430), 909, 911, 913.  
 State v. Edwards (47 La. Ann. 688; 17 So. 246), 1278.  
 State v. Edwards (60 Mo. 420), 1626, 1643.  
 State v. Edwards (71 Mo. 324), 2041.  
 State v. Edwards (134 N. C. 636; 46 S. E. 766), 1158, 1178.  
 State v. Edwards (109 Lea, 236; 37 So. 209), 262.  
 State v. Effinger (44 Mo. 81), 1496, 1567.  
 State v. Eighteen Casks of Beer ([Okla.] 104 Pac. 1093), 329, 330.  
 State v. Ekanger (8 N. D. 559; 80 N. W. 482), 1090.  
 State v. Elad (8 Kan. App. 625; 56 Pac. 153), 1003.  
 State v. Elder (54 Me. 381), 524.  
 State v. Elliott (45 Kan. 525; 26 Pac. 55), 829, 1613, 1647, 1650, 1653.  
 State v. Ellison (14 Ind. 380), 1019.  
 State v. Ely ([S. D.] 118 N. W. 687), 957, 1163.  
 State v. Emerick (35 Ark. 324), 1514.  
 State v. Emerick (35 Ind. 324), 1563.  
 State v. Emery (98 N. C. 768; 3 S. E. 810), 908, 920, 928, 1589, 1644, 1646.  
 State v. Emmons ([Ore.] 104 Pac. 883), 1184.  
 State v. Engborg (63 Kan. 853; 66 P. 1007), 825.

[References are to pages.]

- State v. English (78 N. H. 328; 68 Atl. 129), 760, 1180.  
 State v. Erb (74 Mo. 199), 2054.  
 State v. Erickson (14 N. D. 139; 103 N. W. 389), 1547.  
 State v. Erskine (66 Me. 358), 1050.  
 State v. Esterbrook (6 Ala. 653), 521.  
 State v. Estabrook (29 Kan. 739), 777, 784.  
 State v. Eskridge (1 Swan. 413), 1306, 1566.  
 State v. Essman (112 Mo. App. 132; 85 S. W. 955), 1489.  
 State v. Estop (66 Kan. 416; 71 Pac. 857), 979.  
 State v. Evans (83 Mo. 319), 1638.  
 State v. Evans (5 Jones L. [N. C.] 250), 1645.  
 State v. Evans (3 Hill [S. C.] 190), 1246.  
 State v. Haab (105 La. 230; 29 So. 725), 2039, 2045, 2058.  
 State v. Haden (15 Mo. 447), 1522.  
 State v. Hadlock (43 Me. 282), 1542.  
 State v. Hafsoos (1 S. D. 382; 47 N. W. 400), 1158, 1489, 1490.  
 State v. Haines ([Mo. App.] 107 S. W. 36), 1685.  
 State v. Haines (35 N. H. 207), 1369.  
 State v. Haines (35 Ore. 379; 58 Pac. 39), 354, 410, 1158, 1739.  
 State v. Hale (72 Mo. App. 78), 834, 1524, 1637.  
 State v. Hale (91 Iowa 367; 59 N. W. 281), 1084, 1754.  
 State v. Haley (52 Vt. 476), 1655.  
 State v. Hall (78 Me. 37; 2 Atl. 546), 1058.  
 State v. Hall (79 Me. 501; 11 Atl. 181), 1551, 1719.  
 State v. Hall (81 Me. 34; 16 Atl. 329), 1062.  
 State v. Hall (39 Me. 107), 822, 1163.  
 State v. Hall (130 Mo. App. 170; 108 S. W. 1077), 959, 1466.  
 State v. Hall (2 Bailey [S. C.] 151), 557, 590, 1509.  
 State v. Hall (26 W. Va. 236), 1455.  
 State v. Halter (149 Ind. 292; 47 N. E. 665), 1740.  
 State v. Haltzschullerr (72 Iowa 541; 34 N. W. 323), 841.  
 State v. Ham (64 N. J. L. 49; 44 Atl. 846), 1714.  
 State v. Hambright (33 Mo. 394), 531.  
 State v. Hamby ([N. C.] 35 S. E. 614), 382.  
 State v. Hamil (127 Mo. App. 661; 106 S. W. 1103), 829.  
 State v. Hamilton (75 Ind. 238), 1223, 1560.  
 State v. Hamilton (78 Vt. 467; 63 Atl. 7), 159.  
 State v. Hammack (93 Mo. App. 521), 839, 1371.  
 State v. Hammel (134 Wis. 61; 114 N. W. 97), 735.  
 State v. Hampton (77 N. C. 526), 247, 592, 1278.  
 State v. Hanaphy (117 Iowa 15; 90 N. W. 601), 335.  
 State v. Hand (1 Marv. [Del.] 545; 41 Atl. 192), 2038, 2051.  
 State v. Handler (178 Mo. 38; 76 S. W. 984), 233, 1512, 1178.  
 State v. Hanlan (24 Neb. 608; 39 N. W. 780), 600, 616; 617, 637.  
 State v. Hanley (25 Minn. 429), 1466, 1469.  
 State v. Hannan (53 Ind. 335), 1491, 1561.  
 State v. Hannons (59 W. Va. 475; 53 S. E. 630), 1225.  
 State v. Hansen (25 Ore. 391; 35 Pac. 976; 36 Pac. 296), 2070, 2071.  
 State v. Hanson (16 N. D. 347; 113 N. W. 371), 103, 220.  
 State v. Harley (54 Me. 562), 264.



[References are to pages.]

- State v. Harden (62 W. Va. 313; 58 S. E. 715; 60 N. E. 394), 170, 197, 559.  
 State v. Hardy (7 Neb. 377), 140, 187, 479, 651, 788.  
 State v. Harlow (21 Mo. 446), 2040.  
 State v. Harp (31 Kan. 496; 3 Pac. 432), 1484.  
 State v. Harp (210 Mo. 254; 109 S. W. 578), 111, 234.  
 State v. Harper (42 La. Ann. 312; 7 So. 446), 140, 167, 397, 402, 432.  
 State v. Harper (58 Mo. 530), 448, 449, 522.  
 State v. Harper (99 Tex. 19; 86 S. W. 920; reversing 85 S. W. 294), 760, 761.  
 State v. Harper ([Tex. Civ. App.] 87 S. W. 878), 757, 764, 765.  
 State v. Harrigan (9 Houst. 369; 31 Atl. 1052), 2041, 2051, 2054, 2247.  
 State v. Harrington (69 N. H. 496; 45 Atl. 404), 996, 1086, 1098, 1701.  
 State v. Harrington (12 Rich., 203), 1246.  
 State v. Harris (27 Iowa 429), 1670, 1677.  
 State v. Harris (36 Iowa 136), 1013, 1044.  
 State v. Harris (38 Iowa 242), 1028, 1777.  
 State v. Harris (64 Iowa 287; 20 N. W. 439), 831, 1092.  
 State v. Harris (100 Iowa 188; 69 N. W. 413), 2077.  
 State v. Harris (122 Iowa 78; 97 N. W. 1093), 840.  
 State v. Harris (50 Minn. 128; 52 N. W. 387), 440.  
 State v. Harris (47 Mo. App. 558), 1502, 1504, 1524.  
 State v. Harris (2 Sneed. 224), 1508.  
 State v. Harris ([S. D.] 115 N. W. 533), 898.  
 State v. Harrison (162 Ind. 542; 70 N. E. 877), 343, 643.  
 State v. Hart (29 Iowa 268), 2041, 2078, 2080.  
 State v. Hart (84 Iowa 215; 50 N. W. 981), 1097, 1658.  
 State v. Hartfield (24 Wis. 61), 1238.  
 State v. Hartwick (49 Conn. 101), 1659.  
 State v. Harvey (11 Tex. Civ. App. 691; 33 S. W. 885), 933.  
 State v. Hass (22 Iowa 193), 1546.  
 State v. Hassett ([Vt.] 23 Atl. 584), 1600.  
 State v. Haugh (123 N. W. 251), 358.  
 State v. Hauley (25 Minn. 429), 934.  
 State v. Hawkins (91 N. C. 626), 370.  
 State v. Hawley ([Me.] 9 Atl. 620), 1045.  
 State v. Haworth (122 Ind. 462; 23 N. E. 946), 106.  
 State v. Haworth (70 Iowa, 157; 30 N. W. 389), 1452.  
 State v. Hayes (67 Iowa, 27; 24 N. W. 574), 1356, 1359.  
 State v. Hayes (38 Mo. 367), 1383, 1537.  
 State v. Haymond (20 W. Va. 18; 43 Am. Rep. 787), 18, 24, 51, 55, 86, 971.  
 State v. Haynes (35 Vt. 570), 1719, 1765, 1766.  
 State v. Haynie (118 N. C. 1270; 24 S. E. 536), 382.  
 State v. Hays (36 Mo. 80), 1623.  
 State v. Hays (49 Mo. 607), 106.  
 State v. Hazell (100 N. C. 471; 6 S. E. 404), 523, 525, 1268, 1497, 1499.  
 State v. Hazleton (78 Vt. 567; 63 Atl. 305), 158, 1491.  
 State v. Head (3 R. I. 135), 1081, 1082, 1091.

[References are to pages.]

- State v. Heard (107 La. 60; 31 So. 384), 1323, 1486, 1623, 1720, 1723.  
 State v. Heaton (81 N. C. 542), 1476.  
 State v. Heck (23 Minn. 549), 1253, 1255, 1461, 1492.  
 State v. Heckler (81 Mo. 417), 1761.  
 State v. Heege (37 Mo. App. 338), 564, 585, 674, 676.  
 State v. Heibel (116 Mo. App. 43; 90 S. W. 758), 1443, 1505.  
 State v. Heibel (54 Ohio St. 321; 43 N. E. 328), 1119, 1128.  
 State v. Heinemann (80 Wis. 253; 49 N. W. 818; 27 Am. St. 34), 188.  
 State v. Heinze (45 Mo. App. 403), 43, 650.  
 State v. Heitsch (29 Minn. 134; 12 N. W. 353), 1457.  
 State v. Heldt (41 Tex. 220), 1505, 1554, 1555.  
 State v. Hellman (56 Conn. 190; 14 Atl. 806), 1315.  
 State v. Helms (136 Ind. 122; 35 N. E. 893), 1740.  
 State v. Henderson (52 S. C. 470; 30 S. E. 477), 1091, 1705.  
 State v. Hendrix (98 Mo. 374; 11 S. W. 728), 832, 836.  
 State v. Hensley (94 Mo. App. 151; 67 S. W. 964), 832, 834.  
 State v. Herd (1 Mo. App. Rep'r. 343), 1556.  
 State v. Jenkins (32 Kan. 477; 425), 12, 24, 561, 576, 648.  
 State v. Herod (29 Iowa 123), 411, 483.  
 State v. Herring (145 N. C. 418; 58 S. E. 1007), 165, 951.  
 State v. Hertzog (55 W. Va. 74; 46 S. E. 792), 2068.  
 State v. Hesner (55 Iowa, 594; 8 N. W. 329), 1713.  
 State v. Hibner (115 Iowa, 48; 87 N. W. 741), 995.  
 State v. Hickerson (3 Heisk. 375), 1505.  
 State v. Hickerson ([Mo. App.] 109 S. W. 108), 934, 939.  
 State v. Hickman (54 Kan. 225; 38 Pac. 256), 1712.  
 State v. Hickok (90 Wis. 161; 62 N. W. 934), 1483.  
 State v. Hickox (64 Kan. 650; 68 Pac. 35), 335.  
 State v. Hicks (101 N. C. 747; 7 S. E. 707), 362, 1760, 1762.  
 State v. Higgins (71 Mo. App. 180), 576.  
 State v. Higgins (84 Mo. App. 531), 618, 624, 646, 648.  
 State v. Higgins (13 R. I. 330; 43 Am. Rep. 26), 264, 265, 1643.  
 State v. Higgins (53 Vt. 193), 1504, 1508, 1555.  
 State v. Hill (46 La. Ann. 27; 14 So. 294), 2068, 2082.  
 State v. Hill (52 N. J. L. 326; 19 Atl. 789), 533, 538, 622.  
 State v. Hilliard (10 N. D. 436; 87 N. W. 980), 1267.  
 State v. Hines (13 R. I. 10), 1501, 1504, 1519.  
 State v. Hipp (38 Ohio St. 199), 120, 147, 479, 483.  
 State v. Hirsch (125 Ind. 207; 24 N. E. 1062; 9 L. R. A. 170), 1304, 1320.  
 State v. Hitchcock (124 Mo. App. 101; 101 S. W. 117), 857, 874, 916, 1466, 1471, 1685.  
 State v. Hitchcock (68 N. H. 244; 44 Atl. 296), 633, 1664.  
 State v. Hix (3 Dev. [N. C.] 116), 370.  
 State v. Hoard (123 Ind. 34; 23 N. E. 972), 1109, 1541, 1545.  
 State v. Hoagland (77 Iowa, 135; 41 N. W. 595), 827, 831.  
 State v. Hodgson (66 Vt. 134; 28 Atl. 1089), 148, 149, 153, 193, 259, 260, 261, 1169.  
 State v. Hogan (67 Conn. 581; 35 Atl. 508), 1728.

[References are to pages.]

- State v. Hogan (117 La. 863; 42 So. 352), 1583, 2038, 2068.
- State v. Hogan (30 N. H. 268), 1268, 1296.
- State v. Hogrewer (152 Ind. 652), 215.
- State v. Holder (133 N. C. 709; 45 S. E. 862), 1516, 1517.
- State v. Holleyman ([S. C.] 31 S. E. 362), 174, 327, 381.
- State v. Holleyman ([S. C.] 33 S. E. 366; 45 L. R. A. 567), 323.
- State v. Hollin (12 La. Ann. 677), 1741.
- State v. Hollingsworth (100 N. C. 535; 6 S. E. 417), 931, 933, 1739.
- State v. Holmes (38 N. H. 225), 182, 492.
- State v. Holt (65 Minn. 423; 72 N. Y. 700), 957.
- State v. Holt Co. Ct. (39 Mo. 521), 627.
- State v. Hooker ([Okla.] 98 Pac. 964), 110, 122, 291, 1037.
- State v. Hopkins (94 Iowa, 86; 62 N. W. 656), 1453.
- State v. Hopkins (5 R. I. 53), 1442.
- State v. Hopkirk (84 Mo. 278), 1584.
- State v. Horacek (41 Kan. 87; 21 Pac. 204; 3 L. R. A. 687), 1339, 1342.
- State v. Horan (25 Tex. Supp. 371), 1516.
- State v. Hornbeak (15 Mo. 478), 1519.
- State v. Horner (9 Kan. 119), 2041.
- State v. Horton (21 Ore. 83; 27 Pac. 165), 722, 734.
- State v. Hough ([Wis.] 123 N. W. 251), 358.
- State v. Houts (36 Mo. 265), 7, 8, 11, 13, 84, 1285, 1469, 1495, 1505.
- State v. Hovey (118 Ind. 350; 21 N. E. 244), 1014.
- State v. Howard (91 Me. 396; 40 Atl. 65), 1661, 1732.
- State v. Howard Co. Ct. (90 Mo. 593; 2 S. W. 788), 583.
- State v. Howarth (70 Iowa, 157; 30 N. W. 389), 1546.
- State v. Howe (95 Wis. 530; 70 N. W. 670), 796.
- State v. Howley (65 Me. 100), 1063, 1078.
- State v. Hoxsie (15 R. I. 1; 22 Atl. 1059; 2 Am. St. 838), 1101, 1102, 1372, 1375, 1580, 1643, 1644, 1659, 1672.
- State v. Hubbard (60 Iowa, 466; 15 N. W. 287), 1247.
- State v. Hudson (78 Mo. 302), 139, 198, 427, 787, 788.
- State v. Hudson (11 Mo. App. 590), 432.
- State v. Hudson (13 Mo. App. 61), 635, 648.
- State v. Huff (76 Iowa, 200; 40 N. W. 720), 828, 835, 996, 1647, 1752, 1763.
- State v. Huffman (51 Kan. 541; 33 Pac. 377), 1454.
- State v. Huffschtmidt (47 Mo. 73), 215, 1305.
- State v. Hughes (3 Kan. App. 95; 45 Pac. 84), 1097, 1609, 1658.
- State v. Hughes (24 Mo. 147), 497, 500, 509, 691, 1267.
- State v. Hughes (35 Mo. App. 515), 1385.
- State v. Hughes (16 R. I. 403; 16 Atl. 911), 961, 978, 1104, 1697, 1702, 1708, 1709.
- State v. Hughes (22 W. Va. 753), 1280, 1281.
- State v. Humber (72 Iowa, 767; 34 N. W. 829), 777.
- State v. Hundley (46 Mo. 414), 2041, 2045, 2051, 2053.
- State v. Hunt (29 Kan. 762), 511, 1371, 1459.
- State v. Hunter (8 Blackf. 212), 1443.
- State v. Hunter (77 Kan. 850; 92 Pac. 603), 983, 996, 997.

[References are to pages.]

- State v. Hunter (106 N. C. 796; 11 S. E. 366; 8 L. R. A. 529), 2034.
- State v. Huntley (29 Mo. App. 278), 504, 505, 1160.
- State v. Hurley (1 Houst. Cr. Cas. [Del.] 28), 2041, 2051, 2060, 2061.
- State v. Hurley (54 Me. 562), 265, 1585.
- State v. Hutchins (74 Iowa, 20; 36 N. W. 775), 1175.
- State v. Hutchinson (72 Iowa, 561; 34 N. W. 421), 50, 968.
- State v. Hutchinson (56 Ohio St. 82; 46 N. E. 71), 1384.
- State v. Hutton (39 Mo. App. 410), 885, 932, 1465, 1468, 1687, 1688.
- State v. Hutzell (53 Ind. 160), 1444.
- State v. Huxford (47 Iowa, 16), 1736.
- State v. Hyde (27 Minn. 153; 6 N. W. 555), 1245, 1562.
- State v. Hynes (66 Me. 114), 1113, 1667.
- State v. Ilgner & Co. ([Kan.] 105 Pac. 14), 1003.
- State v. Illsley (81 Iowa, 49; 46 N. W. 977), 1065, 1096, 1656, 1670.
- State v. Ingalls (59 N. H. 88), 1486.
- State v. Ingersoll (17 Wis. 631), 929.
- State v. Ingram (118 Mo. App. 323; 94 S. W. 790), 1108.
- State v. Innes (53 Me. 536), 1722.
- State v. Intoxicating Liquors (40 Iowa, 95), 1016.
- State v. Intoxicating Liquors (64 Iowa, 300; 20 N. W. 445), 1013, 1037.
- State v. Intoxicating Liquors (76 Ia. 243; 41 S. W. 6; 2 L. R. A. 418), 7, 10, 962.
- State v. Intoxicating Liquors (92 Iowa, 762; 60 N. W. 630), 1065.
- State v. Intoxicating Liquors (109 Iowa, 145; 80 N. W. 230), 1064, 1070, 1072.
- State v. Intoxicating Liquors (50 Me. 506), 1021, 1069.
- State v. Intoxicating Liquors (61 Me. 520), 1071.
- State v. Intoxicating Liquors (63 Me. 121), 1045, 1070.
- State v. Intoxicating Liquors (68 Me. 187), 1021, 1029.
- State v. Intoxicating Liquors (69 Me. 524), 1071.
- State v. Intoxicating Liquors (80 Me. 57; 12 Atl. 794), 258, 1016, 1113, 1115.
- State v. Intoxicating Liquors (80 Me. 91; 13 A. 403), 1016, 1018.
- State v. Intoxicating Liquors (82 Me. 558; 19 Atl. 913), 154, 307, 313, 316.
- State v. Intoxicating Liquors (85 Me. 304; 27 Atl. 178), 1065.
- State v. Intoxicating Liquors (96 Me. 415; 52 Atl. 911), 324.
- State v. Intoxicating Liquors (98 Me. 464; 57 Atl. 798), 256, 1022.
- State v. Intoxicating Liquors (101 Me. 161, 430; 53 Atl. 666, 812), 307, 324, 325, 326, 1022.
- State v. Intoxicating Liquors (102 Me. 206; 66 Atl. 393), 307, 324, 325, 326.
- State v. Intoxicating Liquors ([Me.] 71 Atl. 759), 1383, 1389, 1390.
- State v. Intoxicating Liquors ([Vt.] 73 Atl. 586), 1034, 1068, 1071, 1662, 1748.
- State v. Intoxicating Liquors (38 Vt. 387), 1035, 1040, 1042.
- State v. Intoxicating Liquors (44 Vt. 208), 1033, 1040, 1182, 1729.
- State v. Intoxicating Liquors (58 Vt. 594; 4 Atl. 902), 91, 111, 1072, 1073, 1075, 1077.

[References are to pages.]

- State v. Irvine (3 Heisk. 155), 1446, 1568.  
 State v. Isabel (40 La. Ann. 340), 183, 185, 226, 488, 494.  
 State v. Jabbour (72 Vt. 22; 47 Atl. 107), 1016, 1068, 1071.  
 State v. Jackson (68 Ind. 58), 660.  
 State v. Jackson (105 La. 436; 29 So. 870), 941.  
 State v. Jackson (72 Mo. App. 59), 1756.  
 State v. Jacobs (133 Mo. App. 182; 113 S. W. 244), 1662.  
 State v. Jaeger (63 Mo. 403), 540.  
 State v. Jamison (23 Mo. 330), 504, 1159.  
 State v. Janesville (90 Wis. 157; 62 N. W. 933), 797, 898.  
 State v. Jangraw (61 Vt. 39; 17 Atl. 733), 1723.  
 State v. Jaques (68 Mo. 260), 1505, 1524, 1555.  
 State v. Jarvis (67 Minn. 10; 69 N. W. 474), 1512.  
 State v. Jeffcoat (54 S. C. 196; 32 S. E. 298), 1506.  
 State v. Jefferson County (20 Fla. 425), 12, 24, 561, 576, 648.  
 State v. Jenkins (32 Kan. 477; 4 Pac. 809), 10, 41, 43, 84, 1707, 1710.  
 State v. Jenkins (64 N. H. 375; 10 Atl. 699), 1495, 1496.  
 State v. Jenkins (116 N. C. 972; 20 S. E. 1021), 2252.  
 State v. Jennings (27 Ark. 419), 393.  
 State v. Jennings (79 S. C. 246; 60 S. E. 699), 909.  
 State v. Jepson (76 Kan. 644; 92 Pac. 600, 603), 983, 991, 996, 997.  
 State v. Jersey City (54 N. J. L. 437; 24 Atl. 571), 567.  
 State v. Jocks (54 Ind. 412), 1499, 1501.  
 State v. John (8 Ired. L. 330; 49 Am. Dec. 396), 2039.  
 State v. Johnny (29 Nev. 203; 87 Pac. 83), 2038, 2068, 2069, 2085.  
 State v. Johns ([Iowa] 118 N. W. 295), 980, 996, 1333, 1662.  
 State v. Johnson (40 Conn. 136), 2061, 2062, 2066, 2067.  
 State v. Johnson (41 Conn. 584), 2041, 2060, 2063, 2067.  
 State v. Johnson (61 Iowa, 504; 16 N. W. 534), 1101.  
 State v. Johnson (92 Iowa, 768; 61 N. W. 195), 1658.  
 State v. Johnson (93 Iowa, 768; 61 N. W. 195), 1097.  
 State v. Johnson (74 Minn. 381; 77 N. W. 293), 1156.  
 State v. Johnson (86 Minn. 121; 90 N. W. 161), 234, 251, 1205, 1469.  
 State v. Johnson (17 Mo. App. 156), 831.  
 State v. Johnson (37 Neb. 362; 55 N. W. 874), 735.  
 State v. Johnson (33 N. H. 441), 552, 1170.  
 State v. Johnson (3 R. I. 94), 1116, 1513, 1533.  
 State v. Johnson ([S. D.] 121 N. W. 785), 357, 358.  
 State v. Johnson (62 W. Va. 154; 57 S. E. 371; 11 L. R. A. [N. S.] 872), 1218, 1558.  
 State v. Johnston (139 N. C. 640; 52 S. E. 273), 1285.  
 State v. Jones (3 Ind. App. 121; 28 N. E. 717), 32, 80, 1496, 1561.  
 State v. Jones (88 Minn. 27; 92 N. W. 468), 551, 1175.  
 State v. Jones (73 Mo. App. 525), 1201.  
 State v. Jones (7 Nev. 408), 2247, 2251.  
 State v. Jones (39 Vt. 370), 1175.  
 State v. Jordan (72 Iowa, 377; 34 N. W. 285), 111, 119, 148, 153, 254, 258, 1101.



[References are to pages.]

- State v. Jordan (87 Mo. App. 466), 1370.  
 State v. Jordan (87 Mo. App. 420), 825.  
 State v. Joyner (81 N. C. 534), 110, 247, 1521.  
 State v. Judge (39 La. Ann. 132), 215.  
 State v. Justices (15 Ga. 408), 627.  
 State v. Kalb (14 Ind. 403), 1240, 1460, 1628.  
 State v. Kale (124 N. C. 816; 32 S. E. 892), 2039, 2062, 2078.  
 State v. Kaler (56 Me. 88), 1081, 1083.  
 State v. Kampman (81 Mo. App. 205), 834.  
 State v. Kane (15 R. I. 395; 6 Atl. 783), 121, 147, 491, 492, 1194.  
 State v. Kantler (33 Minn. 69; 21 N. W. 856), 405, 420, 503.  
 State v. Kantz (13 R. I. 528), 253, 385, 1333, 1676, 1677.  
 State v. Kass (25 Neb. 607; 41 N. W. 558), 600.  
 State v. Kaufman (45 Mo. App. 656), 885, 887, 930.  
 State v. Kauffman (68 Ohio St. 635; 67 N. E. 1062), 39.  
 State v. Kavanaugh (4 Pennewill [Del.] 31; 53 Atl. 335), 2038, 2051, 2078.  
 State v. Keaough (68 Wis. 135; 31 N. W. 723), 186, 445, 796.  
 State v. Keen (34 Me. 500), 476, 1510.  
 State v. Keenan (5 R. I. 497), 125.  
 State v. Keenan (7 Kan. App. 813; 55 Pac. 102), 1601, 1654.  
 State v. Keith (37 Ark. 96), 515, 1349, 1371.  
 State v. Kelley (76 Me. 333), 1070.  
 State v. Kelley (47 Vt. 294), 61, 63.  
 State v. Kellogg ([Tex.] 113 S. W. 460), 858, 860, 867, 883, 892.  
 State v. Kelly (29 Mo. 476), 1554.  
 State v. Kelly (12 R. I. 535), 2031.  
 State v. Kelly (47 Vt. 294), 1249.  
 State v. Kempman (75 Mo. App. 188), 890.  
 State v. Kennard (74 N. H. 76; 65 Atl. 376), 14, 1496, 1601, 1662.  
 State v. Kennedy (1 Ala. 31), 369, 617, 1575.  
 State v. Kennedy (16 R. I. 409; 17 Atl. 51), 121, 147.  
 State v. Kennedy (36 Vt. 563), 1484.  
 State v. Kenney (62 W. Va. 284; 57 S. E. 823), 307, 1218.  
 State v. Kerr (3 N. D. 523; 58 N. W. 27), 1446.  
 State v. Kesells (120 Mo. App. 233; 96 S. W. 494), 403, 415, 460.  
 State v. Kezer (74 Vt. 50; 52 Atl. 116), 20, 24, 963.  
 State v. Kibling (63 Vt. 636; 22 Atl. 613), 295, 298, 327, 1712, 1757.  
 State v. Kidd (74 Ind. 554), 1304, 1320.  
 State v. Kidwell (62 W. Va. 466; 59 S. E. 494; 13 L. R. A. [N. S.] 1024), 2038, 2051, 2052, 2068.  
 State v. Kiefer (90 Md. 165; 44 Atl. 1043), 1441.  
 State v. Kiger (63 W. Va. 450; 61 S. E. 362), 1172, 1204, 1604.  
 State v. Kight (103 Minn. 371; 119 N. W. 56), 260.  
 State v. Kiley (36 Ind. App. 513; 76 N. E. 184), 1498, 1573.  
 State v. Kindred (148 Mo. 270; 49 S. W. 845), 2038.  
 State v. King (37 Iowa, 462), 167, 169, 402.

[References are to pages.]

- State v. Kingsburg (105 Mo. App. 22; 78 S. W. 641), 586.  
 State v. Kingsley (108 Mo. 135; 18 S. W. 994), 264, 1585.  
 State v. Kingston (5 R. I. 297), 1677.  
 State v. Kinhead (57 Conn. 173; 17 Atl. 855), 1238, 1239, 1751.  
 State v. Kinney (21 S. D. 390; 113 N. W. 77), 1128.  
 State v. Kirk (112 Mo. App. 447; 86 S. W. 1099), 723, 747, 748.  
 State v. Kirkham (23 N. C. 384), 1190, 1757.  
 State v. Kite (81 Mo. 97), 686.  
 State v. Kittelle (110 N. C. 560; 15 S. E. 103; 28 Am. St. Rep. 698; 15 L. R. A. 694), 1357.  
 State v. Klein (22 Minn. 328), 192, 277.  
 State v. Kline (107 Minn. 184; 119 N. W. 656), 341, 342, 343.  
 State v. Klein (78 Mo. 627), 1450, 1452.  
 State v. Kline (50 Ore. 426; 93 Pac. 237), 232, 1339, 1342, 1680, 1682.  
 State v. Kleinfeld (72 Kan. 674; 83 Pac. 831), 287.  
 State v. Knoby (6 Kan. App. 334; 51 Pac. 53), 1526, 1551.  
 State v. Knotts (24 Ind. App. 477; 56 N. E. 941), 767, 771, 1861, 1878.  
 State v. Knotts (131 N. C. 705; 42 S. E. 444), 1278.  
 State v. Knott (5 R. I. 293), 1655.  
 State v. Knowles (57 Iowa, 669; 11 N. W. 620), 822, 828.  
 State v. Knowles (8 Me. 71), 1014.  
 State v. Knowlton (70 Me. 200), 1038, 1040.  
 State v. Kraemer (49 La. Ann. 766; 22 So. 254), 2038, 2045, 2051.  
 State v. Kreichbaum (81 Iowa, 633; 47 N. W. 872), 513, 1372, 1606, 1647, 1738.  
 State v. Kreig (13 Iowa, 426), 1550.  
 State v. Krinski (78 Vt. 162; 62 Atl. 37), 969, 1086, 1660, 1663, 1706.  
 State v. Kruse ([N. D.] 124 N. W. 385), 1546.  
 State v. Kobe (26 Minn. 148; 1 N. W. 1054), 1741.  
 State v. Koch (61 Mo. 117), 1567.  
 State v. Koehler (6 Iowa, 398), 1742.  
 State v. Koler (56 Me. 88), 1087.  
 State v. Koso (25 Neb. 607; 41 N. W. 558), 637.  
 State v. Kuhn (24 La. Ann. 474), 1500, 1505.  
 State v. Kuhuke (26 Kan. 405), 688.  
 State v. Kurtz (2 Mo. App. Rep'r, 913), 1491.  
 State v. Laborde (119 La. 410; 44 So. 156), 528, 529, 1638.  
 State v. Labore ([Kan.] 103 Pac. 106), 1444, 1550.  
 State v. Ladd (15 Mo. 430), 1501, 1505, 1627.  
 State v. Ladenberger (44 Kan. 261; 24 Pac. 347), 1454.  
 State v. Laferty (5 Har. [Del.] 491), 2034.  
 State v. Laffer (38 Iowa, 422), 20, 21, 52, 53, 55, 79, 1753.  
 State v. Lager Beer (68 N. H. 377; 39 Atl. 255), 1023, 1043.  
 State v. Lamberton (37 Minn. 362; 34 N. W. 336), 669, 674.  
 State v. Lamos (26 Me. 258), 737.  
 State v. Lang (63 Me. 215), 1063, 1447, 1512.  
 State v. Langdon (29 Minn. 393; 13 N. W. 187), 402, 467.  
 State v. Langdon (31 Minn. 316; 17 N. W. 859), 395, 448, 449.  
 State v. Langdon (74 N. H. 50; 64 Atl. 1099), 1456.

[References are to pages.]

- State v. Lane (33 Me. 536), 1510, 1554.  
 State v. Langan (149 Ala. 647; 43 So. 187), 648.  
 State v. Langley (79 Me. 52; 7 Atl. 902), 1044.  
 State v. Langston (88 N. C. 682), 398.  
 State v. Lanier (88 N. C. 658), 1476.  
 State v. Lantz (90 Mo. App. 15), 1650.  
 State v. Larimore (19 Mo. 391), 821, 842.  
 State v. Larned (47 Me. 426), 1016, 1023, 1024.  
 State v. La Rose (71 N. H. 435; 52 Atl. 943), 1086, 1766.  
 State v. Larson (83 Minn. 124; 86 N. W. 3; 54 L. R. A. 487), 766.  
 State v. Lashus (79 Me. 504; 11 Atl. 180), 1528, 1572, 1717, 1724.  
 State v. Lavake (26 Minn. 526; 6 N. W. 339; 37 Am. Rep. 415), 1483, 1484, 1499.  
 State v. Lawler (85 Iowa, 564; 52 N. W. 490), 987.  
 State v. Lawrence (97 N. C. 492; 2 E. 367), 1226, 1233.  
 State v. Lawson (45 Kan. 339; 25 Pac. 864), 1609.  
 State v. Lawson (83 Minn. 124; 86 N. W. 3; 54 L. R. A. 487), 784.  
 State v. Leach (17 Ind. App. 174; 46 N. E. 549), 769, 1352.  
 State v. Leap (1 Cranch C. C. 1; Fed. Cas. No. 16964), 1757.  
 State v. Learned (47 Me. 426), 1044, 1045, 1444, 1530.  
 State v. Leavenworth (36 Kan. 314; 13 Pac. 591), 169, 434, 443, 475.  
 State v. Leavitt (63 N. H. 381), 1456.  
 State v. Le Clair (86 Me. 522; 30 Atl. 7), 254, 1014, 1078.  
 State v. Lee (29 Minn. 445), 271.  
 State v. Leicht (17 Iowa, 28), 369.  
 State v. Leis (11 Iowa, 416), 1764.  
 State v. Lemp (16 Mo. 389), 7, 11, 44, 84, 966.  
 State v. Leonard ([Mo.] 116 S. W. 14), 498, 499, 502, 647, 683.  
 State v. Leonard (72 Vt. 102; 47 Atl. 395), 1368, 1370.  
 State v. Leppert (7 Ind. 355), 1554.  
 State v. Lewis (63 Kan. 268; 65 Pac. 258), 1104.  
 State v. Lewis (116 La. 762; 41 So. 63), 683, 1643, 1644.  
 State v. Lewis (86 Minn. 174; 90 N. W. 318), 11, 33, 1357, 1602.  
 State v. Lewis (86 Minn. 374; 90 N. W. 918), 12.  
 State v. Lewis (101 U. S. 30), 238.  
 State v. Lichta (130 Mo. App. 284; 109 S. W. 825), 490, 723, 747, 1109.  
 State v. Lillard (78 Mo. 136), 21, 52, 58, 970.  
 State v. Lincoln (6 Neb. 12), 799, 808, 815.  
 State v. Lincoln (50 Vt. 644), 1722.  
 State v. Lincoln (73 Vt. 221; 51 Atl. 9), 995.  
 State v. Linden (87 Iowa, 702; 54 N. W. 1075), 1706, 1710.  
 State v. Linder (76 Ohio St. 463; 81 N. E. 753), 679, 1614.  
 State v. Lindgrove (1 Kan. App. 51; 41 Pac. 688), 148, 149, 150, 190, 1703.  
 State v. Lindquist (77 Minn. 540; 80 N. W. 701), 400.  
 State v. Lindquist ([Minn.] 124 N. W. 215), 1703.  
 State v. Lindven (87 Iowa, 702; 54 N. W. 1075), 1185.  
 State v. Liquors & Vessels (80 Me. 57; 12 Atl. 794), 1731.

[References are to pages.]

- State v. Liquor (38 Vt. 387), 8.  
 State v. Lisles (58 Mo. 359),  
 1458, 1568, 1763.  
 State v. Livingston (64 Iowa, 560;  
 21 N. W. 34), 2246.  
 State v. Lockstand (4 Ind. 572),  
 1501.  
 State v. Lockyear (95 N. C. 633;  
 59 Am. Rep. 287), 1339, 1342.  
 State v. Loftis (49 S. C. 443;  
 27 S. E. 451), 381.  
 State v. Long (7 Jones L. [N. C.]  
 24), 1201.  
 State v. Long (48 Ohio St. 509;  
 28 N. E. 1038), 133, 596,  
 1278.  
 State v. Longley (79 Me. 52; 7  
 Atl. 902), 1047.  
 State v. Looker (54 Kan. 227;  
 38 Pac. 288), 1554.  
 State v. Lord (8 Kan. App. 257;  
 55 Pac. 503), 993, 1101, 1108,  
 1678.  
 State v. Lotti (72 Vt. 115; 47  
 Atl. 392), 1175, 1176, 1178,  
 1183.  
 State v. Louis (63 Kan. 268; 65  
 Pac. 258), 1102.  
 State v. Louis ([La.] 49 So. 167),  
 183.  
 State v. Lovell (47 Vt. 493), 110,  
 972, 1194.  
 State v. Lowe (93 Mo. 547); 2 S.  
 W. 840), 2041, 2045.  
 State v. Lowenhaught (11 Lea,  
 13), 542.  
 State v. Lowry (74 N. C. 121),  
 25, 30, 82, 1753.  
 State v. Lucas (94 Mo. App. 117;  
 67 S. W. 971), 1180, 1322,  
 1323, 1374.  
 State v. Luddington (33 Wis.  
 107), 103, 223, 498.  
 State v. Ludwig (21 Minn. 202),  
 215, 216, 400, 460.  
 State v. Lund (49 Kan. 209; 30  
 Pac. 518), 1448.  
 State v. Lundergan (74 Vt. 48;  
 52 Atl. 70), 995.  
 State v. Lunsford (150 N. C. 862;  
 64 N. E. 745), 1516.  
 State v. Lydick (11 Neb. 366;  
 9 N. W. 560), 694.  
 State v. Lynch (72 N. H. 185;  
 55 Atl. 553), 986.  
 State v. Lyons (3 La. Ann. 154),  
 1246.  
 State v. McAdams (106 La. 720;  
 37 So. 187), 1378.  
 State v. McAdoo (80 Mo. 216),  
 1524, 1525.  
 State v. McAnally (105 Mo. App.  
 333; 79 S. W. 990), 826, 832,  
 1289, 1486, 1507.  
 State v. McBrayer (98 N. C. 619;  
 2 S. E. 755), 1224.  
 State v. McBride (64 Mo. 364),  
 1524.  
 State v. McBride (4 McCord, 332),  
 493, 1760.  
 State v. McBryer (98 N. C. 619;  
 2 S. E. 755), 822, 1235.  
 State v. McCabe (94 Mo. App.  
 122; 67 S. W. 973), 1205,  
 1211.  
 State v. McCafferty (63 Me. 223),  
 1703.  
 State v. McCammon ([Mo. App.]  
 86 S. W. 510), 408, 415, 432,  
 648.  
 State v. McCance (110 Mo. 398;  
 19 N. W. 648), 1627, 1629.  
 State v. McCann (59 Me. 383),  
 1062, 1063, 1078.  
 State v. McCann (61 Me. 116),  
 1017, 1024, 1081, 1658, 1663,  
 1756.  
 State v. McCann (67 Me. 372),  
 1016, 1024, 1034.  
 State v. McCants (1 Speer L.  
 389), 2040, 2046, 2059, 2060.  
 State v. McClain (49 Mo. App.  
 398), 1228.  
 State v. McCleary (17 Iowa, 44),  
 452, 523, 525.  
 State v. McConnell (90 Iowa,  
 197; 57 N. W. 707), 1358,  
 1364, 1615, 1632.

[References are to pages.]

- State v. McCord (207 Mo. 519; 106 S. W. 27), 851, 853, 874.  
 State v. McCord (124 Mo. App. 63; 100 S. W. 1129), 874.  
 State v. McCormick ([Wash.] 105 Pac. 1037), 15, 1234, 1236, 1445.  
 State v. McCoy (86 Minn. 149; 90 N. W. 305), 1108.  
 State v. McDaniel (115 N. C. 807; 20 S. E. 622), 2070, 2071, 2072.  
 State v. McDaniel (1 Houst. Crim. [Del.] 506), 1369.  
 State v. McDavid (84 Mo. App. 47), 674.  
 State v. McDonald (4 Harr. 555), 660.  
 State v. McDonough (84 Me. 488; 24 Atl. 944), 1528.  
 State v. McElrath (40 Ore. 294; 89 Pac. 803), 234, 867.  
 State v. McEntee (68 Iowa, 381; 27 N. W. 265), 355, 841.  
 State v. McEnturff (87 Iowa, 691; 55 N. W. 2), 1546.  
 State v. McEvoy (69 Iowa, 63; 28 N. W. 437), 1065.  
 State v. McGahan (48 W. Va. 438; 37 S. E. 573), 1110.  
 State v. McGill (65 Vt. 604; 27 Atl. 429), 1582.  
 State v. McGinnis (30 Minn. 52; 14 N. W. 258), 1223, 1446, 1491.  
 State v. McGinnis (38 Mo. App. 15), 1627, 1629.  
 State v. McGinnis (14 Mont. 462; 36 Pac. 1046), 1447.  
 State v. McGlynn (34 N. H. 422), 1085, 1510, 1527, 1660.  
 State v. McGonigal (5 Harr. [Del.] 510), 2041, 2051, 2052, 2054.  
 State v. McGough (14 R. I. 63), 1462, 1541.  
 State v. McGowan ([Me.] 5 Atl. 561), 1065.  
 State v. McGrath (73 Mo. 181), 1359.  
 State v. McGregor (88 Minn. 74; 92 N. W. 509), 465.  
 State v. McGrier (9 N. D. 566; 84 N. W. 363), 977.  
 State v. McGuinness (38 Mo. App. 15), 1357.  
 State v. McGuire (74 Neb. 769; 105 N. W. 471), 666.  
 State v. McGuire (64 N. H. 529; 15 Atl. 213), 1084, 1372, 1375.  
 State v. McIlvenna (21 S. D. 489; 113 N. W. 878), 1532.  
 State v. McIntosh (98 Me. 397; 57 Atl. 83), 1104.  
 State v. McIntyre (139 N. C. 599; 52 S. E. 63), 1082, 1659.  
 State v. McKenna (16 R. I. 398; 17 Atl. 51), 7, 8, 10, 1492, 1495, 1697, 1702, 1708, 1709.  
 State v. McLafferty (47 Kan. 140; 27 Pac. 843), 49, 50.  
 State v. McLaughlin (47 Kan. 143; 27 Pac. 840), 1452, 1616.  
 State v. McMahon (53 Conn. 407; 5 Atl. 596); 55 Am. Rep. 140), 215, 1227, 1228, 1303.  
 State v. McMaster (13 N. D. 58; 99 N. W. 58), 256, 998, 1066, 1076, 1330, 1791.  
 State v. McMickle (34 Tex. 676), 1484.  
 State v. McMillan (21 S. D. 209; 111 N. W. 540), 1458, 1762.  
 State v. McMinn (83 N. C. 668), 197, 1196.  
 State v. McNair (46 N. C. [1 Jones] 180), 1245.  
 State v. McNally (34 Me. 210; 56 Am. Dec. 650), 1038, 1047, 1051.  
 State v. McNamara (69 Me. 133), 49, 968.  
 State v. McNary (88 Mo. 143), 498, 503, 1160.  
 State v. McNeary (14 Mo. App. 410), 1643, 1644.  
 State v. McNett (5 Pen. [Del.] 334; 61 Atl. 689), 527, 539, 541.



[References are to pages.]

- State v. McNeeley (1 Winst. [N. C. L.] 234), 694.  
 State v. McNeeley (60 N. C. 232), 510.  
 State v. McNinch (87 N. C. 567), 2034.  
 State v. McNinn (118 N. C. 1259; 24 S. E. 523), 833.  
 State v. Mackin (51 Mo. App. 299), 869, 1687, 1688.  
 State v. Maddox (74 Ind. 105), 1509.  
 State v. Madeira (125 Mo. App. 508; 102 S. W. 1046), 1128, 1350, 1641, 1651.  
 State v. Madigan (57 Minn. 425; 59 N. W. 490), 2249.  
 State v. Maher (35 Me. 225), 1722.  
 State v. Mahn (25 Kan. 182), 2086.  
 State v. Mahnele County ([Ore.] 103 Pac. 446), 864.  
 State v. Mahoney (23 Minn. 181), 1362.  
 State v. Major (81 Mo. App. 289), 1485, 1487, 1504.  
 State v. Malheur County (46 Ore. 519; 101 Pac. 907), 926, 936.  
 State v. Malia ([Me.] 5 Atl. 562), 1045.  
 State v. Malling (11 Iowa, 239), 1653.  
 State v. Maloney (78 Iowa, 598; 43 N. W. 606), 1000.  
 State v. Maloney (79 Iowa, 413; 44 N. W. 693), 1763.  
 State v. Maloney (6 Ohio Dec. 209; 4 Ohio N. P. 197), 1768.  
 State v. Mancke (18 S. C. 81), 449, 496.  
 State v. Mann ([Ind.] 86 N. E. 976), 1853.  
 State v. Manning (87 Mo. App. 78), 1526.  
 State v. Manning (107 Mo. App. 51; 81 S. W. 223), 833, 838.  
 State v. Manning (14 Tex. 402), 226.  
 State v. Mansker (36 Tex. 364), 69, 1575.  
 State v. Marchbanks (61 S. C. 17; 39 S. E. 187), 1676, 1677, 1698.  
 State v. Marciniak (97 Minn. 355; 105 N. W. 965), 460.  
 State v. Marion (14 Mont. 458; 36 Pac. 1044), 1447.  
 State v. Marks (65 N. J. L. 84; 46 Atl. 757), 971, 1700.  
 State v. Markuson (5 N. D. 147; 64 N. W. 934), 1001, 1003.  
 State v. Markuson (7 N. D. 155; 73 N. W. 82), 1002, 1053.  
 State v. Marley (78 Conn. 330; 62 Atl. 85), 476.  
 State v. Marsh (37 Ark. 356), 157.  
 State v. Marshall (2 Kan. App. 792; 44 Pac. 49), 1609.  
 State v. Marston (64 N. H. 603; 15 Atl. 222), 987.  
 State v. Martel (103 Me. 63; 68 Atl. 454), 1732.  
 State v. Martin ([N. J.] 3 Crim. L. Mag. 44), 2040, 2051, 2063.  
 State v. Martin (20 Ark. 629), 2008.  
 State v. Martin (34 Ark. 346), 5, 16, 17, 25, 81, 962, 1457, 1532.  
 State v. Martin (55 Fla. 538; 46 So. 424), 652, 920.  
 State v. Martin (20 Ind. App. 699), 1119.  
 State v. Martin (108 Mo. 117; 18 S. W. 1005, affirming 44 Mo. App. 45), 1502, 1504.  
 State v. Martin (64 N. H. 603; 15 Atl. 222), 988.  
 State v. Martin (3 Heisk. 487), 1385.  
 State v. Maryland Club (105 Md. 585; 66 Atl. 667), 1310, 1332, 1566.  
 State v. Mason (108 Ind. 48; 8 N. E. 716), 929.  
 State v. Massey (72 Vt. 210; 47 Atl. 834), 988, 989, 999.

[References are to pages.]

- State v. Mateer (105 Iowa, 66; 74 N. W. 912), 1768.  
 State v. Matherson (77 Iowa, 485; 42 N. W. 377), 992, 1716.  
 State v. Mathews (51 N. J. L. 253; 17 Atl. 154), 616, 617.  
 State v. Mathis (18 Ind. App. 608; 48 N. E. 645), 214, 346, 1536.  
 State v. Mathis (20 Ind. App. 699; 48 N. E. 1109), 214, 1536.  
 State v. Mattle (48 La. Ann. 728; 19 So. 748), 139.  
 State v. Maurer (7 Clarke ([Ia.] 406), 369.  
 State v. Maxwell (36 Conn. 157), 1074.  
 State v. Maxwell (42 Iowa, 208), 2041.  
 State v. May (20 Iowa, 305), 1774.  
 State v. May (52 Kan. 53; 34 Pac. 407), 10, 1753.  
 State v. May (32 S. C. 39; 11 S. E. 440), 832.  
 State v. Mayor, etc. (37 Mo. 270), 904.  
 State v. Mays (59 W. Va. 331; 53 S. E. 416), 1560.  
 State v. Meader (62 Vt. 458; 20 Atl. 730), 929.  
 State v. Mead's Liquors (46 Conn. 22), 1656.  
 State v. Meagher (49 Mo. App. 571), 1309, 1634.  
 State v. Meagher (114 Mo. App. 266; 89 S. W. 595), 1129.  
 State v. Meagher (124 Mo. App. 333; 101 S. W. 634), 1319.  
 State v. Meek (26 Wash. 405; 67 Pac. 76), 1383.  
 State v. Meekin (51 Mo. App. 299), 910.  
 State v. Mellor (13 R. I. 666), 1729.  
 State v. Melton (38 Mo. 368), 1495, 1537.  
 State v. Melton (130 Mo. App. 262; 109 S. W. 858), 1682.  
 State v. Melton (120 N. C. 591; 26 S. E. 933), 1476.  
 State v. Mercer (32 Iowa, 405), 1341.  
 State v. Mercer (58 Iowa, 182; 12 N. W. 269), 825, 1523.  
 State v. Merget (129 Mo. App. 46; 107 S. W. 1015), 1482.  
 State v. Meteer (94 Iowa, 42; 62 N. W. 684), 577, 585.  
 State v. Meyers (80 Mo. 601), 585.  
 State v. Midgett (85 N. C. 538), 136, 137, 247.  
 State v. Midkiff (125 Mo. App. 397; 102 S. W. 590), 1350.  
 State v. Meyer (94 Mo. App. 201; 67 S. W. 933), 1383.  
 State v. Miller (20 Conn. 523), 1510, 1608.  
 State v. Miller (53 Iowa, 84; 4 N. W. 838), 1581, 1589, 1698.  
 State v. Miller (86 Iowa, 638; 53 N. W. 330), 309, 310.  
 State v. Miller (114 Iowa, 396; 87 N. W. 287), 484.  
 State v. Miller (63 Kan. 62; 64 Pac. 1033), 1722.  
 State v. Miller (48 Me. 576), 253, 1017, 1024, 1059, 1068, 1074, 1530.  
 State v. Miller (104 Mo. App. 297; 78 S. W. 643), 555.  
 State v. Miller (129 Mo. App. 390; 108 S. W. 603), 649, 650.  
 State v. Mitchell ([Mo.] 115 S. W. 1098), 924.  
 State v. Miller (48 Vt. 576), 1044.  
 State v. Miller ([W. Va.] 66 S. E. 522), 159, 233.  
 State v. Miller (26 W. Va. 106), 1221, 1578.  
 State v. Milwaukee (129 Wis. 562; 109 N. W. 421), 410, 472.  
 State v. Millikan (24 Mo. App. 462), 834.  
 State v. Milliken (8 Blackf. 260), 486.

[References are to pages.]

- State v. Minnehan (83 Me. 310; 22 Atl. 177), 1049, 1050.  
 State v. Minnesota Club ([Minn.] 119 N. W. 494), 13, 1325.  
 State v. Mitchell (4 Kan. App. 743; 46 Pac. 541), 1636, 1652.  
 State v. Mitchell (28 Mo. 562), 821.  
 State v. Mitchell (134 Mo. App. 540; 114 S. W. 1113), 38, 83.  
 State v. Mitchell (127 Mo. App. 455; 105 S. W. 655), 617, 621.  
 State v. Mitchell ([Mo.] 119 S. W. 498), 675.  
 State v. Mitchell (3 S. D. 223; 52 N. W. 1052), 995.  
 State v. Moceli (49 Kan. 142; 30 Pac. 189), 1454, 1504.  
 State v. Mohr (53 Iowa, 261; 5 N. W. 183), 1529.  
 State v. Molheur Co. (46 Ore. 519; 81 Pac. 368), 927.  
 State v. Momberg ([N. D.] 103 N. W. 566), 1661, 1731.  
 State v. Mondy (24 Ind. 268), 1491, 1498, 1499.  
 State v. Moniteau Co. Ct. (45 Mo. App. 387), 537, 538, 560, 568, 586, 602.  
 State v. Moody (95 N. C. 656), 509, 691, 1267.  
 State v. Moody (70 S. C. 56; 49 S. E. 8), 300, 307, 324.  
 State v. Moore (5 Blackf. 118), 21, 23, 25, 26, 28, 30, 82, 967.  
 State v. Moore (6 Ind. 436), 275.  
 State v. Moore (129 Iowa, 514; 106 N. W. 268), 1650.  
 State v. Moore (107 Mo. 78; 16 S. W. 937), 233, 826, 930, 936, 1524.  
 State v. Moore (84 Mo. App. 11), 677, 684, 685.  
 State v. Moore (14 N. H. 451), 314, 493, 687, 1637.  
 State v. Moore (1 Jones [N. C.] 276), 528, 576, 684, 685.  
 State v. Moore (49 S. C. 438; 27 S. E. 454), 1104, 1105.  
 State v. Mooty (3 Hill [S. C.] 187), 81, 1556.  
 State v. Moran ([Idaho] 90 Pac. 1044), 285.  
 State v. Moran (40 Me. 129), 1451, 1530.  
 State v. Morehead (22 R. I. 272; 47 Atl. 545), 963, 1101, 1104, 1677, 1697.  
 State v. Morgan (40 Conn. 44), 1094.  
 State v. Morgan ([Mo.] 115 S. W. 491), 1291, 1294, 1478, 1489.  
 State v. Morgan (96 Mo. App. 343; 70 S. W. 267), 824, 1640.  
 State v. Morgan (40 S. C. 345; 18 S. E. 937), 2040, 2046.  
 State v. Moriarty (50 Conn. 415), 1650.  
 State v. Moriarty (74 Ind. 103), 2024, 2026.  
 State v. Morin (102 Me. 290; 66 Atl. 650), 1730.  
 State v. Morphy (33 Iowa, 270; 11 Am. Rep. 122), 2246, 2248, 2252.  
 State v. Morris (77 N. C. 512), 182.  
 State v. Morris County (36 N. J. L. 72; 13 Am. Rep. 422), 235.  
 State v. Morrison (3 Dev. 299), 1642, 1643, 1644.  
 State v. Mortland (71 Iowa, 543; 32 N. W. 485), 777.  
 State v. Morton (42 Mo. App. 64), 1372.  
 State v. Mosier (25 Conn. 40), 1380, 1381.  
 State v. Mott (61 Md. 297), 291, 436.  
 State v. Moulton (52 Kan. 69; 34 P. 412), 1185.  
 State v. Mourey (37 Kan. 369; 15 Pac. 282), 2041, 2067.

[References are to pages.]

- State v. Mudie ([S. D.] 115 N. W. 107), 1196, 1325, 1343, 1447, 1558.  
 State v. Mueller (38 Minn. 497; 38 N. W. 691), 1362, 1620.  
 State v. Mugler (29 Kan. 252), 110.  
 State v. Mulhern (130 Iowa, 46; 106 N. W. 267), 1239, 1241.  
 State v. Mullen (14 La. Ann. 577), 2059, 2060.  
 State v. Mullenhoff (74 Iowa, 271; 37 N. W. 329), 183, 450, 488, 495, 827, 1093, 1094, 1160.  
 State v. Mullikin (8 Blackf. 260), 104, 1106, 1107, 1109.  
 State v. Mullinix (6 Blackf. 554), 1491.  
 State v. Mullins (67 Ark. 422; 55 S. W. 211), 1509, 1511.  
 State v. Muncey (28 W. Va. 494), 11, 53, 55, 1713.  
 State v. Munch (15 Mo. App. 207), 1729.  
 State v. Munch (57 Mo. App. 207), 1732.  
 State v. Munger (15 Vt. 290), 23, 24, 25, 34, 35, 80, 1487, 1496, 1505, 1519, 1537, 1648, 1650.  
 State v. Munson (25 Ohio St. 31), 1173, 1231, 1234, 1845.  
 State v. Muntz (3 Kan. 383), 1479, 1501, 1554.  
 State v. Munzemeier (24 Iowa, 87), 1089, 1658.  
 State v. Murch ([Me.] 7 Atl. 115), 1528.  
 State v. Murphy (118 Mo. 7; 25 S. W. 95), 2041.  
 State v. Murphy (51 N. J. L. 250; 17 Atl. 157), 567.  
 State v. Murphy (15 R. I. 543; 10 Atl. 585), 1082, 1444, 1531.  
 State v. Murphy (71 Vt. 127; 41 Atl. 1037), 2257.  
 State v. Murphy (23 N. W. 390; 48 Pac. 628), 25.  
 State v. Muse (4 D. & B. L. [N. C.] 319), 132, 138, 1507.  
 State v. Myers (146 Ind. 36; 44 N. E. 801), 1573.  
 State v. Nagley (8 Kan. App. 812; 57 Pac. 554), 1484, 1652.  
 State v. Nash (97 Ala. 514), 156.  
 State v. Nash (97 N. C. 514; 2 S. E. 645), 25, 156.  
 State v. Nathan (60 W. Va. 673; 55 S. E. 742), 1254.  
 State v. Nations (75 Mo. 53), 1446.  
 State v. Neagle (65 Me. 468), 1717, 1719, 1724.  
 State v. Neal (27 N. H. 131), 1365, 1366.  
 State v. Ned (105 La. 696; 30 So. 126; 54 L. R. A. 933), 2250.  
 State v. Neese (38 S. C. 261; 16 S. E. 893), 970.  
 State v. Neeson ([Iowa] 64 N. W. 409), 1097, 1658.  
 State v. Neild (4 Kan. App. 626; 45 Pac. 623), 1086.  
 State v. Neiss (108 N. C. 787; 13 S. E. 225; 12 L. R. A. 412), 1338, 1339, 1342.  
 State v. Nelson (10 Idaho, 522; 79 Pac. 79; 67 L. R. A. 808), 218, 465, 466.  
 State v. Nelson (14 N. L. 297; 103 N. W. 609), 1207.  
 State v. Nelson (13 N. D. 122; 99 N. W. 1077), 976, 977, 978, 992.  
 State v. Nerbovig (33 Minn. 480; 24 N. W. 321), 1446, 1519, 1492.  
 State v. Nethken (60 W. Va. 673; 55 S. E. 742), 1248, 1250, 1631, 1645.  
 State v. New (165 Ind. 571; 76 N. E. 400), 1443.  
 State v. New (36 Ind. App. 521; 76 N. E. 181), 1443.  
 State v. New Orleans (113 La. 371; 36 So. 999), 190, 490, 627, 632, 649.

[References are to pages.]

- State v. New Orleans, etc., Club (116 La. 46; 40 So. 526), 798.
- State v. New Orleans (117 La. 715; 42 So. 245), 576, 578.
- State v. Newcomb (107 N. C. 900; 12 S. E. 53), 508.
- State v. Newcomb (36 S. E. 147; 126 N. C. 1104), 1476.
- State v. Newton (5 N. J. L. 534), 163.
- State v. Nibblet ([Nev.] 102 Pac. 229), 1576.
- State v. Nickels (65 S. C. 169; 43 S. E. 521), 1084.
- State v. Nickerson (30 Kan. 545; 2 Pac. 654), 1542, 1548.
- State v. Nield (4 Kan. App. 626; 45 Pac. 623), 1546, 1608, 1756.
- State v. Niers (87 Iowa, 723; 54 N. W. 1076), 1546.
- State v. Nippert (74 Kan. 371; 86 Pac. 478), 1732.
- State v. Nixford (46 Mo. App. 494), 838.
- State v. Nolan (37 Minn. 16), 395, 400.
- State v. Nolan (15 R. I. 529; 10 Atl. 481), 1445, 1446, 1738.
- State v. Noland (29 Ind. 212), 1485.
- State v. Norman (13 N. C. 222), 1476.
- State v. Norris (59 N. H. 536), 1752.
- State v. Norris (65 S. C. 287; 43 S. E. 791), 1104.
- State v. Northfield ([S. D.] 101 N. W. 1063), 648, 650.
- State v. Norton (41 Iowa, 430), 1670.
- State v. Norton (67 Iowa, 641; 25 N. W. 842), 2087.
- State v. Nowlan (64 Me. 531), 1756.
- State v. Noyes (30 N. H. 279), 167, 228, 233, 240.
- State v. Nulty (57 Vt. 543), 1643.
- State v. Nunnally (43 Ark. 68), 1653.
- State v. Nutt (28 Vt. 598), 1534.
- State v. Nutter (44 W. Va. 385; 30 S. E. 67), 768, 778, 779.
- State v. Nye (32 Kan. 201, 204; 4 Pac. 134, 136), 1641, 1645.
- State v. O'Brien (35 Mont. 441; 90 Pac. 514), 916, 958, 1463, 1467, 1469, 1614, 1620, 1679, 1681, 1682, 1685, 1696, 1738.
- State v. O'Connell (26 Ind. 266), 70.
- State v. O'Connell (31 Kan. 383; 2 Pac. 579), 1740.
- State v. O'Connell ([Me.] 14 Atl. 291), 1717, 1724.
- State v. O'Connell (82 Me. 30; 19 Atl. 86), 1113, 1115, 1639, 1665, 1729, 1731, 1732.
- State v. O'Connell (99 Me. 61; 58 Atl. 59), 967, 1490, 1697.
- State v. O'Conner (49 Me. 594), 1114.
- State v. O'Connor (3 Kan. App. 594; 43 Pac. 859), 498, 1372, 1670, 1678, 1689.
- State v. O'Connor (13 La. Ann. 486), 929.
- State v. O'Connor (58 Minn. 193; 59 N. W. 999), 750.
- State v. O'Connor (65 Mo. App. 324), 498, 1372, 1643, 1644.
- State v. O'Connor (11 Nev. 416), 2075.
- State v. O'Connor (5 N. Dak. 629), 426.
- State v. Odam (2 Lea, 220), 1570.
- State v. Oder (92 Iowa, 767; 61 N. W. 190), 1674.
- State v. O'Donnell (41 S. C. 553; 19 S. E. 748), 150, 174.
- State v. O'Donnell (10 R. I. 472), 1510.
- State v. Oeder (80 Iowa, 72; 45 N. W. 543), 827.
- State v. O'Grady (65 Vt. 66; 25 Atl. 905), 1084.
- State v. O'Keefe (41 Vt. 691), 1484.



[References are to pages.]

- State v. Oliphant (128 Mo. App. 252; 107 S. W. 32), 1685.
- State v. Oliver (26 W. Va. 422; 53 Am. Rep. 79), 7, 24, 25, 43, 47, 48, 49, 968.
- State v. Olson (38 Minn. 150; 36 N. W. 446), 1538, 1539, 1648.
- State v. O'Malley (132 Iowa, 696; 109 N. W. 491), 1678.
- State v. O'Neal ([N. D.] 124 N. W. 68), 1546.
- State v. O'Neil (51 Kan. 651; 33 Pac. 287; 24 L. R. A. 555), 2041, 2054, 2061, 2067.
- State v. O'Neil (58 Vt. 140; 2 Atl. 586; 56 Am. Rep. 557), 254, 1008, 1010, 1283, 1727.
- State v. O'Neill (24 Wis. 149), 233.
- State v. One Bottle of Brandy (43 Vt. 297), 1016.
- State v. O'Reilly (126 Mo. 597; 29 S. W. 597), 2040.
- State v. Orth (38 Minn. 150; 36 N. W. 103), 541.
- State v. Orton (41 Ark. 305), 1571.
- State v. Osborn (155 Ind. 385; 58 N. E. 491), 2116.
- State v. Oshkosh ([Wis.] 70 N. W. 300), 718, 734.
- State v. Otten (10 Kan. App. 351; 59 Pac. 380; 60 Pac. 1132), 1678.
- State v. Owen (15 Mo. 506), 73, 1499, 1519.
- State v. Packer (80 N. C. 439 [port wine]), 8, 13, 30, 82, 1491.
- State v. Packett ([Mo.] 119 S. W. 25), 579, 648.
- State v. Paddock (24 Vt. 312), 1637, 1764.
- State v. Page (66 Me. 418), 11, 29, 85, 967, 973.
- State v. Page ([Mo. App.] 80 S. W. 912), 646.
- State v. Paige (50 Vt. 445), 1672.
- State v. Paige (78 Vt. 286; 62 Atl. 1017), 282, 295, 1491, 1512, 1529, 1531.
- State v. Papp (45 Md. 432), 1649.
- State v. Parker (15 La. Ann. 231), 1189.
- State v. Parker (139 N. C. 586; 51 S. E. 1028), 964, 965.
- State v. Parker (26 Vt. 357), 233, 240.
- State v. Parkersburg Brewing Co. (53 W. Va. 591; 45 S. E. 924), 1461.
- State v. Parkinson (5 Nev. 15), 228.
- State v. Parks (29 Vt. 70), 383.
- State v. Parnell (16 Ark. 506), 1504.
- State v. Parr (34 W. Va. 81; 11 S. E. 737), 1255.
- State v. Parsons (40 N. J. L. 123), 243.
- State v. Parson (102 Mo. 436; 27 S. W. 1102; 46 Am. St. 457), 311.
- State v. Parsons (124 Mo. 436; 27 S. W. 1162; 42 Am. St. 457), 309.
- State v. Partlow (91 N. C. 550; 49 Am. Rep. 652), 136, 137.
- State v. Pasnau (118 Iowa, 501; 92 N. W. 682), 2038, 2060, 2077, 2082.
- State v. Patterson (116 Ind. 45; 10 N. E. 289; 18 N. E. 270), 1485.
- State v. Patterson ([N. J. L.] 23 Atl. 1098), 676.
- State v. Patterson (98 N. C. 666; 4 S. E. 540), 541, 1739.
- State v. Patterson (134 N. C. 612; 47 S. E. 808), 268, 951.
- State v. Patterson (13 N. D. 70; 99 N. W. 67), 982, 1046, 1060.
- State v. Patrick (65 Mo. App. 653), 1740, 1741.
- State v. Patrick (2 Mo. App. Rep'r. 1149), 929.
- State v. Paul (87 Mo. App. 47), 831.

[References are to pages.]

- State v. Paul (5 R. I. 185), 98,  
 125, 126, 129, 179, 258, 259.  
 State v. Paulk (18 S. C. 514),  
 2040, 2053.  
 State v. Paull (14 N. D. 557; 105  
 N. W. 717), 1103.  
 State v. Pawtucket ([R. I.] 46  
 Atl. 1047), 589.  
 State v. Peak (9 Kan. App. 436;  
 5<sup>c</sup> Pac. 1034), 1500, 1701.  
 State v. Pearis (35 W. Va. 320;  
 13 S. E. 1006), 1460.  
 State v. Pearse (31 Neb. 562; 48  
 N. W. 391), 603.  
 State v. Pearsell (43 Ia. 630),  
 389, 390.  
 State v. Peck (66 Kan. 701; 72  
 Pac. 237), 1103.  
 State v. Pecker (47 N. H. 364),  
 1068.  
 State v. Peckham (3 R. I. 289),  
 111, 139, 155, 233, 234, 314,  
 316.  
 State v. Peel, etc., Co. (36 W. Va.  
 802; 15 S. E. 1000; 76 L. R.  
 A. 385), 479.  
 State v. Pefferle (33 Kan. 718; 7  
 Pac. Rep. 597), 221.  
 State v. Pell ([Iowa] 119 N. W.  
 154), 2039, 2062, 2068.  
 State v. Pendergast (20 W. Va.  
 672), 1505.  
 State v. People (1 Penn. [Del.]  
 525), 1230, 1239.  
 State v. People (139 Ill. App. 500;  
 affirmed [Ill.] 86 N. E. 236),  
 1184.  
 State v. Percy (72 N. J. L. 375;  
 61 Atl. 148; affirmed, 73 N. J.  
 L. 554; 64 Atl. 113), 21.  
 State v. Perkins (63 N. H. 368),  
 1530.  
 State v. Perkins (141 N. C. 797;  
 53 S. E. 735), 1558.  
 State v. Peterson (38 Minn. 143;  
 36 N. W. 443), 1478, 1538,  
 1539, 1567, 1640, 1648.  
 State v. Peterson (98 Minn. 210;  
 108 N. W. 6), 1611.  
 State v. Peterson (129 N. C. 556;  
 40 S. E. 9), 2039, 2078.  
 State v. Peterson (41 Vt. 504),  
 1702.  
 State v. Pfeifer (26 Minn. 175),  
 443.  
 State v. Piferle (36 Kan. 90; 12  
 Pac. 406), 1656, 1702, 1706,  
 1713, 1740.  
 State v. Pileajor (81 Iowa, 759;  
 46 N. W. 1063), 307, 327.  
 State v. Phillips (73 Minn. 77),  
 259.  
 State v. Pianfetti (79 Vt. 236; 65  
 Atl. 84), 1653, 1717, 1719,  
 1723.  
 State v. Piazza (66 Miss. 426; 6  
 So. 316), 802.  
 State v. Piche (98 Mo. 348; 56  
 Atl. 1052), 19, 972, 973, 1708.  
 State v. Pickett (47 S. C. 101; 25  
 S. E. 46), 1528, 1739.  
 State v. Pierce (65 Iowa, 85; 21  
 N. W. 195), 62, 1101, 1250.  
 State v. Pierce (26 Kan. 777), 777,  
 824.  
 State v. Pierce ([Me.] 15 Atl. 68),  
 1547, 1549.  
 State v. Pierce (111 Mo. App.  
 216; 85 S. W. 663), 1354,  
 1596.  
 State v. Pierce (55 Vt. 82), 1028.  
 State v. Pierce County (50 Wash.  
 650; 97 Pac. 778), 472.  
 State v. Piezzo (66 Miss. 426; 6  
 So. 316), 793.  
 State v. Pigg (78 Kan. 618; 97  
 Pac. 859), 34, 80, 1696, 1729,  
 1732.  
 State v. Pike (49 N. H. 399; 6  
 Am. Rep. 533), 1631, 1735.  
 State v. Pillsbury (47 Me. 449),  
 1455.  
 State v. Pinckney (111 Iowa, 34;  
 82 N. W. 450), 1482.  
 State v. Piner (141 N. C. 760; 53  
 S. E. 305), 945, 1707.  
 State v. Piper (70 N. H. 282; 47  
 Atl. 703), 997, 999.

[References are to pages]

- State v. Pischel (16 Neb. 490; 20 N. W. 848), 1445, 1446, 1449, 1501, 1503, 1508, 1557.  
 State v. Pittman (10 Kan. 593), 497, 550, 1522.  
 State v. Pittman (76 Mo. 56), 1445, 1446.  
 State v. Pitts ([Ala.] 49 So. 441), 251.  
 State v. Pitts (58 Mo. 556), 2041.  
 State v. Pitzer (23 Kan. 250), 1522.  
 State v. Plainfield (44 N. J. L. 118), 443, 484, 1502.  
 State v. Plamondon (75 Kan. 269; 89 Pac. 23), 1002, 1004.  
 State v. Plunket (64 Me. 534), 1046, 1057.  
 State v. Plunket (3 Har. [N. J.] 5), 271.  
 State v. Pollard (72 Mo. App. 230), 833.  
 State v. Pollard (6 R. I. 290), 270.  
 State v. Police Jury (116 La. 767; 41 So. 85), 559.  
 State v. Police Jury (120 La. 163; 45 So. 47), 651, 652.  
 State v. Polk (69 Atl. 1006), 1456, 1517.  
 State v. Pond (93 Mo. 606; 6 S. W. 469), 110, 228, 232, 233, 235.  
 State v. Pope (79 S. C. 87; 60 S. E. 234), 387, 955, 1011, 1023.  
 State v. Popp (45 Md. 432), 1323.  
 State v. Porter (76 Kan. 411; 91 Pac. 1073; 13 L. R. A. [N. S.] 462), 1001.  
 State v. Porterfield (47 S. C. 75; 25 S. E. 39), 111, 139, 149, 281, 383.  
 State v. Poteet (86 N. C. 612), 1163.  
 State v. Potter (30 Ia. 587), 389.  
 State v. Potter (125 Mo. App. 465; 102 S. W. 668), 1349, 1505.  
 State v. Potts (100 N. C. 457; 6 S. E. 657), 2051, 2058.  
 State v. Poull (14 N. D. 557; 105 N. W. 717), 1481, 1676.  
 State v. Powell (141 N. C. 790; 53 S. E. 515), 1185.  
 State v. Powers (38 Ohio St. 54), 243.  
 State v. Prater (59 S. C. 271; 37 S. E. 933), 1108, 1486, 1552, 1671, 1716.  
 State v. Prather (41 Mo. App. 451), 1465, 1468.  
 State v. Pratt (52 N. J. L. 306; 19 Atl. 607), 1290.  
 State v. Pratt (34 Vt. 323), 64, 65, 67, 1253, 1588, 1633, 1754, 2031.  
 State v. Prescott (67 N. H. 203; 30 Atl. 342), 1179, 1460.  
 State v. Prescott (27 Vt. 194), 110.  
 State v. Pressman (103 Iowa, 449), 72 N. W. 660, 683, 901.  
 State v. Probst (87 N. Car. 560), 449, 522.  
 State v. Prettyman (3 Harr. [Del.] 570), 69, 509, 690, 694, 1267.  
 State v. Price (75 Iowa, 243; 39 N. W. 291), 1541, 1546, 1763.  
 State v. Price (92 Iowa, 181; 60 N. W. 514), 994.  
 State v. Priester (43 Minn. 373; 45 N. W. 712), 221, 283, 474, 1606.  
 State v. Priester (Cheves [S. C.] 103), 1451.  
 State v. Pritchard (16 S. D. 166; 91 S. W. 583), 12, 15, 1257, 1630.  
 State v. Prouty (102 Iowa, 105; 84 N. W. 670), 999.  
 State v. Putnam (38 Me. 296), 383, 476.  
 State v. Quinlan (40 Minn. 55; 41 N. W. 299), 5, 24, 26, 43.  
 State v. Quinn (170 Mo. 176; 70 S. W. 1117), 553.  
 State v. Quinn (25 Mo. App. 102), 1598.

[References are to pages.]

- State v. Quinn (40 Mo. App. 627), 1361.  
 State v. Quinn (49 Mo. App. 602), 1502.  
 State v. Quinn (94 Mo. App. 59; 67 S. W. 974), 1192.  
 State v. Raiford (7 Post [Ala.] 101), 1492.  
 State v. Rairort (64 N. J. 412; 45 Atl. 786), 1678.  
 State v. Ramsey (82 Mo. 133), 2041.  
 State v. Rand (51 N. H. 361), 1221, 1578.  
 State v. Randall (73 Mo. App. 463, 465), 824, 831.  
 State v. Randolph<sup>e</sup> ([Mo. App.] 123 S. W. 61), 1484.  
 State v. Ranelle ([Mo.] 119 S. W. 55), 372.  
 State v. Ranscher (69 Tenn. [1 Lea] 96), 110, 132, 134, 135, 247, 248, 424.  
 State v. Rath sack (82 Neb. 386; 117 N. W. 949), 672.  
 State v. Ratner (44 Kan. 429; 24 Pac. 953), 1442, 1554, 1555.  
 State v. Rauch (47 Ohio, 478; 25 N. E. 59), 813.  
 State v. Ray (119 La. 417; 44 So. 417), 528, 529.  
 State v. Raymond (24 Conn. 204), 1610, 1659.  
 State v. Rechards (21 Minn. 47), 1109.  
 State v. Redden (5 Har. [Del.] 505), 1196.  
 State v. Reed (168 Ind. 588; 81 N. E. 571), 1446, 1722.  
 State v. Reed (35 Me. 489; 58 Am. Dec. 727), 1500.  
 State v. Reed (35 Pac. 706), 2246.  
 State v. Reick (43 Kan. 279; 23 Pac. 577), 1651.  
 State v. Reid (134 Mo. App. 582; 114 S. W. 1116), 891.  
 State v. Reid (115 N. C. 741; 20 S. E. 468), 382.  
 State v. Reiley (75 Mo. 521), 1353, 1359, 1361.  
 State v. Reilly (108 Iowa, 735; 78 N. W. 680), 955, 956.  
 State v. Reily (66 N. J. L. 399; 52 Atl. 1005), 23, 39, 1493.  
 State v. Reingardt (46 N. J. L. 337), 610.  
 State v. Renneker (75 Kan. 685; 90 Pac. 245), 1185.  
 State v. Reno (41 Kan. 674; 21 Pac. 803), 989, 1650, 1613, 1655, 1674.  
 State v. Repetto (66 Mo. App. 251), 1638.  
 State v. Reymann (48 W. Va. 307; 37 S. E. 591), 991, 999.  
 State v. Reylets (74 Iowa, 499; 38 N. W. 377), 1101, 1670, 1740.  
 State v. Reynolds (5 Kan. App. 515; 47 Pac. 573), 963, 964, 969, 1609.  
 State v. Reynolds (14 Mont. 383), 218.  
 State v. Reynolds (18 Neb. 431; 25 N. W. 610), 603, 616, 617.  
 State v. Reynolds (47 Vt. 297), 1491.  
 State v. Rhodes (90 Iowa, 496; 58 N. W. 887; 24 L. R. A. 245), 323.  
 State v. Rhodes (2 Ind. 321), 1549.  
 State v. Richardson (48 Ore. 309; 85 Pac. 225), 148, 234, 291, 868, 913, 927.  
 State v. Richter (23 Minn. 81), 1223, 1245.  
 State v. Ridgway (73 Ohio St. 31; 76 N. E. 95), 1502.  
 State v. Riddock (80 S. C. 118; 61 S. E. 210), 980, 987.  
 State v. Riffe (10 W. Va. 794), 1519.  
 State v. Rigley (7 Idaho, 292; 62 Pac. 679), 2039, 2069.  
 State v. Riley (86 Me. 144; 29 Atl. 920), 1087.

[References are to pages.]

- State v. Riley (100 Mo. 493; 13 S. W. 1063), 2041, 2054, 2055, 2056, 2079.  
 State v. Riley (3 Hill L. [S. C.] 65), 1459.  
 State v. Rinke ([Mo.] 121 S. W. 159), 882, 892, 902, 924.  
 State v. Ripley (104 N. C. 752; 10 S. E. 259), 2057, 2059, 2086.  
 State v. Ritzman (8 Ohio S. & P. 685), 1481, 1697.  
 State v. Roach (74 Me. 360), 1037.  
 State v. Roach (74 Me. 562), 1479.  
 State v. Roach (75 Me. 123), 49, 968.  
 State v. Roan (122 Iowa, 136; 97 N. W. 997), 2038, 2060.  
 State v. Robbins (54 N. J. L. 566; 25 Atl. 471), 797, 878, 879.  
 State v. Robbins ([Me.] 14 Atl. 584), 1717, 1724.  
 State v. Robbins (51 Mo. 82), 228, 248.  
 State v. Roberts (33 Mo. App. 524), 1609.  
 State v. Roberts (74 N. H. 476; 69 Atl. 722), 163, 186, 496, 976.  
 State v. Roberts (55 N. H. 483), 1615, 1616.  
 State v. Roberts (74 N. H. 476; 69 Atl. 722), 279.  
 State v. Robinson (111 Ala. 482; 20 So. 30), 61, 64, 2032.  
 State v. Robinson (33 Me. 564), 1038, 1043, 1044, 1048, 1051, 1062, 1063, 1074, 1530.  
 State v. Robinson (39 Me. 150), 1572.  
 State v. Robinson (49 Me. 285), 306, 307, 313, 316, 1016, 1049, 1051, 1056, 1074, 1589.  
 State v. Robinson (101 Minn. 277; 112 N. W. 269), 171.  
 State v. Robinson (129 Mo. App. 147; 108 S. W. 619), 940.  
 State v. Robinson (17 N. H. 263), 1760.  
 State v. Robinson (116 N. C. 1046; 21 S. E. 701), 382.  
 State v. Robinson (61 S. C. 106; 39 S. E. 247), 968, 1677, 1698.  
 State v. Robinson (20 W. Va. 713; 43 Am. Rep. 799), 2039, 2044, 2045, 2051, 2061, 2063, 2067, 2070, 2071, 2072.  
 State v. Rock (9 Tex. 369), 198.  
 State v. Rockwell (82 Iowa, 429; 48 N. W. 721), 1738.  
 State v. Roehm (61 Mo. 82), 1567.  
 State v. Rogers (39 Mo. 431), 1491, 1505, 1501, 1537.  
 State v. Rohrer (34 Kan. 427; 8 Pac. 718), 1479.  
 State v. Rolle (30 La. Ann. 991), 202, 428, 792.  
 State v. Roller (77 Mo. 120), 825, 831, 833.  
 State v. Rollins (77 Me. 380), 1542, 1550.  
 State v. Rollins (113 N. C. 722; 18 S. E. 394), 2258.  
 State v. Ronan (37 Fed. 117), 208.  
 State v. Roney (133 Iowa, 416; 110 N. W. 604), 344.  
 State v. Rosenberg (212 Mo. 648; 111 S. W. 509), 1280.  
 State v. Rosenblatt (9 Mo. App. 587), 279, 558.  
 State v. Ross (58 S. C. 444; 36 S. E. 659), 554, 1754.  
 State v. Rosum (8 N. D. 548; 80 N. W. 477), 1090, 1454, 1455, 1742.  
 State v. Rouch (47 Ohio St. 475; 25 N. E. 59), 198, 233, 281, 433.  
 State v. Rowell (75 S. C. 494; 56 S. E. 23), 2038, 2068, 2070, 2082.  
 State v. Roy (119 La. 417; 44 So. 159), 1638.  
 State v. Ruark (34 Mo. App. 325), 650, 883, 885, 893.



[References are to pages.]

- State v. Ruby (68 Me. 543), 1549.  
 State v. Rudolph (3 Hill L. [S. C.] 257), 1503.  
 State v. Rudy (9 Pan. App. 60; 57 Pac. 263), 1613, 1652.  
 State v. Rundlett (33 N. H. 70), 1650, 1740.  
 State v. Runyan (26 Mo. 167, 169), 1457.  
 State v. Rupperty (70 Iowa, 160; 30 N. W. 391), 1546.  
 State v. Rush (13 R. I. 198), 8, 12, 45, 85, 962, 966.  
 State v. Rushing (140 Ala. 187; 36 So. 1007), 475.  
 State v. Russell (1 Houst. [Del.] 122), 2035.  
 State v. Russell ([Del.] 69 Atl. 839), 1172, 1205, 1372, 1376.  
 State v. Russell (69 Minn. 499; 72 N. W. 837), 1510, 1512.  
 State v. Russell (99 Mo. App. 373; 73 S. W. 297), 834, 1375, 1649.  
 State v. Rust (35 N. H. 438), 1500.  
 State v. Ryan (50 Conn. 411), 1126.  
 State v. Ryan (68 Conn. 512; 37 Atl. 377), 1722.  
 State v. Ryan ([La.] 48 So. 537), 63.  
 State v. Ryan (81 Me. 107; 16 Atl. 406), 1461, 1549.  
 State v. Ryan (30 Mo. App. 159), 1457, 1497, 1499.  
 State v. Ryan (70 Wis. 676; 36 N. W. 823), 65.  
 State v. St. Louis Club (125 Mo. 308; 28 S. W. 604; 26 L. R. A. 573), 537, 1329, 1332, 1338.  
 State v. Salikowski ([Del.] 69 Atl. 839), 1241, 1448.  
 State v. Salts (77 Iowa, 193; 39 N. W. 167), 829, 1094, 1102.  
 State v. Salverson (87 Minn. 40; 91 N. W. 1), 2247.  
 State v. Sanborn (38 Me. 32), 1018.  
 State v. Sanford (67 Conn. 286; 34 Atl. 1045), 1766.  
 State v. Sanford (15 S. D. 153; 87 N. W. 592), 1241.  
 State v. Sanger ([Ark.] 88 S. W. 903), 910, 1686.  
 State v. Sannerud (38 Minn. 229; 36 N. W. 447), 1538, 1539, 1640, 1641, 1648.  
 State v. Sargent ([Vt.] 69 Atl. 825), 884, 890.  
 State v. Sartin (55 Iowa, 340; 7 N. W. 604), 1591.  
 State v. Sartori (55 Iowa, 340; 7 N. W. 604), 1658.  
 State v. Sasse (6 S. D. 212; 60 N. W. 853; 55 Am. St. 834), 1237.  
 State v. Sattley (131 Mo. 464; 33 S. W. 41), 264, 1585.  
 State v. Saunders (66 N. H. 39; 25 Atl. 588; 18 L. R. A. 646), 981.  
 State v. Savage (89 Ala. 1; 7 So. 70; 7 L. R. A. 427), 61, 2031, 2032, 2262.  
 State v. Savage (48 N. H. 484), 1513, 1516.  
 State v. Sawyer (67 Vt. 239; 31 Atl. 285), 1766.  
 State v. Saxaner (48 Mo. 454), 1739.  
 State v. Scale (36 Ind. App. 73; 74 N. E. 1111), 1907.  
 State v. Scampini (77 Vt. 92; 59 Atl. 201), 230, 282, 957, 1159, 1183, 1184, 1192, 1193, 1512.  
 State v. Scarlett (38 Ark. 563), 1521.  
 State v. Scatena (84 Minn. 281; 87 N. W. 764), 467.  
 State v. Schaefer (44 Kan. 90; 24 P. 92), 43, 49, 50, 968, 1185, 1708, 1709.  
 State v. Scharrer (2 Coldw. [Tenn.] 323), 215.  
 State v. Schell ([S. D.] 117 N. W. 505), 1538.  
 State v. Schilling (14 Iowa, 455), 1484, 1548, 1550, 1551, 1741.

[References are to pages.]

- State v. Schingen (20 Wis. 75), 2079, 2080, 2081.
- State v. Schleuter (110 Mo. App. 7; 83 S. W. 1012), 1448.
- State v. Schmail (25 Minn. 368), 522, 1503, 1508, 1509.
- State v. Schmidt (34 Kan. 399; 8 Pac. 867), 1516, 1640.
- State v. Schmidt (57 N. J. L. 625; 31 Atl. 280), 1556.
- State v. Schmidt (65 Iowa, 556; 22 N. W. 673), 675, 743, 749, 879.
- State v. Schmitz (36 Mo. App. 550), 851.
- State v. Schmulbach Brewing Co. 56 W. Va. 333; 49 S. E. 249), 543.
- State v. Schneider (47 Mo. App. 669), 668, 674.
- State v. Schoenthaler (63 Kan. 148; 65 Pac. 235), 1093.
- State v. Schraps (97 Minn. 62; 106 N. W. 106), 279.
- State v. Schreiber (98 Ind. 332), 1554.
- State v. Schreiner (86 Minn. 253; 90 N. W. 401), 756.
- State v. Schroeder (51 Iowa, 197; 1 N. W. 431), 168, 407, 424.
- State v. Schroeder (43 Minn. 231; 45 N. W. 149; 45 Minn. 44; 47 N. W. 308), 540, 541, 1194.
- State v. Schroeder (3 Hill L. [S. C.] 61), 1223, 1246, 1459, 1502.
- State v. Schroff (123 Wis. 98; 100 N. W. 1030), 716, 732, 748.
- State v. Schuler (109 Iowa, 111; 80 N. W. 213), 1449.
- State v. Schultz (79 Iowa, 478; 44 N. W. 713), 993.
- State v. Schwartz (25 Tex. 764), 1515.
- State v. Schweickardt (109 Mo. 496; 19 S. W. 47), 190, 980.
- State v. Schweifer (27 Kan. 499), 1446, 1502, 1506, 1641.
- State v. Scott (96 Mo. App. 620; 70 S. W. 736), 539, 577.
- State v. Scroggins (107 N. C. 959; 12 S. E. 59; 10 L. R. A. 542), 1229, 1365, 1367.
- State v. Scott (116 N. C. 1012; 21 S. E. 194), 1753.
- State v. Searey (20 Mo. 489), 111, 138.
- State v. Searey (111 Mo. 236; 20 S. W. 186), 1465, 1642, 1687, 1688.
- State v. Searey (39 Mo. App. 393), 893, 1465, 1468, 1688, 1750.
- State v. Searey (46 Mo. App. 421), 832, 907, 908, 1687, 1688.
- State v. Searlett (38 Ark. 563), 1525.
- State v. Seattle ([Wash.] 71 Pac. 712), 807, 808.
- State v. Seebold (192 Mo. 720; 91 S. W. 491), 282, 718, 720.
- State v. Seelig (16 N. D. 177; 112 N. W. 140), 1706.
- State v. Seibert (98 Mo. App. 212; 71 S. W. 95), 567, 576, 646.
- State v. Sejours (113 La. 676; 37 So. 599), 2258.
- State v. Semmes ([Ala.] 50 So. 120), 1749.
- State v. Settles (34 Mont. 448; 87 Pac. 445), 208, 578.
- State v. Severson (88 Iowa, 714; 54 N. H. 347), 981, 993.
- State v. Sevier (117 Ind. 338; 20 N. E. 245), 2026.
- State v. Sewell (3 Jones L. [N. C.] 245), 2051, 2082.
- State v. Shackles (29 Kan. 341), 1490, 1554, 1583.
- State v. Shafer (20 Kan. 226), 1717.
- State v. Shafer (82 Mo. App. 58), 1458.
- State v. Shanahan (54 N. H. 497), 389.
- State v. Shank (74 Iowa, 649; 38 N. W. 523), 827, 831, 1088, 1094, 1102, 1591, 1660, 1754.

[References are to pages.]

- State v. Shanks (98 Mo. App. 138; 71 S. W. 1065), 826, 832.  
 State v. Sharpe (119 Mo. App. 386; 95 S. W. 298), 836, 969.  
 State v. Sharrer (2 Coldw. 323), 23, 27, 304, 965.  
 State v. Shaw (23 Iowa, 316), 1760.  
 State v. Shaw (8 Kan. App. 679; 57 Pac. 137), 1187, 1188.  
 State v. Shaw (32 Me. 570), 497, 503, 756, 1638, 1639.  
 State v. Shaw (35 N. H. 217), 1482, 1511, 1513.  
 State v. Shaw (58 N. H. 72), 830, 1616.  
 State v. Shaw (13 N. C. 198), 1499.  
 State v. Shawbeck (7 Iowa, 322), 1742.  
 State v. Shearer (8 Blackf. 362), 1479, 1489.  
 State v. Sheasley (71 Kan. 857; 78 Pac. 997), 211, 247, 632, 662.  
 State v. Shelton (38 Ind. App. 80; 77 S. E. 1052), 1318.  
 State v. Shelton (16 Wash. 590; 48 Pac. 258), 841, 1210, 1613, 1643.  
 State v. Shenkle (36 Kan. 43; 12 Pac. 309), 1219.  
 State v. Sheppard (64 Kan. 451; 67 Pac. 870), 269, 1084.  
 State v. Sheriff (38 La. Ann. 975), 520.  
 State v. Sherman (50 Mo. 265), 448, 522.  
 State v. Sherman ([Mo.] 119 S. W. 476), 1575.  
 State v. Sherman ([Mo. App.] 119 S. W. 479), 1638.  
 State v. Shields (8 Blackf. 151), 1444.  
 State v. Shields (110 La. 547; 34 So. 673), 1161, 1164, 1280.  
 State v. Shinn (63 Kan. 638; 66 Pac. 650), 1254, 1458, 1526.  
 State v. Shine (149 N. C. 400; 62 S. E. 1080), 1573.  
 State v. Shoemaker (4 Ind. 100), 1563.  
 State v. Shortell (93 Mo. 123; 5 S. W. 691), 1353, 1359.  
 State v. Shunate ([W. Va.] 29 S. E. 1001), 1332.  
 State v. Shuster (63 N. J. L. 355; 46 Atl. 1101), 1286.  
 State v. Sies (30 La. Ann. 918), 520.  
 State v. Sills (56 Mo. App. 408), 1499.  
 State v. Simmons (3 Mo. 414), 228.  
 State v. Simmons (66 N. C. 622), 1365, 1625.  
 State v. Simons (17 N. H. 83), 1621.  
 State v. Sims (16 S. C. 486), 2033.  
 State v. Sinks (42 Ohio St. 345), 200.  
 State v. Sinnott (15 Neb. 472; 19 N. W. 613), 215, 1303, 1304, 1741.  
 State v. Sioux Falls Brewing Co. (5 S. D. 39; 58 N. W. 1; 26 L. R. A. 138), 11, 43, 83, 1712.  
 State v. Sioux Falls, etc., Co. (2 S. D. 363; 50 N. W. 629), 985.  
 State v. Sitterle ([Tex. Civ. App.] 26 S. W. 764), 758.  
 State v. Skeggs (154 Ala. 249; 46 So. 268), 110, 234, 251, 285.  
 State v. Skillicorn, (104 Iowa, 97; 73 N. W. 503), 969, 1101, 1102, 1104, 1612, 1633, 1704.  
 State v. Skillicorn (109 Iowa, 97; 73 N. W. 503), 1711.  
 State v. Skinner (34 Kan. 256; 8 Pac. 420), 1349.  
 State v. Slack (52 N. J. L. 113; 18 Atl. 687), 807.  
 State v. Slate (24 Mo. 530), 73.  
 State v. Slaughter (17 Mo. App. 142), 1223, 1224.

[References are to pages.]

- State v. Slentz (27 Ind. App. 558; 61 N. E. 956), 214, 342, 346, 1485, 1535, 1566.  
 State v. Sloss (25 Mo. 291; 69 Am. Dec. 467), 260.  
 State v. Small (80 Me. 452; 14 Atl. 942), 1650, 1655.  
 State v. Small (31 Mo. 197), 1483, 1649.  
 State v. Small (64 N. H. 491; 14 Atl. 727), 1572.  
 State v. Smiley (101 N. C. 709; 7 S. E. 904), 382, 928, 933.  
 State v. Small ([S. C.] 60 S. E. 676), 951, 1180, 1206.  
 State v. Smause (50 Iowa, 43), 1444.  
 State v. Smith (49 Conn. 376), 2085.  
 State v. Smith (26 Fla. 427; 7 So. 848), 928, 931.  
 State v. Smith (122 Ind. 178; 23 N. E. 714), 1257, 1461, 1565, 1566, 1631, 1633.  
 State v. Smith (74 Iowa, 580; 38 N. W. 492), 840, 1646.  
 State v. Smith (132 Iowa, 645; 109 N. W. 115), 2247.  
 State v. Smith (135 Iowa, 523; 113 N. W. 336), 1528.  
 State v. Smith (54 Me. 33), 1021.  
 State v. Smith (61 Me. 386), 1448.  
 State v. Smith (38 Mo. App. 618), 850, 851, 857, 885, 887, 1713.  
 State v. Smith (117 N. C. 809; 23 N. E. 449), 1198.  
 State v. Smith (126 N. C. 1057; 35 S. E. 615), 382, 1476.  
 State v. Smith (3 Heisk. 465), 2024.  
 State v. Smith (35 Tex. 132), 1442, 1554.  
 State v. Smith (22 Vt. 74), 1609.  
 State v. Smith (55 Vt. 57), 1747.  
 State v. Smith (81 Vt. 291; 69 Atl. 762), 1217.  
 State v. Smith (61 W. Va. 329; 56 S. E. 528), 1605.  
 State v. Sneed (88 Mo. 138; 3 West. Rep. 797), 2041, 2067, 2085.  
 State v. Snow (3 Penn. [Del.] 259; 51 Atl. 607), 2039, 2077, 2078.  
 State v. Snow (117 N. C. 778; 23 S. E. 323), 136, 1476.  
 State v. Snow (3 R. I. 64), 253, 254, 255, 294, 1008, 1010, 1050, 1067.  
 State v. Snyder (108 Iowa, 205; 78 S. W. 807), 1163.  
 State v. Snyder (34 Kan. 425; 8 Pac. Rep. 425), 222, 226, 1163.  
 State v. Soale (36 Ind. App. 73; 74 N. E. 1111), 1910.  
 State v. Sodini (84 Minn. 444; 87 N. W. 1130), 1130, 1133, 1363.  
 State v. Solio (4 Penn. [Del.] 138; 54 Atl. 684), 1557.  
 State v. Solkowski ([Del.] 69 Atl. 839), 1557.  
 State v. Solomon (33 Ind. 450), 136.  
 State v. Somerville (21 Mo. 20), 1063.  
 State v. Somerville (1 Ohio N. P. 422), 132, 1768.  
 State v. Sommers (3 Vt. 156), 1523.  
 State v. Sopher (157 Ind. 360; 61 N. E. 785), 196, 671, 672.  
 State v. Sopher (70 Iowa, 494), 2044, 2047, 2067, 2077.  
 State v. Sorrell (98 N. C. 738; 4 S. E. 630), 1643.  
 State v. South Omaha (33 Neb. 856; 51 N. W. 291), 568.  
 State v. Sowers (111 N. C. 685; 16 S. E. 315), 1093, 1095, 2027.  
 State v. Spain (29 Mo. 415), 1505, 1507.  
 State v. Sparegrove (134 Iowa, 599; 112 N. W. 83), 2038, 2060, 2069, 2082.

[References are to pages.]

- State v. Sparrow (3 Murph. [N. C.] 487), 2246, 2252.  
 State v. Spaulding (61 Vt. 505; 17 Atl. 844), 49, 968, 1096, 1103, 1490, 1491, 1493, 1598, 1635, 1677, 1724.  
 State v. Spaulding (60 Vt. 228; 14 Atl. 769), 1729, 1732.  
 State v. Spence (87 Mo. App. 577), 1641.  
 State v. Spiers (103 Iowa, 711; 73 N. W. 343), 1043, 1084.  
 State v. Spirituous Liquors (39 Me. 262), 1048.  
 State v. Spirituous Liquors (68 N. H. 47; 40 Atl. 398), 1011.  
 State v. Spirituous Liquors ([N. H.] 73 Atl. 169), 1061.  
 State v. Spokane (2 Wash. St. 40; 25 Pac. 903), 492, 807.  
 State v. Squires (26 Ia. 340), 228.  
 State v. Stacks ([Miss.] 26 So. 962), 1443.  
 State v. Stafford (67 Me. 125), 978.  
 State v. Stakke ([S. D.] 117 S. W. 129; 118 S. W. 703), 906, 937.  
 State v. Staley (3 Lea, 565), 1505.  
 State v. Stamey (71 N. C. 202), 1502, 1524, 1569.  
 State v. Standish (37 Kan. 643), 1175.  
 State v. Stanley (84 Me. 555; 24 Atl. 983), 1096, 1461.  
 State v. Stanton (37 Conn. 421), 1383.  
 State v. Stanton's Liquors (38 Conn. 233), 1075.  
 State v. Staples (37 Me. 228), 1018, 1048.  
 State v. Staples (45 Me. 320), 1455.  
 State v. Stapp (29 Iowa, 551), 8, 29, 39.  
 State v. Stark (63 Kan. 529; 66 Pac. 243; 54 L. R. A. 910), 986.  
 State v. Stark (1 Strob. L. [S. C.] 479), 2040, 2052.  
 State v. Starr (67 Me. 242), 38, 1753.  
 State v. State Board (78 S. C. 461; 59 S. E. 145), 898.  
 State v. Steedman (8 Rich. L. 312), 1502.  
 State v. Steele (84 Mo. App. 316), 831.  
 State v. Steifel (74 Md. 546; 22 Atl. 1), 1194.  
 State v. Stephens (70 Mo. App. 554), 1608, 1643, 1652, 1653, 1718.  
 State v. Stephens (36 N. H. 59), 2026.  
 State v. Stephens ([N. D.] 123 N. W. 888), 1486, 1742, 1743, 1762.  
 State v. Stephens (1 Mo. App. Rep. 500), 1499.  
 State v. Sterling (8 Mo. 697), 182.  
 State v. Sterns (28 Kan. 154), 512, 1365, 1480, 1491, 1625.  
 State v. Stevens (119 Iowa, 675; 94 N. W. 241), 1084, 1102, 1104.  
 State v. Stevens (47 Me. 357), 1062, 1063, 1648.  
 State v. Stevens (114 N. C. 873; 19 S. E. 861), 382, 414.  
 State v. Stevens (8 Ohio Dec. 6; 5 Ohio N. P. 354), 233.  
 State v. Steward (31 Me. 515), 25, 28, 1357, 1554, 1753.  
 State v. Stibbens (188 Mo. 387; 87 S. W. 460), 2080.  
 State v. Stiefel (74 Md. 546; 22 Atl. 1), 549, 550.  
 State v. Stiff (104 Mo. App. 685; 78 S. W. 675), 628, 630, 648.  
 State v. Stilsing (52 N. J. L. 517; 20 Atl. 65), 159, 307, 313.  
 State v. Stilsing (23 Vroom, 517; 20 Atl. 65), 159.  
 State v. Stinson (17 Me. 154), 1447, 1534, 1739.



[References are to pages.]

- State v. Stock (95 Mo. App. 55; 68 S. W. 579), 1457, 1458.  
 State v. Stockman (9 Kan. App. 888; 58 Pac. 1006), 1357, 1661, 1689.  
 State v. Stockman (82 S. C. 388; 64 S. E. 595), 63.  
 State v. Stoffels (89 Minn. 205; 94 N. W. 675), 110, 225, 1008, 1059, 1662, 1670.  
 State v. Stommel (84 Ia. 751; 52 N. W. 557), 452.  
 State v. Stone (54 Vt. 550), 1544.  
 State v. Storm (74 Kan. 859; 86 Pac. 145), 1643.  
 State v. Story (87 Minn. 5; 91 N. W. 26), 1205.  
 State v. Stout (96 Ind. 407), 10.  
 State v. Stovall (103 N. C. 416; 8 S. E. 900), 132, 133.  
 State v. Stover (111 La. 92; 35 So. 405), 1650.  
 State v. Strauss (49 Md. 288), 263, 459, 1135.  
 State v. Strathmann (4 Mo. App. [abstract] 583), 498.  
 State v. Strickford (70 N. H. 297; 47 Atl. 262), 981.  
 State v. Strobb. L. ([S. C.] 479), 2051.  
 State v. Strodemeir (41 Wash. 159; 83 Pac. 22), 2251.  
 State v. Stroeschein (99 Minn. 248; 109 N. W. 235), 1225.  
 State v. Stubblefield (40 Fed. 454), 59.  
 State v. Stucker (33 Iowa, 395), 1372, 1375.  
 State v. Stucker (58 Ia. 496; 12 N. W. 483), 110, 158.  
 State v. Stuckey (2 Blackf. 289), 1502, 1504, 1508.  
 State v. Stultz (20 Iowa, 488), 452, 523, 1730.  
 State v. Sutor (78 Vt. 391; 63 Atl. 182), 1084, 1085, 1091, 1530, 1531, 1662.  
 State v. Sullivan (83 Me. 417; 22 Atl. 381), 1375.  
 State v. Summers (142 Mo. 586; 4 S. W. 797), 826, 1384, 1385.  
 State v. Summers (50 So. 120), 279.  
 State v. Summey (60 N. C. 496), 972.  
 State v. Sumter Co. (22 Fla. 1), 525), 567, 568, 576, 585, 636, 694.  
 State v. Sundquist ([Wis.] 118 N. W. 836), 903, 926.  
 State v. Sundry Persons (2 Ohio Dec. 435), 975, 995, 998.  
 State v. Superior Court (49 Wash. 268; 94 Pac. 1086), 168.  
 State v. Superior Court ([Wash.] 87 Pac. 818), 747.  
 State v. Sutton (25 Mo. 303), 1513.  
 State v. Sutton (100 N. C. 474; 6 S. E. 687), 492, 1497, 1499.  
 State v. Sutton ([Tex. Cr. App.] 40 S. W. 501), 1341.  
 State v. Swallum (111 Iowa, 37; 32 N. W. 439), 561, 1184.  
 State v. Swan (14 N. W. 492), 491.  
 State v. Swanson (85 Minn. 112; 88 N. W. 416), 957.  
 State v. Swearingen (128 Mo. App. 605; 107 S. W. 1), 890, 896, 1685.  
 State v. Sweizewski (73 Kan. 733; 85 Pac. 800), 1598.  
 State v. Swift (35 W. Va. 542; 14 S. E. 135), 551.  
 State v. Swisher (17 Tex. 441), 232, 240.  
 State v. Sykes (104 N. C. 694; 10 S. E. 191), 1285.  
 State v. Taber (34 Ind. App. 393; 72 N. E. 1039), 1108.  
 State v. Tague (76 Vt. 118; 56 Atl. 535), 1169, 1173, 1178.  
 State v. Tall (56 Wis. 577; 14 N. W. 596), 1455, 1519.  
 State v. Tamler (19 Ore. 528; 25 Pac. 71), 1510.  
 State v. Tanner (50 Kan. 365; 31 Pac. 1096), 1554, 1555.

[References are to pages.]

- State v. Tarver (11 Lea, 758), 247,  
 542, 1279.  
 State v. Tatlow (34 Kan. 10; 8  
 Pac. 267), 2346, 2248.  
 State v. Tatro (50 Vt. 483), 2039,  
 2071.  
 State v. Taylor (70 Mo. 52), 1524.  
 State v. Taylor (72 Mo. 52), 1512.  
 State v. Taylor (134 Mo. 109; 35  
 S. W. 92), 2246.  
 State v. Taylor (89 N. C. 577),  
 1180, 1198, 1615.  
 State v. Teague ([Tex. Civ. App.]  
 111 S. W. 234), 757, 758.  
 State v. Teahan (50 Conn. 92),  
 1165, 1167, 1221, 1446, 1491,  
 1501, 1578, 1729.  
 State v. Teasdale (145 N. C. 422;  
 58 S. E. 744), 1507.  
 State v. Tegder (6 Kan. App. 762;  
 50 Pac. 985), 1104, 1454.  
 State v. Teissedre (30 Kan. 210,  
 476; 2 Pac. 108), 38, 39, 84,  
 111, 1516.  
 State v. Terheide (166 Ind. 689;  
 78 N. E. 195), 767, 771, 778,  
 782.  
 State v. Terry (104 Mo. App. 400;  
 79 S. W. 477), 1361.  
 State v. Terry (72 N. J. L. 375;  
 61 Atl. 148; affirmed, 73 N.  
 J. L. 554; 64 Atl. 113), 52,  
 832.  
 State v. Terry (73 N. J. L. 554;  
 64 Atl. 113; affirming 72 N. J.  
 P. 375; 61 Atl. 148), 971,  
 1643, 1644.  
 State v. Terry (4 Dev. & B. [N.  
 C.] 185), 370, 1576.  
 State v. Terry (9 Ired. [N. C.]  
 378), 370.  
 State v. Terry (35 Tex. 366),  
 1523.  
 State v. Thibodeaux (69 Miss. 92;  
 10 So. 58), 801.  
 State v. Thoemke (11 N. D.  
 386; 92 N. W. 480), 1083,  
 1176, 1203.  
 State v. Thomas (47 Conn. 546;  
 36 Am. Rep. 98), 264, 265.  
 State v. Thomas (1 Houst. Crim.  
 Rep. [Del.] 511), 2041, 2051,  
 2052.  
 State v. Thomas (74 Kan. 360;  
 86 Pac. 499), 259, 288, 998.  
 State v. Thomas (118 N. C. 1221;  
 24 S. E. 535; 442, 454.  
 State v. Thomas (7 Rich L. [S.  
 C.] 481), 1457, 1459.  
 State v. Thomasson (19 Ind. 99),  
 1306, 1307.  
 State v. Thompson (44 Iowa 399),  
 1033, 1678, 1044, 1049, 1074,  
 1483.  
 State v. Thompson (74 Iowa 119;  
 37 N. W. 104), 827, 828, 841,  
 1237, 1646.  
 State v. Thompson (130 Iowa 227;  
 106 N. W. 515), 1002.  
 State v. Thompson (2 Kan. 432),  
 1510, 1521.  
 State v. Thompson (42 Mich. 594;  
 4 N. W. 536), 1912, 1918.  
 State v. Thompson (12 Nev. 140),  
 2040, 2045, 2050.  
 State v. Thompson (1 Wright  
 [Ohio] 617), 2040, 2048.  
 State v. Thompson (20 W. Va.  
 674), 25, 29, 41, 822.  
 State v. Thornburn (75 Vt. 18;  
 52 Atl. 1039), 968.  
 State v. Thornton (Busb. L. [N.  
 C.] 252), 1107, 1109, 1495.  
 State v. Thurman (65 Kan. 90;  
 68 Pac. 1081), 1550.  
 State v. Tibbetts (35 Me. 81),  
 1752.  
 State v. Tierney (74 Iowa, 237;  
 37 N. W. 176), 1670.  
 State v. Till (1 Houst. Crim. Rep.  
 [Del.] 233), 2041, 2045.  
 State v. Tinchler (21 Ind. App.  
 142; 51 N. E. 943), 2025,  
 2027.  
 State v. Tindall (40 Mo. App.  
 271), 1341.  
 State v. Tisdale (54 Minn. 105;  
 55 N. W. 903), 1753.  
 State v. Tissing (74 Mo. 72),  
 1650.

[References are to pages.]

- State v. Titrich (34 W. Vt. 137;  
 11 S. E. 1002), 838.  
 State v. Toler (145 N. C. 440;  
 58 S. E. 1005), 264, 1508,  
 1732.  
 State v. Tomah (80 Wis. 198; 49  
 N. W. 753), 737.  
 State v. Tomlinson (77 N. C.  
 528), 1476.  
 State v. Tomlinson (7 N. D. 294;  
 74 N. W. 995), 2256.  
 State v. Tonks (15 R. I. 385; 5  
 Atl. 636), 121, 147, 491, 495,  
 716.  
 State v. Toohy (2 Rice, Dig. [S.  
 C.] 105), 2040.  
 State v. Topeka (30 Kan. 653; 2  
 Pac. 387; 31 Kan. 452; 2 Pac.  
 597), 169, 475.  
 State v. Topeka (31 Kan. 586;  
 3 Pac. 320; 31 Kan. 452; 2  
 Pac. 593), 434, 442.  
 State v. Totman (82 Mo. App.  
 56), 1159.  
 State v. Towler (19 Ore. 528; 25  
 Pac. 71; 9 L. R. A. 853),  
 1521.  
 State v. Townley (3 Har. [N. J.]  
 311), 6, 1521.  
 State v. Tracey (12 R. I. 216),  
 1445.  
 State v. Trageser (73 Md. 250;  
 20 Atl. 905; 25 Am. St. 587;  
 9 L. R. A. 780), 189.  
 State v. Trenton (51 N. J. L. 498;  
 18 Atl. 116), 169.  
 State v. Truit (5 Pennewill [Del.]  
 466; 62 Atl. 790), 2038, 2049,  
 2069, 2076, 2081.  
 State v. Tucker (45 Ark. 55),  
 502, 1160.  
 State v. Tucker (46 Ind. 355),  
 227, 248.  
 State v. Tucker (32 Mo. App.  
 620), 883, 885, 886, 887.  
 State v. Tucker (127 N. C. 539;  
 37 S. E. 203), 1624.  
 State v. Tufts (56 N. H. 137),  
 1016, 1034.  
 State v. Tulip (9 Kan. App. 454;  
 60 Pac. 659), 1520.  
 State v. Tuller (34 Conn. 280),  
 1484.  
 State v. Tullock (108 Mo. App.  
 32; 82 S. W. 645), 575, 674,  
 675.  
 State v. Turner (63 Kan. 714;  
 66 Pac. 1008), 1105.  
 State v. Turner (210 Mo. 77; 107  
 S. W. 1064), 283, 648.  
 State v. Turner (125 Mo. App.  
 21; 102 S. W. 599), 1637.  
 State v. Turner (1 Wright [Ohio]  
 30), 2040.  
 State v. Turner (18 S. C. 103),  
 541.  
 State v. 25 Packages of Liquor  
 (38 Vt. 387), 1057, 1060,  
 1062, 1063, 1712.  
 State v. Uferty (70 Iowa 160;  
 30 N. W. 391), 1452.  
 State v. Uhrig (14 Mo. App. 413),  
 975, 980.  
 State v. Union Social Club (82  
 S. C. 142; 63 S. E. 545), 990.  
 State v. U. S. Express Co. (70  
 Iowa 271; 30 N. W. 568),  
 1021, 1283.  
 State v. U. S., etc., Ex. Co. (60  
 N. H. 219), 791.  
 State v. Upton (20 Mo. 397),  
 2252.  
 State v. Valkmar (20 La. Ann.  
 585), 793.  
 State v. Valure (95 Iowa 401;  
 64 N. W. 280), 1185.  
 State v. Vandenburg ([Miss.] 28  
 So. 825), 939, 957.  
 State v. Van Vliet (92 Iowa 476;  
 61 N. W. 241), 931, 977.  
 State v. Verden (24 Iowa 126),  
 1676.  
 State v. Vic. De Bar (18 Mo. 395),  
 437.  
 State v. Vierling (33 Ind. 99),  
 662, 663.  
 State v. Viers (82 Iowa 397; 48  
 N. W. 732), 1083, 1087, 1093,  
 1094, 1102.

[References are to pages.]

- State v. Virgo (14 N. D. 29; 103 N. W. 610), 963, 973.  
 State v. Volkman (20 La. Ann. 585), 199.  
 State v. Volmer (6 Kan. 371), 8, 38, 41, 1588, 1697.  
 State v. Von Haltzschuber (72 Iowa, 541; 34 N. W. 323), 830.  
 State v. Wacker (71 Wis. 672; 38 N. W. 189), 1102, 1304.  
 State v. Wade (34 N. H. 495), 1511, 1521.  
 State v. Wade (63 Vt. 80; 22 Atl. 12), 1084, 1588.  
 State v. Wadsworth (30 Conn. 55), 10, 11, 34, 35, 48, 80, 81, 82, 1180, 1365, 1377, 1509, 1512, 1625, 1756.  
 State v. Wagener (77 Minn. 483; 77 Am. St. Rep. 681), 426.  
 State v. Waggoner (52 Ind. 481), 2024, 2026.  
 State v. Wahl ([Mo.] 119 S. W. 453), 1178, 1304.  
 State v. Waite (72 Vt. 108; 47 Atl. 397), 50.  
 State v. Waldron (16 R. I. 191; 14 Atl. 847), 264, 265.  
 State v. Walker (103 N. C. 413; 9 S. E. 582), 1228.  
 State v. Walker (3 Har. [Del.] 547), 1502.  
 State v. Walker (16 Me. 241), 69, 691, 509, 1267.  
 State v. Walker ([Mo.] 119 S. W. 1198; affirming 129 Mo. App. 371; 108 S. W. 615), 1642.  
 State v. Walker ([Mo.] 120 S. W. 1198; affirming 129 Mo. App. 371; 108 S. W. 615), 110, 121, 174.  
 State v. Walker (129 Mo. App. 371; 108 S. W. 615), 784.  
 State v. Walker (7 N. J. L. Jr. 86), 2067.  
 State v. Walker (56 N. H. 76), 778.  
 State v. Walker (Taylor [N. C.] 299), 1455.  
 State v. Wall (34 Me. 165), 1753.  
 State v. Wallace (94 N. C. 827), 1456.  
 State v. Waller (3 Murph. 229), 2024.  
 State v. Walruff (26 Fed. 178), 111, 112.  
 State v. Walters (57 Kan. 702; 47 Pac. 839), 1479, 1480, 1481.  
 State v. Walterstradt (74 Minn. 292; 77 N. W. 48), 1627.  
 State v. Waltz (74 Iowa, 610; 38 N. W. 494), 1550.  
 State v. Wambold (72 Iowa, 468; 34 N. W. 213), 1483, 1650.  
 State v. Wambold (74 Iowa, 605; 38 N. W. 429), 1087, 1594, 1658.  
 State v. Warcholik (80 Conn. 351; 68 Atl. 379), 1345, 1347.  
 State v. Ward (75 Iowa, 637; 36 N. W. 765), 830, 1253, 1631.  
 State v. Washburn (91 Mo. 571; 4 S. W. 274), 2247.  
 State v. Washington (44 N. J. L. 318; 43 Am. Rep. 402), 263, 459.  
 State v. Watson (5 Blackf. 155), 1516, 1519.  
 State v. Watson (6 Kan. App. 897; 50 Pac. 959), 1104.  
 State v. Watts (111 Mo. 553; 20 S. W. 237), 233.  
 State v. Watts (101 Mo. App. 666; 74 S. W. 376), 19, 43, 44, 722, 1494.  
 State v. Watts (39 Mo. App. 409), 893, 1465, 1468, 1752.  
 State v. Wayrich (45 Iowa, 516), 1101.  
 State v. Weathers (98 N. C. 685; 4 S. E. 512), 382.  
 State v. Weaver (83 Ind. 452), 1568, 1570.  
 State v. Weaver (35 Ore. 415; 53 Pac. 109), 2038, 2063.

[References are to pages.]

- State v. Webb (49 Mo. App. 407), 859, 867, 882, 883.
- State v. Webber (76 Iowa, 686; 39 N. W. 286), 986, 1094, 1102.
- State v. Webber (11 Mo. 204; 20 S. W. 33), 1357.
- State v. Weber (20 Neb. 467; 30 N. W. 531), 576, 616.
- State v. Webster (5 Halst. [N. J.] 293), 1520, 1522.
- State v. Wecker (71 Wis. 577), 215.
- State v. Weckerling (38 La. Ann. 36), 540, 796.
- State v. Weeks (67 Me. 60; 8 Atl. 754), 383, 476.
- State v. Weeks (93 Mo. 499; 6 S. W. 266), 650.
- State v. Weeks (38 Mo. App. 566), 850, 851, 857, 885, 886, 914, 930.
- State v. Weeks (7 Humph. 522), 1246, 1505, 1507.
- State v. Weir (33 Ia. 134; 11 Am. Rep. 115), 231, 240.
- State v. Welch (36 Conn. 215), 275, 449, 456, 457.
- State v. Welch (88 Ind. 308), 2026.
- State v. Welch (79 Me. 99; 9 Atl. 348), 1035, 1046.
- State v. Welch (21 Minn. 22), 2067.
- State v. Wells (28 Mo. 565), 821.
- State v. Welsh (109 Iowa, 19; 79 N. W. 369), 2261.
- State v. Welsh ([Me.] 7 Atl. 475), 1552.
- State v. Wentworth (35 N. H. 442), 1503, 1555.
- State v. Wentworth (65 Me. 234; 2 Atl. 688), 1353, 1354, 1361, 1616, 1752.
- State v. Wenzel (72 N. H. 396; 56 Atl. 918), 919, 1084.
- State v. Werner ([Kan.] 101 Pac. 1004), 1739.
- State v. West (69 Mo. 401; 33 Am. Rep. 506), 2247.
- State v. West (157 Mo. 309; 57 S. W. 1071), 2080.
- State v. Wester (67 Kan. 810; 74 Pac. 239), 1547.
- State v. Western U. T. Co. (73 Me. 518), 791.
- State v. Weyland (126 Mo. App. 723; 105 S. W. 660), 1455.
- State v. Whalen (85 Me. 469; 27 Atl. 348), 1048.
- State v. Whalen (54 Iowa, 753; 6 N. W. 552), 1491.
- State v. Wheat (48 W. Va. 259; 37 S. E. 544), 953.
- State v. Wheeler (25 Conn. 290), 109, 120, 126, 192, 211, 253, 255, 294, 314.
- State v. Wheeler (27 Minn. 76), 400.
- State v. Wheeler (87 Mo. App. 580), 1210.
- State v. Wheeler (62 Vt. 439; 20 Atl. 601), 1081, 1722.
- State v. Wheelock (95 Iowa, 577; 64 N. W. 620; 30 L. R. A. 429), 331.
- State v. Wheldon (6 Kan. App. 650; 49 Pac. 786), 995.
- State v. Whipple (57 Vt. 637), 1650.
- State v. Whisemant ([N. C.] 63 S. E. 91), 1187, 1756.
- State v. Whiskey (54 N. H. 164), 1043, 1049.
- State v. Whisner (35 Kan. 271; 10 Pac. 852), 1491, 1506, 1581, 1746.
- State v. Whissenhunt (98 N. C. 682; 4 S. E. 533), 1757, 1758.
- State v. White (23 Ark. 275), 505, 506.
- State v. White (14 Kan. 538), 2041.
- State v. White (31 Kan. 342; 2 Pac. 598), 1600.
- State v. White (63 Kan. 882; 65 Pac. 234), 1623.
- State v. White (115 La. 779; 40 So. 44), 522, 549, 802.



[References are to pages.]

- State v. White (7 Baxt. 158), 247, 1298.
- State v. White (70 Vt. 225; 39 Atl. 1085), 1084, 1651, 1654, 1658, 1660, 1661, 1705.
- State v. White (72 Vt. 108; 47 Atl. 397), 968.
- State v. White (10 Wash. 611; 39 Pac. 160; 41 Pac. 442), 2259.
- State v. Whitener (23 Ind. 124), 777.
- State v. Whitney (15 Vt. 298), 1557.
- State v. Whitted (3 Ala. 102), 1446.
- State v. Whitter (18 W. Va. 306), 1223, 1645.
- State v. Whorton (26 Tex. Civ. App. 262; 63 S. W. 915), 760.
- State v. Wickey (54 Ind. 438), 1450.
- State v. Wickey (57 Ind. 596), 1450.
- State v. Wickmire (16 Ind. App. 348; 45 N. E. 195), 1537.
- State v. Wiggin (72 Me. 425), 1729, 1732.
- State v. Wiggin (20 N. H. 449), 1180, 1349.
- State v. Wilburn ([Ala.] 39 So. 816), 382.
- State v. Wilcox (42 Conn. 364), 232, 240.
- State v. Wilcox (66 Ind. 557; 9 Cent. L. Jr. 408), 498, 500, 501, 526.
- State v. Wilcox (78 Kan. 597; 97 Pac. 372), 418.
- State v. Wilkinson (36 Mo. App. 373), 1498, 1499.
- State v. Williams (143 Ala. 501; 39 So. 276), 241, 522, 648.
- State v. Williams ([Ala.] 39 So. 816), 241.
- State v. Williams (90 Iowa, 513; 58 N. W. 904), 994.
- State v. Williams (38 Mo. App. 37), 930.
- State v. Williams (69 Mo. App. 284, 286), 832.
- State v. Williams (68 N. H. 449; 42 Atl. 898), 1739.
- State v. Williams (30 N. J. L. 102), 309, 1106, 1110.
- State v. Williams (14 N. D. 411; 104 N. W. 546), 969, 1704, 711.
- State v. Williams (6 R. I. 207), 1112, 1115.
- State v. Williams (1 Nott. & M. 26), 1767.
- State v. Williams (3 Hill L. [S. C.] 91), 1362, 1714.
- State v. Williams (11 S. C. 288), 271.
- State v. Williams (79 S. C. 101; 60 S. E. 229), 1476.
- State v. Williams ([N. C.] 61 S. E. 61), 111, 127, 128, 139.
- State v. Williams (11 S. D. 64; 75 N. W. 815), 1505, 1533.
- State v. Williams (20 S. D. 492; 107, N. W. 830), 833, 1624.
- State v. Williams (10 Tex. Civ. App. 346; 30 S. W. 477), 123.
- State v. Williamson (19 Mo. 384), 1488, 1552.
- State v. Williamson (21 Mo. 496), 32, 80, 1496.
- State v. Williamson (8 Utah 219; 30 Pac. 753), 2112.
- State v. Willard (39 Mo. App. 251), 756.
- State v. Wills (106 Mo. App. 196; 80 S. W. 311), 1709.
- State v. Wilson (71 Kan. 263; 80 Pac. 565), 842.
- State v. Wilson (124 La. 82; 49 So. 986), 2039, 2086.
- State v. Wilson (80 Mo. 303), 58, 60, 970.
- State v. Wilson (90 Mo. App. 154), 676.
- State v. Wilson (39 Mo. App. 114), 1643.
- State v. Wilson (104 N. C. 868; 10 S. E. 315), 2039, 2045.

[References are to pages.]

- State v. Wilson (5 R. I. 291), 1591, 1594.  
 State v. Wilson (15 R. I. 180; 1 Atl. 415), 265, 1677.  
 State v. Winebrenner (67 Iowa, 230; 25 N. W. 146), 1447.  
 State v. Winfield (65 Mo. App. 662), 1740, 1741.  
 State v. Wingfield (115 Mo. 428; 22 S. W. 363; 37 Am. St. 406), 1283.  
 State v. Winstrand (37 Iowa, 110), 1760.  
 State v. Winters (44 Kan. 723; 25 Pac. 235; 10 L. R. A. 616), 309, 313, 324, 327.  
 State v. Wise (70 Minn. 99; 72 N. W. 843), 210.  
 State v. Wise (66 N. C. 120), 929.  
 State v. Wiseman (97 Me. 90; 53 Atl. 875), 1543.  
 State v. Wishon (15 Md. 503), 1519.  
 State v. Wisnewski (13 N. D. 649; 102 N. W. 883), 1762.  
 State v. Wister (62 Mo. 593), 271.  
 State v. Witt (39 Ark. 216), 9, 16, 18, 81, 961, 962, 1490, 1491.  
 State v. Witter (107 N. C. 792), 394.  
 State v. Wittmar (12 Mo. 407), 7, 1698, 1753.  
 State v. Witts (106 Mo. App. 196; 80 S. W. 311), 1700.  
 State v. Witty (74 Mo. App. 550), 824, 831.  
 State v. Wold (96 Me. 401; 52 Atl. 909), 972, 1092, 1647, 1718.  
 State v. Wolf (46 Mo. 584), 1626.  
 State v. Wolfer (53 Minn. 135; 19 L. R. A. 783; 54 N. W. 1065), 2261.  
 State v. Wood (155 Mo. 425; 56 S. W. 474; 48 L. R. A. 596), 980, 1384.  
 State v. Wood (14 R. I. 151), 1446.  
 State v. Woodbury (35 N. H. 230), 383.  
 State v. Woods (68 Me. 409), 261, 1051.  
 State v. Woodward (34 Me. 293), 508, 1643.  
 State v. Woodward (191 Mo. 617; 90 S. W. 90), 2038.  
 State v. Woodward (25 Vt. 616), 1447, 1532, 1535, 1554.  
 State v. Woll (86 N. C. 708), 215, 1304, 1305, 1306.  
 State v. Wooley (59 Vt. 357; 10 Atl. 84), 1442, 1747.  
 State v. Woolsey (92 Ind. 131), 1488, 1553.  
 State v. Wooten ([Mo. App.] 122 S. W. 1101), 576, 648.  
 State v. Worden (27 R. I. 484; 63 Atl. 486), 1460, 1543.  
 State v. Workman (75 Mo. App. 454), 825.  
 State v. Wray (72 N. C. 253), 821, 828.  
 State v. Wright (98 Iowa, 792; 68 N. W. 440), 1678, 1689.  
 State v. Wright (20 Mo. App. 412), 58, 825, 832.  
 State v. Wright (68 N. H. 351; 44 Atl. 519), 44, 1086, 1661, 1678, 1701, 1702, 1708.  
 State v. Wright (14 Ore. 365; 12 Pac. 708), 790.  
 State v. Wright (5 R. I. 287), 1758.  
 State v. Wyman (80 Me. 117; 13 Atl. 47), 1572.  
 State v. Wyman (42 Minn. 182; 43 N. W. 1116), 1499.  
 State v. Wm. J. Lemp Brewing Co. ([Kan.] 102 Pac. 504), 335.  
 State v. W. J. Langran & Co. ([Tex. Civ. App.] 87 S. W. 713), 346.  
 State v. Yager (72 Iowa, 421; 34 N. W. 188), 829.  
 State v. Yates (132 Iowa, 475; 109 N. W. 1005), 2038, 2060, 2083.

[References are to pages.]

- State v. Yewell (63 Md. 120), 930.  
 State v. Yockey (49 Mo. App. 443), 1623.  
 State v. York (74 N. H. 125; 65 Atl. 685), 5, 7, 10, 12, 15, 43, 79, 964, 1086, 1495, 1662.  
 State v. Young (17 Kan. 414), 560.  
 State v. Young (36 Mo. App. 517), 1754.  
 State v. Young (70 Mo. App. 52), 1268), 1479.  
 State v. Young (73 Mo. App. 602), 1478.  
 State v. Young (2 Cold. 51), 1556.  
 State v. Zeitler (63 Ind. 441), 1253, 1497, 1498, 1500.  
 State v. Zermmehler (110 Iowa 1; 81 N. W. 154), 518.  
 State v. Zimmerman (2 Ind. 565), 1552.  
 State v. Zimmerman (78 Iowa, 614; 43 N. W. 458), 314, 1719.  
 State v. Zimmerman (83 Iowa, 117; 49 N. W. 71), 1763, 1.66.  
 Stebbins v. Hart (4 Dem. Sur. 501), 2136.  
 Stebbins v. State (22 Tex. App. 32; 2 S. W. 617), 370.  
 Steckard v. Reade ([Tex.] 121 S. W. 1114), 249.  
 Stedham v. Stedham (32 Ala. 525), 2135.  
 Stedler, *In re* (52 N. C. Misc. Rep. 322; 102 N. C. Supp. 147), 739.  
 Steel v. Smith (1 Barn. & Ald. 94), 1509.  
 Steel v. State (26 Ind. 92), 1554.  
 Steele v. State (19 Tex. App. 425), 120, 232, 240, 243, 850, 851, 860, 900.  
 Steele v. State (52 Tex. Civ. App. 426; 108 S. W. 698), 111.  
 Steele v. Thompson (42 Mich. 594; 4 N. W. 536), 1845, 1882, 1994.  
 Steffy v. Monroe City (135 Ind. 466; 35 N. E. 121; 41 Am. St. 436), 409, 468.  
 Stehle v. Commonwealth ([Pa.] 7 Atl. 169), 774.  
 Stein v. Adams ([Miss.] 23 So. 269), 1697.  
 Stein v. State (50 Ind. 21), 1516, 1567.  
 Steinberger v. State (35 Tex. Cr. App. 492; 34 S. R. 617), 1185, 1539, 1540, 1640.  
 Steinkraus v. Hurlbert (20 Neb. 519; 30 N. W. 940), 617.  
 Steinkuhler v. State (77 Neb. 331; 109 N. W. 395), 1084.  
 Steinmetz v. Versailles (40 Ind. 249), 412.  
 Stellard v. Marks (3 Q. B. Div. 412; 47 L. J. M. C. 91; 28 L. T. 566; 26 W. R. 694), 1275.  
 Stelle v. State ([Tex. Cr. App.] 92 S. W. 530), 52, 58, 972, 1185, 1651.  
 Stephen, *Ex parte* (114 Cal. 278; 46 Pac. 86), 403, 407, 453, 474.  
 Stephens v. Henderson (120 Ga. 218; 47 S. E. 498), 159, 168, 555, 1385.  
 Stephens v. People (89 Ill. 337), 886.  
 Stephens v. State (14 Ohio 386), 1451.  
 Stephens v. State (7 Tex. Cr. Rep. 970; 73 S. W. 1056), 845.  
 Stephens v. State ([Tex. Cr. App.] 73 S. W. 1056), 1474.  
 Stephens v. State (47 Tex. Cr. App. 604; 85 S. W. 797), 210, 234, 1224.  
 Stephens v. State ([Tex. Cr. App.] 87 S. W. 157), 915.  
 Stephens v. State (50 Tex. Cr. App. 251; 96 S. W. 7), 1681.  
 Stephens v. State ([Tex. Cr. App.] 97 S. W. 483), 1472.  
 Stephens v. Watson ([1702] 1 Salk. \*45), 104, 1106.

[References are to pages.]

- Stephenson v. Rogers (63 J. P. 230; 80 L. T. 195; 15 T. L. R. 748), 690, 1273.
- Stephenson v. State (28 Ind. 272), 1242, 1627.
- Sterling v. Callahan (94 Mich. 536; 54 N. W. 495), 1878.
- Stern's License, *In re* (27 Pa. Super. Ct. 538), 696.
- Stevens v. Cheney (33 Hun [N. Y.] 1), 1860, 1901.
- Stevens v. Commonwealth (124 Ky. 32; 98 S. W. 284; 30 Ky. L. Rep. 200), 2033, 2034.
- Stevens v. Emson (1 Exch. Div. 100; 40 J. P. 484; 45 L. J. M. C. 63; 33 L. T. 821), 526, 683.
- Stevens v. Green (23 Q. B. Div. 142; 53 J. P. 423; 58 L. J. M. C. 167; 61 L. T. 240; 37 W. R. 605), 709, 733.
- Stevens v. Marston [[1890] 55 J. P. 404; 64 L. T. 274; 39 W. R. 129), 1816.
- Stevens v. San Francisco R. Co. (100 Cal. 554; 35 Pac. 168), 2199.
- Stevens v. Shornbrook, J. J. (23 Q. B. Div. 142; 58 L. J. M. C. 167; 61 L. T. 240; 37 W. R. 605; 52 J. P. 423), 671, 708.
- Stevens v. State (61 Ohio 597; 56 N. E. 478), 233, 334.
- Stevens v. State (93 Fed. 793), 324.
- Stevens v. Stevens (8 R. I. 557), 2153.
- Stevens v. Watson (1 Salk. 45), 485.
- Stevens v. Wood (54 J. P. 742), 1331, 1344, 1345, 1346.
- Stevenson v. Deal (2 Pars. Eq. Cas. 212), 800, 801.
- Stevenson v. Hunter (2 Ohio N. P. 300; 5 Ohio S. & C. P. Dec. 27), 521, 815.
- Stevenson v. State (65 Ind. 409), 1176, 1177.
- Stevenson v. West Seattle, etc., Co. (22 Wash. 84; 60 Pac. 51), 2201, 2202.
- Stewart v. Calhoun Circuit Judge (156 Mich. 642; 121 N. W. 279), 826, 1457, 1575.
- Stewart v. Calhoun Co. ([Mich.] 124 N. W. 39), 826.
- Stewart v. Cooley (23 Minn. 347; 23 Am. Rep. 690), 660.
- Stewart v. State (25 Ohio Cir. Ct. Rep. 438), 1502, 1508.
- Stewart v. State (31 Tex. Cr. Rep. 153; 19 S. W. 908), 2249, 2252.
- Stewart v. State (35 Tex. Cr. Rep. 391; 33 S. W. 1081), 1464, 1471), 1474.
- Stewart v. State (34 Tex. Cr. Rep. 33; 28 S. W. 806), 372.
- Stewart v. State (37 Tex. Cr. App. 135; 38 S. W. 1143), 1692, 1698, 1699.
- Stewart v. State (38 Tex. Cr. Rep. 627; 44 S. W. 505), 1735.
- Stewart v. Waterloo Turn Verein (71 Iowa, 226; 60 Am. Rep. 786), 1342.
- Steyer v. McCauley (102 Iowa 105; 71 N. W. 194), 999.
- Stick v. State (23 Ohio Cir. Ct. Rep. 392), 859, 898, 899, 1652.
- Stickrod v. Commonwealth (86 Ky. 285; 5 S. W. 580; 9 Ky. L. Rep. 563), 119, 125, 221, 289, 945, 1158.
- Stiles v. State (1 Tex. Cr. App.] 43 S. W. 993), 1200.
- Still v. McNight (7 W. & S. 245), 2018.
- Stinson v. Gardner (97 Tex. 287; 78 S. W. 492), 922.
- Stirling v. Hinekey (4 Atl. [Pa.] 358; 2 Cent. Rep. 824), 2103, 2119, 2120.
- Stockley v. Stockley (1 Ves. & B. 23), 2115.
- Stockton v. Baltimore (32 Fed. Rep. 9), 156.

[References are to pages.]

- Stockwell v. State (85 Ind. 522), 1290.  
 Stockwell v. Brent (97 Ind. 474), 598, 599, 600, 601, 621, 623, 663.  
 Stockwell v. State (27 Ohio St. 563), 1608.  
 Stoddart v. Hawke (50 W. R. 93; 18 T. L. R. 22), 377.  
 Stokes v. Schlachter (66 N. J. L. 247; 49 Atl. 556), 413.  
 Stokes v. Wall (112 Ga. 349; 37 S. E. 383), 677.  
 Stolte v. State (115 Ind. 128; 17 N. E. 258), 1624.  
 Stommel v. Timbal (84 Iowa 336; 51 N. W. 159), 523, 525.  
 Stone v. Dana (46 Mass. [5 Met.] 98), 1062.  
 Stone v. Mississippi (101 U. S. 814), 93, 95, 98, 126, 129, 180, 182, 450 490.  
 Stone v. State (30 Ind. 115), 1509.  
 Stone v. State ([Miss.] 7 So. 500), 1456, 1608.  
 Stone v. State (3 Tex. App. 675), 369.  
 Stone v. State ([Tex. Cr. App.] 39 S. W. 367), 1237, 1627.  
 Stone v. Mississippi (101 U. S. 814), 489.  
 Stone v. State (23 Tenn. [4 Humph.] 27 [1851]), 2247.  
 Stoner v. State (5 Ga. App. 716; 63 S. E. 602), 4, 1491, 1697, 1702, 1708.  
 Storey, *In re* (20 Ill. App. 183), 2147.  
 Stormes v. Commonwealth ([Ky.] 47 S. W. 262), 824.  
 Stormes v. Commonwealth (105 Ky. 619; 49 S. W. 451; 20 Ky. L. Rep. 1434; reversing 47 S. W. 262), 549, 826, 931.  
 Stormes v. State ([Tex. Cr. App.] 107 S. W. 550), 1471.  
 Story v. Finkelstein (46 Neb. 577; 65 N. W. 195; 30 L. R. A. 644), 1781.  
 Stountebugh v. Hennick (129 U. S. 141; 9 Sup. Ct. 256), 157.  
 Stout v. State (43 Ark. 413), 1320.  
 Stout v. State (93 Ind. 150), 1291, 1446, 1635, 1752.  
 Stout v. State (96 Ind. 407), 41, 84, 1592.  
 Stout v. Territory ([Okla.] 103 Pac. 75), 1459.  
 Stovall v. State (37 Tex. Cr. App. 337; 39 S. W. 934), 845, 1526.  
 Stoval v. State ([Tex. Cr. App.] 97 S. W. 92), 948, 1376, 1611, 1612.  
 Strahn v. Hamilton (38 Ind. 57), 694, 695, 1783.  
 Strand v. Chicago, etc., R. Co. (67 Mich. 380; 34 N. W. 712), 2174, 2177, 2203, 2217.  
 Strange v. Prince (17 Ind. 524), 749.  
 Strattnan v. Moore (134 Ill. App. 275), 1956.  
 Straub v. Gordon (27 Ark. 625), 198, 200, 788, 791, 793.  
 Straus, Appeal of (73 N. E. 1122; 181 N. Y. 530), 745.  
 Straus v. Galesburg (203 Ill. 234; 67 N. E. 836; affirming 89 Ill. App. 504), 73, 168, 415, 424, 1193.  
 Straus v. Pontiac (40 Ill. 301), 405, 432, 439.  
 Streeter v. People (69 Ill. 595), 111, 138, 256.  
 Streever v. Birch (62 Hun 298; 17 N. Y. Supp. 195), 1858.  
 Streit v. Sanborn (47 Vt. 702), 1807.  
 Strickland v. Knight (45 Fla. 712; 36 So. 363), 645, 658, 659, 974.  
 Strickland v. State ([Tex. Cr. App.] 47 S. W. 720; reversing on rehearing [Tex. Cr. App.] 47 S. W. 470), 914, 1182.



[References are to pages.]

- Strickland v. Whittaker (68 J. P. 235; 52 W. R. 538; 90 L. T. 445; 20 T. L. R. 224), 690, 1274.
- Stringfield v. Louisville Ry. Co. ([Ky.] 105 S. W. 1190; 32 Ky. L. Rep. 578), 2206.
- Stringer v. Huddersfield, J. J. (40 J. P. 22; 45 L. J. M. C. 39; 33 L. T. 568), 563, 1277.
- Stringer v. State (32 Fla. 239; 13 So. 450), 928.
- Strommert v. Johnson ([Iowa] 123 Pac. 337), 996.
- Strong v. State (1 Blackf. [Ind.] 193), 261.
- Stroup v. State (70 Ind. 495), 749.
- Stroutsbury v. Shick (24 Pa. Super. Ct. 442), 809.
- Struble v. Nodwitt (11 Ind. 64), 1838, 1989.
- Strydon v. Yandale (20 Juta 385), 615.
- Stuart, *In re* (61 Cal. 374), 410, 417.
- Stuart v. Cullen (16 N. Z. L. R. 336), 548.
- Stuart v. Machias Port (48 Me. 477), 2171, 2186, 2191, 2197.
- Stuart v. State (1 Baxt. 178), 2051, 2057, 2058.
- Stuckman v. State (21 Ind. 160), 1498.
- Studabaker v. White (31 Ind. 211), 1808.
- Stukeley v. Butler (Hob. 172), 1036.
- Stultz v. State (96 Ind. 456), 1618, 1714.
- Sturgis v. State ([Okla.] 102 Pac. 57), 1450.
- Stuyvesant v. Mayer, etc. (7 Cow. [N. Y.] 604), 404.
- Sublett, *Ex parte* (23 Tex. App. 309; 4 S. W. 894), 866, 871, 872, 883.
- Suggs v. State ([Tex. Cr. App.] 101 S. W. 999), 1733.
- Suit v. Woodhall (113 Mass. 391, 395), 1795, 1798.
- Sullivan, *In re* (30 N. Y. Misc. Rep. 682; 64 N. Y. Supp. 303), 867, 881, 882, 884.
- Sullivan, *Ex parte* ([Tex. Cr. App.] 75 S. W. 790), 915.
- Sullivan, *In re* (21 D. C. 139), 414.
- Sullivan v. Borden (163 Mass. 470; 40 N. E. 859), 722, 734.
- Sullivan v. Commonwealth (13 Ky. L. Rep. [abstract] 397), 1107.
- Sullivan v. District of Columbia (20 App. D. C. 29), 1122, 1124, 1129.
- Sullivan v. Kohlenberg (31 Ind. App. 215; 67 N. E. 541), 1808, 1809.
- Sullivan v. McCammon (51 Ind. 264), 811.
- Sullivan v. Old Colony R. Co. (148 Mass. 119; 18 N. E. 678; 1 L. R. A. 513), 2206.
- Sullivan v. Oneida (61 Ill. 242), 225, 396, 442, 1008, 1025, 1585.
- Sullivan v. Park (33 Me. 438), 1777.
- Sullivan v. Radezwirtz (82 Neb. 657; 118 N. W. 571), 1922, 1957.
- Sullivan v. Seattle, etc., Co. (44 Wash. 53; 86 Pac. 786), 2209, 2215, 2218.
- Sullivan v. State (48 Tex. Cr. App. 201; 87 S. W. 150), 1697.
- Summa, *In re* (3 Pa. Dist. Rep. 651), 701.
- Summa, *In re* (12 Pa. Co. Ct. Rep. 667), 695.
- Summer v. Crawford (91 Tex. 132; 41 S. W. 994), 925.
- Summerson, *In re* ([1900] 1 Ch. 112, *note*), 1814.
- Summit v. Hahr (66 N. J. L. 333; 52 Atl. 956), 1485,

[References are to pages.]

- Sumner v. State (4 Ind. App. 403; 30 N. E. 1105), 1219, 1223, 1224, 1226, 1227.
- Sun, etc., Co. v. Bennett (26 Pa. Super. Ct. 243), 571.
- Sun Mutual Life Ins. Co. v. Searles (73 Miss. 62; 18 So. 544), 1779.
- Sunbury, etc., R. Co. v. Cooper (33 Pa. St. 278), 106.
- Supernant v. People (100 Ill. App. 121), 1232, 1560, 1562, 1564.
- Supervisors, etc. v. Davis (63 Ill. 405), 294.
- Supreme Council v. Curd (111 Ill. 284), 2231.
- Surber v. State (99 Ind. 71), 2040, 2071.
- Surrat v. State (45 Miss. 601), 1524.
- Susquehanna Co., *In re* (3 Pa. Co. Ct. Rep. 616), 532.
- Sutherland v. McKinney (146 Ind. 611; 45 N. E. 1048), 610, 612, 857, 860.
- Sutherland v. Standard L., etc., Ins. Co. (87 Iowa, 505; 54 N. W. 453), 2239), 2243, 2244.
- Sutton v. Grand Lodge A. O. U. W. (84 Mo. App. 208), 65.
- Sutton v. Head (86 Ky. 156; 5 S. W. 410; 9 Am. St. 274), 1808, 1809.
- Sutton v. State ([Tex. Cr. App.] 40 S. W. 996, 501), 1342, 1344, 1695.
- Sutton v. Washington (4 Ga. App. 30; 60 S. E. 811), 1722.
- Swalm v. State (49 Tex. Civ. App. 241; 91 S. W. 575), 85, 87, 1609.
- Swan, *In re*. (150 U. S. 637; 14 Sup. Ct. 225; 37 L. Ed. 1202), 1046.
- Swann, *Ex parte* (96 Mo. 44; 9 S. W. 10), 228, 232, 233, 237, 238, 928, 930, 932, 934, 1763.
- Swan v. State (11 Ala. 594), 1290.
- Swan v. State (4 Humph. 136), 2040, 2067.
- Swan v. Talbott (152 Cal. 142; 94 Pac. 238), 2095, 2107.
- Swan v. Wilderson (10 Okla. 547; 62 Pac. 422), 616, 617, 671, 672, 735.
- Swan River, *In re* (16 Manitoba, 312), 906.
- Swarth v. People (109 Ill. 621), 795.
- Swarthout v. State ([Mo.] 119 S. W. 1014), 283.
- Swartz v. Dover ([N. J. L.] 62 Atl. 1135; affirming 7 N. J. L. 502; 57 Atl. 394), 168.
- Sweatt v. State (153 Ala. 70; 45 So. 588), 1612, 1652.
- Sweeney, *In re* (11 Pa. Super. Ct. 569), 664.
- Sweeney v. State (49 Tex. Cr. App. 226; 91 S. W. 575), 1357.
- Sweeney v. Traverse (82 Iowa 720; 47 N. W. 889), 1001.
- Sweeney v. Webb (97 Tex. 250), 234, 863.
- Sweeney v. Webb (33 Tex. Civ. App. 324; 76 S. W. 766; [Tex.] 77 S. W. 135), 188, 230, 249, 282, 295, 871.
- Sweeney v. Webb (45 Tex. Cr. App. 170; 76 S. W. 766), 245.
- Sweet v. Wabash (41 Ind. 7), 244, 291, 432, 436, 443, 444, 795.
- Sweetman, *Ex parte* (5 Cal. App. 577; 90 Pac. 1069), 171.
- Swick v. Home L. Ins. Co. (2 Dill 160), 2223, 2229.
- Swift v. Klein (163 Ill. 269; 45 N. E. 219), 279, 416, 421.
- Swift v. People (63 Ill. App. 453), 424, 652.
- Swift v. People (162 Ill. 534; 44 N. E. 528; 33 L. R. A. 470; reversing 60 Ill. App. 395), 208.
- Swift v. State (108 Tenn. 610; 69 S. W. 326), 957.

[References are to pages.]

- Swift v. State (108 Tenn. 610; 69 S. W. 326), 1286.  
 Swift v. Sutphin (39 Fed. Rep. 631), 156.  
 Swigart v. State (99 Ind. 111), 1241, 1242, 1627, 1628.  
 Swihart v. Hansen (76 Neb. 727; 107 N. W. 862), 588, 624.  
 Swinfen Eady, J. ([1907] 2 Ch. 229; 72 L. J. Ch. 507), 1827.  
 Swinford v. Lowry (37 Minn. 345; 34 N. W. 22), 1877, 1878.  
 Swords v. Daigle (107 La. 510; 32 So. 94), 446, 794.  
 Swygart v. Willard (166 Ind. 25; 76 N. E. 755), 2137, 2138.  
 Sydleman v. Beckwith (43 Conn. 9), 1736.  
 Sylvester v. Casey (110 Iowa, 256; 81 N. W. 455), 2174, 2186.  
 Symons v. Wedmore ([1894] 1 Q. B. Div. 401; 58 J. P. 197; 63 L. J. M. C. 44; 69 L. T. 801; 42 W. R. 301), 681, 704.
- T**
- Taber v. Lander (94 Ky. 237; 21 S. W. 1056), 931.  
 Taber v. New Bedford (177 Mass. 197; 58 N. E. 640), 559.  
 Tacke, *In re* (17 N. St. Rep. 805), 2141.  
 Tackaberry v. State ([Tex. Cr. App.] 71 S. W. 376), 1237.  
 Tadeaster Tower Brewery Co. v. Wilson ([1897] 1 Ch. 705; 61 J. P. 360; 66 L. J. Ch. 402; 76 L. T. 459; 45 W. R. 428; 13 T. L. R. 295), 1831.  
 Taffe v. State (23 Ark. 34), 2257.  
 Taggart v. Graham ([Tex. Civ. App. 93 S. W. 246), 762.  
 Taggart v. Hillman (42 Tex. Civ. App. 71; 93 S. W. 245, 762.  
 Taggart v. State ([Tex. Cr. App.] 85 S. W. 1155), 298, 307, 1214, 1280.  
 Taggart v. State ([Tex. Cr. App.] 97 S. W. 95), 1167, 1611.  
 Tai Kee v. Minister of Interior (12 Hawaii 164), 631.  
 Taite v. Gosling ([1879] 11 Ch. D. 273; 48 L. J. Ch. 397; 40 L. T. 251; 27 W. R. 394), 1821.  
 Talbott v. Dent (9 B. Mon. [Ky.] 526, 539), 904.  
 Tallassee v. Tooms ([Ala.] 47 So. 308), 382.  
 Tally v. Grider (66 Ala. 119), 850, 854.  
 Tangilpahoia v. Campbell (106 La. 464; 31 So. 49), 932, 933.  
 Tanner v. Alliance (29 Fed. 196 (111, 120, 125, 152, 475).  
 Tanner v. Bugg (74 Mo. App. 196), 561, 576, 587.  
 Tanner v. Louisville, etc., Co. (60 Ala. 621), 2214.  
 Tanner v. Trustee, etc. (5 Hill [N. Y.] 121), 228.  
 Tardiff v. State (23 Tex. 169), 1371, 1372.  
 Tarkington v. Bennett ([Tex. Civ. App.] 51 S. W. 274), 1953.  
 Tarkio v. Cook ([Mo. Supp.] 25 S. W. 202), 461.  
 Tarr's Estate, *In re* (10 Pa. Super. Ct. 554), 2020.  
 Tasker's Estate, *In re* (205 Pa. 455; 55 Atl. 24), 2135, 2138, 2141, 2147, 2148.  
 Tasher v. Stanley (143 Mass 148; 26 N. E. 417), 1796.  
 Tassell v. Oviden (2 Q. B. Div. 383; 41 J. P. 710; 46 L. J. M. C. 228; 36 L. T. 696; 25 W. R. 692), 1142, 1145.  
 Tate v. Donovan (143 Mass. 590; 10 N. E. 492) 1850, 1851.  
 Tate v. State (91 Miss. 382; 44 So. 836), 1182.  
 Tattersal v. Nevels (77 Neb. 843; 110 N. W. 708), 576.  
 Tatum v. Commonwealth ([Ky.] 59 S. W. 32; 22 Ky. L. Rep. 927), 958, 1205, 1498.

[References are to pages.]

- Tatum v. Commonwealth ([Ky.] 65 S. W. 449; 23 Ky. L. Rep. 1533), 1469, 1470.
- Tatum v. State (63 Ala. 147), 64, 65, 1254, 1632, 1633, 2231.
- Tatum v. State (74 Ga. 176; 3 S. E. 907), 928, 932, 934.
- Tatum v. Trenton (85 Ca. 468; 21 S. E. 705), 812.
- Taul v. State ([Tex. Cr. App.] 61 S. W. 394), 1695.
- Taylor v. Becker (6 Ohio Dec. 151; 6 Wkly. L. Bull. 25), 1808.
- Taylor v. Board (31 Pa. St. 73), 811.
- Taylor v. Carroll (145 Mass 95; 13 N. E. 348), 1850, 1905.
- Taylor v. Chester (L. R. 4. Q. B. 309, 311), 1795.
- Taylor v. Carryl (20 How. [U. S.] 597), 1012.
- Taylor v. Commonwealth ([Ky.] 40 S. W. 383), 1467, 1694.
- Taylor v. Commonwealth ([Ky.] 59 S. W. 482; 22 Ky. L. Rep. 1003), 900.
- Taylor v. Felsing (164 Ill. 331; 45 N. E. 161), 1974.
- Taylor v. Humphries (28 J. P. 793; 34 L. J. M. C. 1), 1149.
- Taylor v. Humphries (30 L. J. M. C. 242; 10 C. B. (N. S.) 429; 9 W. R. 705; 4 L. T. 514), 1149.
- Taylor v. Isitt (7 N. Z. L. R. 678), 685.
- Taylor v. Kelly (31 Atl. 59; 68 Am. Dec. 150), 2136.
- Taylor v. Monnot (4 Duer. 116), 544.
- Taylor v. Oran (1 H. & C. 370; 27 J. P. 8; 31 L. J. M. C. 252; 7 L. T. 58; 10 W. R. 800), 1297.
- Taylor v. Patrick (1 Bibb, 168 2094, 2117.
- Taylor v. Pinchett (52 Iowa 467; 3 N. W. 514), 1283, 1290, 1353, 1788.
- Taylor v. Place (4 R. I. 324), 1014.
- Taylor v. Purcell (60 Ark 606; 31 S. W. 567), 2098.
- Taylor v. State (121 Ala. 24; 25 So. 689), 1180.
- Taylor v. State (121 Ala. 39; 25 So. 701), 1163, 1180.
- Taylor v. State (69 Ark. 468; 60 S. W. 33), 1379.
- Taylor v. State (5 Ga. App. 237; 62 S. E. 1048), 1602, 1662, 1722.
- Taylor v. State (126 Ga. 557; 55 S. E. 474), 1501, 1554.
- Taylor v. State (49 Ind. 555), 1643.
- Taylor v. State (107 Ind. 483; 8 N. E. 450), 1241.
- Taylor v. State (113 Ind. 471; 16 N. E. 183), 1712.
- Taylor v. State (7 Humph. 510), 1515.
- Taylor v. State ([Tex. Cr. App.] 49 S. W. 589), 1705, 1707.
- Taylor v. State ([Tex.] 49 S. W. 845), 9.
- Taylor v. State ([Tex. Cr. App.] 50 S. W. 343), 1613, 1699.
- Taylor v. State ([Tex. Cr. App.] 51 S. W. 1106), 2261.
- Taylor v. State (44 Tex. Cr. App. 437; 72 S. W. 181), 963, 1698, 1703.
- Taylor v. State ([Tex. Cr. App.] 75 S. W. 536), 1210, 1211.
- Taylor v. State ([Tex. Cr. App.] 77 S. W. 221), 1209, 1378.
- Taylor v. State (54 Tex. App. 90; 111 S. W. 932), 1694.
- Taylor v. State ([Tex. Cr. App.] 112 S. W. 942), 1596.
- Taylor v. Strong (3 Wend. 384), 2033.
- Taylor v. Taylor (10 Minn. 107), 904.
- Taylor v. United States (6 Ind. T. 350; 98 S. W. 123), 953.
- Taylor v. Vincent (12 Lea 282; 47 Am. Rep. 338), 76, 542.

[References are to pages.]

- Taylor v. Wright** (126 Pa. St. 617; 176, 677), 1912, 1913.  
**Teegarden v. State** (39 Ind. App. 15; 79 N. E. 211), 342, 1536.  
**Teague v. State** (39 Miss. 516), 1740.  
**Teague v. State** (51 Tex. Cr. App. 526, 529; 102 S. W. 1141, 1144), 1680, 1696.  
**Teal v. Commonwealth** ([Ky.] 57 S. W. 464; 22 Ky. L. Rep. 350), 1285.  
**Teasdale v. State** ([Miss.] 3 So. 245), 1358.  
**Tefft v. Commonwealth** (8 Leigh. 721), 1496, 1741.  
**Tegler v. Shipman** (33 Iowa 194), 1788, 1790.  
**Tejszeaski v. Dallas** ([Tex. Cr. App.] 45 S. W. 569), 1553.  
**Temme v. Schmidt** (210 Pa. 507; 60 A. 158), 1999, 2000.  
**Temmick v. Owings** (70 Md. 246; 16 Atl. 719), 246, 941.  
**Temple v. Temple** (1 Hen. & M. 476), 2139.  
**Templeton, *In re*** ([Pa.] 4 Lancast. Law. Rev. 242), 694.  
**Tenant v. Kuhlemeier** ([Iowa] 120 N. W. 689), 1744.  
**Tennant v. Belyea** (24 N. B. 238), 1075.  
**Tennant v. Cumberland** (1 El. and El. 401; 23 J. P. 57), 1136.  
**Tennessee Club v. Dwyer** (11 Lea 452; 47 Am. Rep. 298), 1336, 1338.  
**Tenney v. Leroy** (16 Wis. 566), 184.  
**Tenth Ward Election, *In re*** (5 Pa. Dist. Rep. 287), 1320.  
**Teoli v. Nardoli** (23 R. I. 87; 49 Atl. 489), 690.  
**Terre Haute Brewing Co. v. Hartman** (19 Ind. App. 596; 49 N. E. 864), 1791, 1806.  
**Terre Haute Brewing Co. v. Newland** (33 Ind. App. 544; 70 N. E. 190), 1792, 1912, 1919, 1975.  
**Terre Haute Brewing Co. v. State** 169 Ind. 242; 82 N. E. 81), 1192, 1549.  
**Terrell v. State** (165 Ind. 443; 75 N. E. 884), 1485.  
**Territory v. Burgess** (8 Mont. 57; 19 Pac. 558; 1 L. R. A. 2247.  
**Territory v. Clark** (79 Pac. 708), 2257.  
**Territory v. Coleman** (1 Ore. 191; 75 Am. Dec. 554), 1264.  
**Territory v. Connell** (2 Ariz. 339; 16 Pac. 209), 174, 201, 523, 792.  
**Territory v. Crunka** (15 Hawaii 607), 258.  
**Territory v. Dana** ([Ark.] 6 Lawson Crim. Defences 630), 2072.  
**Territory v. Davis** (2 Ariz. 59; 10 Pac. 359), 2051, 2052.  
**Territory v. Farnsworth** (5 Mont. 303; 5 Pac. 869), 788.  
**Territory v. Ferris** (15 Hawaii 139) 2247.  
**Territory v. Franklin** (2 N. M. 307), 2040, 2058, 2070.  
**Territory v. Grinnell** (2 Ariz. 339; 16 Pac. 209), 138.  
**Territory v. Guyott** (9 Mont. 46; 22 Pac. 134), 1264.  
**Territory v. Hall** (17 Hawaii 536), 1231, 1241.  
**Territory v. Hart** (7 Mont. 489; 14 Pac. 768), 2246.  
**Territory v. McPherson** (6 Dak. 27; 50 N. W. 351), 648, 649, 796.  
**Territory v. Manton** (8 Mont. 95; 19 Pac. 387), 2040, 2046.  
**Territory v. Miguel** (18 Hawaii 402), 124, 174, 645.  
**Territory v. O'Connor** (5 Dak. 397; 37 N. W. 765; 41 N. W. 746; 36 L. R. A. 355), 174, 233, 235, 242, 452, 529, 931.  
**Territory v. Pacific Club** (16 Hawaii 517), 1338.  
**Territory v. Pratt** (6 Dak. 483; 43 N. W. 711), 1466, 1698, 1713.



[References are to pages.]

- Territory v. Robertson (19 Okla. 149; 92 Pac. 144), 414, 417, 635, 974.  
 Territory v. Webster (5 Dak. 351; 40 N. W. 535), 402.  
 Territory v. Wong Feart (17 Hawaii 353), 1293, 1612, 1633.  
 Territt v. Barlett (21 Vt. 184, 188, 189), 1797, 1798.  
 Terry v. Haldiman (15 Upp. Can. 380), 687.  
 Terry v. State (44 Tex. Cr. App. 411; 71 S. W. 968), 1699.  
 Terry v. State (46 Tex. Cr. App. 75; 79 S. W. 317), 1695, 1708.  
 Tetzner v. Naughton (12 Ill. App. 148), 1915.  
 Texas Banking Co. v. State (42 Tex. 636), 428, 791.  
 Texas, etc., R. Co. v. Robertson (82 Tex. 657; 17 S. W. 1041), 1906.  
 Thackrah v. Haas (119 U. S. 499; 7 Sup. Ct. 311; 30 L. Ed. 486; 2104, 2109, 2136.  
 Thalheimer v. Board ([Ariz.] 94 Pac. 1129), 230, 233, 242.  
 Thayer v. Felt (4 Pick. [Mass.] 354), 1067.  
 Thayer v. Boyle (30 Me. 475), 2259.  
 Thayer v. Partridge (47 Vt. 423), 1802, 1803.  
 Thayer v. Turner (8 Met. 552), 2127.  
 Theis v. State (54 Ohio St. 245; 43 N. E. 207), 1279.  
 Theisen, *Ex parte* (30 Fla. 529; 11 So. 901; 32 Am. St. 36), 429, 441.  
 Theisen v. Johns (72 Mich. 285; 40 N. W. 727), 1952.  
 Theo. Hamm Brewing Co. v. Foss ([S. D.] 91 N. W. 584), 291, 1786, 1789.  
 Theuer v. People (211 Ill. 296; 71 N. E. 997, affirming 113 Ill. 628), 578 586, 589, 610, 683.  
 Thibodeaux v. State (69 Miss. 683; 13 So. 352), 794, 800, 802.  
 Thill v. Pohlman (76 Iowa 638; 41 N. W. 385), 1987.  
 Thirty Hhds. Sugar v. Boyle (9 Cranch 191), 252.  
 Thixton v. Illinois Cent. R. Co. ([Ky.] 96 S. W. 548; 29 Ky. L. Rep. 910), 2215.  
 Thoma, *In re* (117 Iowa 275; 90 N. W. 581), 533, 535.  
 Thomas, *In re* (53 Kan. 659; 37 Pac. 171), 403.  
 Thomas, *In re* (169 Pa. 111; 3 Atl. 100), 627, 639.  
 Thomas, *In re* (26 Ont. Rep. 448), 658.  
 Thomas v. Abbott (105 Mich. 687; 63 N. W. 984), 877, 878, 879, 887, 892, 907, 911.  
 Thomas v. Arie (122 Iowa 538; 98 N. W. 380), 1268.  
 Thomas v. Ashland (12 Ohio St. 127), 2035.  
 Thomas v. Burke ([Ark.] 121 S. W. 1061), 947.  
 Thomas v. Commonwealth (90 Va. 92; 17 S. E. 788), 35, 80, 908, 929, 1465, 1493.  
 Thomas v. Dansby (74 Mich. 398; 41 N. W. 1088), 1864, 1865, 1889, 1966, 1967, 1978, 1980.  
 Thomas v. Ivey (12 Austr. L. T. 190), 351.  
 Thomas v. Hayward ([1869] L. R. 4 Ex. 311; 38 L. J. Ex. 175), 1819.  
 Thomas v. Hinkley (19 Neb. 324; 27 N. W. 231), 758, 762, 1924.  
 Thomas v. Marks (19 Neb. 324; 27 N. W. 321), 683.  
 Thomas v. Mount (9 Ohio 219), 294.  
 Thomas v. Norris (62 Ga. 538), 814.  
 Thomas v. Powell (57 J. P. 329), 356, 1146.

[References are to pages.]

- Thomas v. Sanders ([Fla.] 47 So. 796), 263.  
 Thomas v. State (97 Ala. 3; 12 So. 409), 72.  
 Thomas v. State (117 Ala. 134; 23 So. 636), 1199.  
 Thomas v. State ([Fla.] 23 So. 161), 2038.  
 Thomas v. State (47 Fla. 99; 36 So. 161), 2068.  
 Thomas v. State (37 Miss. 353), 1190, 1643.  
 Thomas v. Sutters ([1900] 1 Ch. 10; 69 L. J. Ch. 27; 63 J. P. 724; 48 W. R. 133; 81 L. T. 469; 16 T. L. R. 7), 380.  
 Thomas v. Westfield ([N. J. L.] 57 Atl. 125), 812.  
 Thomason v. State (70 Ala. 20), 842, 843.  
 Thomasson v. State (80 Ark. 364; 97 S. W. 297), 1650, 1652.  
 Thomason v. State (92 Ga. 465; 17 S. E. 858), 1126.  
 Thomasson v. State (15 Ind. 449), 91, 138, 139, 144, 163, 189, 198, 201, 211, 215, 289, 290, 456, 788, 790, 791, 821, 1303, 1304, 1307, 1628.  
 Thompkins v. State (2 Ga. App. 639; 58 S. E. 1111), 1700.  
 Thompkins v. State (65 S. E. 842), 1700.  
 Thompkins County v. Taylor (21 N. Y. 173), 24.  
 Thompson, *Ex parte* (16 N. S. W. L. R. 42), 933.  
 Thompson v. Bassett (5 Ind. 535), 773.  
 Thompson v. Bellemore (7 Low. Can. Jr. 74), 698.  
 Thompson v. Commonwealth (103 Ky. 635; 45 S. W. 1039), 926, 941, 1742.  
 Thompson v. Commonwealth (123 Ky. 302; 94 S. W. 654; 29 Ky. L. Rep. 705), 199.  
 Thompson v. Commonwealth ([Ky.] 107 S. W. 223; 32 Ky. L. Rep. 714), 1128.  
 Thompson v. Commonwealth (8 Gratt. 637), 2246, 2248.  
 Thompson v. Durnford (12 Low. Can. Jr. 285), 1759.  
 Thompson v. Egan (70 Neb. 169; 97 N. W. 247), 571, 585.  
 Thompson v. Harvey (23 J. P. 150; 4 H. & N. 254; 28 L. J. M. C. 163), 529, 547, 683, 685.  
 Thompson v. Hiatt (145 Ind. 530; 44 N. E. 486), 603.  
 Thompson v. Koch (98 Ky. 400; 33 S. W. 96; 17 Ky. L. Rep. 941), 635, 662.  
 Thompson v. Lessee of Carroll (22 How. 422), 396.  
 Thompson v. McKenzie (77 L. J. K. B. 605 [1908]; 1 K. B. 905; 98 L. T. 896; 72 J. P. 150; 24 T. L. R. 330), 2028.  
 Thompson v. Mt. Vernon (11 Ohio St. 688), 395, 441.  
 Thompson v. Peck (115 Ind. 512; 18 N. E. 16), 2127.  
 Thompson v. Rose (16 Conn. 71; 41 Am. Dec. 121), 2125.  
 Thompson v. State (37 Ala. 151), 510.  
 Thompson v. State (37 Ark. 408), 1510, 1524.  
 Thompson v. State (109 Ga. 272; 34 S. E. 579), 1200, 1701.  
 Thompson v. State (45 Ind. 495), 356, 1352, 1357, 1359, 1615, 1616.  
 Thompson v. State (5 Humph. 138; 1349 1374, 1377).  
 Thompson v. State ([Tex. Cr. App.] 97 S. W. 316), 13, 1602, 1693, 1701, 1704, 1705, 1731.  
 Thomson v. Grand Gulf R. Co. (3 How. [Miss.] 240), 294.  
 Thomson v. Greig (34 J. P. 214), 1137, 1141.  
 Thomson v. Norris (63 Ga. 538), 812.  
 Thomson v. Weems (L. R. 9 App. Cas. 671), 221, 223, 225.

[References are to pages.]

- Thon v. Commonwealth (31 Gratt. [Va.] 887), 215, 448, 1304, 1307.
- Thorn v. Atlanta (77 Ga. 661), 506, 682.
- Thornewall v. Johnson ([1881] 50 L. J. Ch. 641; 44 L. T. 768; 29 W. R. 707), 1814.
- Thornley v. Reilly (17 Ont. App. 204, affirming 26 C. L. J. 26), 1853.
- Thornton v. Clegg (24 Q. B. Div. 132; 53 J. P. 342; 58 L. J. M. C. 6; 61 L. T. 562; 38 W. R. 160), 709, 710.
- Thornton v. Territory (3 Wash. T. 482; 17 Pac. 896), 174, 231.
- Thorp v. Brookfield (36 Conn. 320), 2186, 2191, 2193.
- Thorpe v. Rutland (27 Vt. 149), 94, 95, 99.
- Threemits v. Threemits (4 Desaus. 560), 2163.
- Throckmorton v. Commonwealth ([Ky.] 18 Ky. L. Rep. 130; 35 S. W. 635), 1464, 1468, 1521, 1524.
- Throckmorton v. Commonwealth ([Ky.] 49 S. W. 474; 20 Ky. L. Rep. 1508), 1446, 1678.
- Thulmeyer, *Ex parte* ([Tex.] 119 S. W. 1146), 925.
- Thurlow v. Massachusetts (5 How. 504; 12 L. Ed. 256), 147, 195.
- Thurman v. Adams ([Miss.] 33 So. 944), 1370.
- Thurman v. State (45 Tex. Cr. App. 569; 78 S. W. 937), 1483, 1486.
- Thurmond v. State (46 Tex. Cr. App. 162; 79 S. W. 316), 873, 916.
- Thurston v. Adams (41 Me. 419), 122, 1060, 1074.
- Thurston v. Blanchard (22 Pick. 18; 33 Am. Dec. 700), 2125.
- Thweatt v. State ([Tex. Cr. App.] 95 S. W. 517), 1320, 1510, 1570.
- Tibbatts v. Boultar ([1895] 73 L. T. 534), 1833.
- Tibbetts v. Burster (76 Iowa, 176; 40 N. W. 707), 982, 991.
- Tidwell v. State (70 Ala. 33), 2041, 2060, 2085.
- Tiernan v. Harrison (109 Ill. 593), 202.
- Tiernan v. Rinker (102 U. S. 123), 199, 299.
- Tierney, *In re* (11 Pa. Co. Ct. Rep. 406), 645, 718.
- Tiffany v. Driggs (13 Johns. 253), 1649.
- Tift's Will, *In re* (55 N. Y. Misc. Rep. 81; 64 N. Y. Supp. 571), 2136.
- Tigler v. Shipman (33 Iowa 194), 1283.
- Tigner v. State (119 Ga. 114; 45 S. E. 1001), 1510, 1523.
- Tilford v. State (109 Ind. 359; 10 N. E. 107), 832, 837, 883, 1305, 1306.
- Tilleny v. State (10 Lea, 35), 131, 135, 247, 1279.
- Tillery v. State (10 Lea, 35), 1453.
- Tilton v. Tilton (16 Ky. L. Rep. 538), 2161.
- Tilton v. Tilton (29 S. W. 290), 2154.
- Tilton v. Swift (40 Iowa 78), 225.
- Timm v. Harrison (109 Ill. 593), 792.
- Timm v. Caledonia Station (142 Mich. 323; 112 N. W. 942; 14 Det. L. N. 442), 167.
- Tindall v. Monmouth ([N. J. L.] 68 Atl. 799), 741.
- Tinkcom, *In re* (50 N. Y. Misc. Rep. 250; 100 N. Y. Supp. 467), 675.
- Tinker v. State (96 Ala. 115; 11 So. 383), 35, 38, 309, 325, 965, 966, 967, 1017, 1643.
- Tinkle v. Sweeney (97 Tex. 190; 77 S. W. 609), 772.

[References are to pages.]

- Tinkle v. Sweeney ([Tex. Civ. App.] 78 S. W. 248), 357, 771, 772, 1241.
- Tinsley v. State ([Ga.] 35 S. E. 303), 945, 946.
- Tinson v. Moulton (3 Cush. 269), 1784.
- Tippett v. Heyman (19 W. N. [N. S. W.] 6), 375.
- Tippett v. State (53 Tex. Cr. App. 180; 109 S. W. 161), 1177, 1681.
- Tipton v. Thompson (50 S. W. 641; 21 Tex. Civ. App. 143), 1887, 1953, 1970.
- Tipton v. Yakey (72 Mo. 380), 470.
- Tivorney v. O'Brien (29 Vict. L. R. 729; 25 Austr. L. T. 255; 10 Austr. L. R. 101), 1792, 1805, 1806.
- Tobert v. Clough (72 Iowa 220; 33 N. W. 639), 1803.
- Tobin v. District of Columbia (22 App. D. C. 482), 1130.
- Todd, *Ex parte* (3 Q. B. Div. 407; 42 J. P. 662; 47 L. J. M. C. 89), 708.
- Toledo, etc. R. Co. v. Nordyke (27 Ind. 95), 237.
- Toledo, etc. R. Co. v. Pence (68 Ill. 524), 1509.
- Toledo, etc. R. Co. v. Riley (47 Ill. 514), 2180, 2185.
- Tolman v. Johnson (43 Iowa 127), 1798, 1804.
- Toman v. Westfield (70 N. J. L. 610; 57 Atl. 125), 812, 813.
- Tombeaugh v. State (50 Tex. Cr. App. 286; 98 S. W. 1054), 1167.
- Tome v. Stump (89 Md. 264; 42 Atl. 902), 2017, 2020.
- Tomlinson v. Bainake (163 Ind. 112; 70 N. E. 155), 1510.
- Tompkins v. Oswego (40 N. Y. St. Rep. 4), 2176, 2197.
- Tompkins v. State (2 Ga. App. 639; 58 S. E. 1111), 80, 1161, 1598.
- Tompkins v. State (49 Tex. Cr. App. 154; 90 S. W. 1019), 934.
- Tompkins Co. v. Taylor (21 N. Y. 173; 19 How. Pr. 259), 43, 46, 966.
- Tomlinson Carriage Co. v. Kinsella (31 Conn. 268), 1783.
- Tonatio, *In re* (49 N. Y. App. Div. 84; 63 N. Y. Supp. 560), 729.
- Tonella v. State (4 Tex. App. 325), 139.
- Tony v. State (144 Ala. 87; 40 So. 388), 1229, 1233.
- Tooke v. State (4 Ga. App. 495; 61 S. E. 917), 1301, 1453, 1689, 1690, 1695.
- Toole v. State (88 Ala. 158; 7 So. 42), 885, 887, 1593, 1684.
- Tooth v. Laws (2 N. S. W. L. R. 154), 1784.
- Tooth v. Parker (17 W. N. [N. Z.] 17), 1819.
- Topeka v. Chesney (66 Kan. 480; 71 Pac. 843), 1679.
- Topeka v. Myers (34 Kan. 500; 8 P. 726), 258.
- Topeka v. Raynor (60 Kan. 860; 58 Pac. 557; 61 Kan. 10; 55 Pac. 509), 258, 433, 1542, 1742.
- Topeka v. Stevenson (79 Kan. 394; 99 Pac. 598), 1732.
- Topeka v. Webb (44 Kan. 71; 23 P. 1073), 258.
- Topeka v. Zufall (40 Kan. 47; 19 Pac. 359), 9, 51, 258, 1753.
- Topper v. State (118 Ind. 110; 20 N. E. 699), 771, 1219, 1220, 1223, 1220, 1230, 1621, 1845.
- Tousey v. De Huy ([Ky.] 62 S. W. 1118; 23 Ky. L. Rep. 458), 858, 868, 869.
- Tousey v. Stites ([Ky.] 66 S. W. 277; 23 Ky. L. Rep. 1738), 939.
- Towles, *Ex parte* (48 Tex. 413), 925.

[References are to pages.]

- Townley v. State (18 N. J. L. 311), 1525.
- Townsend, Matter of (129 N. Y. App. Div. 909; 114 N. Y. Supp. 1149), 595.
- Townsend v. State (2 Blackf. 151), 688, 1751.
- Tozer v. Saturlee (3 Grant Cas. [Pa.] 162), 2119.
- Tracy, *In re* (11 N. Y. St. Rep. 103), 2137, 2148.
- Tracy, *In re* (1 Paige 580), 66, 2018.
- Tracy v. Ginzberg (189 Mass. 260; 75 N. E. 637), 480, 682, 694, 702, 819.
- Tracy v. Ginzberg (205 U. S. 170; 51 L. Ed. 755; 27 Sup. Ct. 461, affirming 189 Mass. 260; 75 N. E. 637), 480, 702.
- Tracy v. Perry (5 N. H. 504), 1365, 1625.
- Tracy v. State ([Tex. Cr. App.] 85 S. W. 1056), 1225.
- Tracy v. Talmage (14 N. Y. 162; 67 Am. Dec. 132), 1795, 1797, 1801.
- Trageser v. Gray (73 Md. 250; 20 Atl. 905; 25 Am. St. 589; 9 L. R. A. 780), 96, 149, 150, 152, 313.
- Trail v. State ([Tex. Cr. App.] 107 S. W. 545), 1598.
- Trainor v. Multnoma (2 Ore. 214), 808, 812, 813.
- Trammell v. Bradley (37 Ark. 374), 136, 247.
- Transportation Co. v. Parkersburg (107 U. S. 691; 2 Sup. Ct. 732), 315.
- Tranter v. Lancashire J. J. (51 J. P. 454), 655.
- Travelers' etc., Ins. Co. v. Harvey (82 Va. 949; 5 S. E. 553), 2189, 2238, 2239, 2245.
- Travis v. State (37 Tex. Cr. Rep. 486; 36 S. W. 589), 509.
- Traynor v. Jones ([1894] 1 Q. B. p. 86), 701, 709, 711.
- Treadway v. State ([Tex. Cr. App.] 62 S. W. 574), 1204, 1380.
- Treahey v. Holliday (43 Kan. 29; 22 Pac. 1004), 1159.
- Treas. v. Maxwell (157 Mass. 333; 32 N. E. 152), 1840.
- Tredway v. Riley (32 Neb. 495; 49 N. W. 268; 29 Am. St. 447), 8, 111, 119, 1788.
- Trefty v. Board (73 N. J. L. 278; 62 Atl. 1004), 698.
- Treese v. State (14 Tex. App. 31), 929.
- Tremblay v. Pointe-au-Pic (13 L. N. [Can.] 386), 649.
- Tremblay, *Ex parte* (7 Mon. S. C. 17), 1839.
- Treue v. State ([Tex. Cr. App.] 44 S. W. 829), 1186, 1615, 1692, 1694.
- Trice v. Robinson (16 Ont. Rep. 433), 1843.
- Trigg v. State (49 Tex. 645), 64.
- Triggally v. Memphis (6 Cold. [Tenn.] 382), 470.
- Triggs v. McIntyre (215 Ill. 369; 74 N. E. 400; affirming 115 Ill. App. 257), 1999, 2000.
- Trinkle v. State (52 Tex. Cr. App. 42; 105 S. W. 201), 1694.
- Trinkle v. State ([Tex. Cr. App.] 123 S. W. 1114), 921, 926.
- Tripp v. Bristol Co. (2 Allen, 556), 2252.
- Tripp v. Flanigan (10 R. I. 128), 770, 783, 1188.
- Tripp v. Hennessy (10 R. I. 129), 1190.
- Tripp v. Norton (10 R. I. 125), 758.
- Tromans v. Hodgkinson ([1903] 1 K. B. 30; 72 L. J. K. B. 21; 67 J. P. 30; 51 W. R. 286; 87 L. T. 549; 19 T. L. R. 19), 379.
- Trometer v. District of Columbia (24 App. D. C. 242), 1507, 1617.



[References are to pages.]

- Tron v. Lewis (31 Ind. App. 178; 66 N. E. 490), 975, 1108, 1268.  
 Tross v. Board (59 N. J. L. 97; 35 Atl. 646), 682.  
 Trost v. State (64 Miss. 188; 1 So. 49), 1556, 1744.  
 Trott v. Irish (1 Allen, 481), 1775, 1805.  
 Trotter, *In re* (24 Pa. Super. Ct. 26), 628, 638.  
 Trout v. State (107 Ind. 578; 8 N. E. 618), 1485.  
 Troy v. Cape Fear, etc., R. Co. (99 N. C. 298; 6 S. E. 77), 2183.  
 Truesdell v. State (42 Tex. Cr. App. 544; 61 S. W. 935), 911, 1680.  
 Trumbull v. Erickson (97 Fed. 891; 38 C. C. A. 536), 2191.  
 Trustees v. Board (62 Miss. 68; 39 S. E. 793), 889.  
 Trustees, etc., v. Board (56 N. J. L. 411; 29 Atl. 150), 616, 617.  
 Trustees v. Keating (4 Den. [N. Y.] 341), 395.  
 Trustees v. Lewis Co. ([Ky.] 46 S. W. 1; 20 Ky. L. Rep. 369), 807, 809.  
 Tuchman v. Welch (42 Fed. 548), 154, 307, 313, 327.  
 Tuck v. Waldron (31 Ark. 462), 432, 436.  
 Tucker v. Adams (63 N. H. 361), 1771, 1772.  
 Tucker v. Moultrie (122 Ga. 160; 50 S. E. 61), 127, 169, 1690.  
 Tucker v. United States (151 U. S. 164; 14 Sup. Ct. 299; 38 L. Ed. 112), 2068, 2085.  
 Tugman v. City of Chicago (78 Ill. 405), 408.  
 Tuichner, *Ex parte* (69 Iowa, 393; 28 N. W. 655), 1760.  
 Tulloss v. Sedan (31 Kan. 165; 1 Pac. 285), 428.  
 Tummings v. State (32 Tex. Cr. App. 117; 22 S. W. 409), 932.  
 Tupelo v. Beard (56 Miss. 532), 813.  
 Turnbull v. Appleton (45 J. P. 469), 1301.  
 Turner v. Cheesman (15 N. J. Eq. 243), 2135, 2137.  
 Turner v. Clay (3 Bibb, 52), 2126.  
 Turner v. Forsyth (78 Ga. 683; 3 S. E. 649), 473, 932.  
 Turner v. Johnson (51 J. P. 22), 1643.  
 Turner v. Rehm (43 Ind. 208), 662.  
 Turner v. Saxon ([Wash. Ter.] 20 Pac. Rep. 685), 231.  
 Turner v. State (121 Ga. 154; 48 S. E. 906), 1752, 1754.  
 Turner v. Wilson (49 Ind. 581), 276.  
 Turpin v. State (80 Ind. 148), 1485.  
 Tuttle v. Cincinnati, etc., Ry. Co. ([Ky.] 80 S. W. 802; 26 Ky. L. Rep. 152), 2207, 2217.  
 Tuttle v. Commonwealth (2 Gray, 505), 262, 1764.  
 Tuttle v. Holland (43 Vt. 542), 1798.  
 Tuttle v. Poechert ([Iowa] 121 N. W. 1057), 577, 578.  
 Tuttle v. Russell (2 Day, 201; 2 Am. Dec. 89), 2258.  
 Twining v. St. Louis Co. (47 Mo. App. 647), 662.  
 Tyler v. State (69 Miss. 395; 11 So. 25), 1624.  
 Tynemouth v. Attorney General ([1899] App. Cas. 293; 68 L. J. Q. B. 752; 63 J. P. 404; 15 T. L. R. 340), 671, 681.  
 Tyra v. Commonwealth (2 Met. [Ky.] 1), 2041, 2049, 2053.  
 Tyrrell v. State ([Tex. Cr. App.] 38 S. W. 1011), 1613.  
 Tyson v. Bowden (8 Fed. 61), 1027.  
 Tyson v. Postlethwait (13 Ill. 728), 467.

[References are to pages.]

## U

- Uldrich v. Gilmore (35 Neb. 288; 53 N. W. 135), 761, 773, 1981.
- Ulmer v. State (61 Ala. 208), 1476.
- Ulmer v. State (14 Ind. 52), 1485.
- Uloth v. State (48 Tex. Cr. App. 295; 87 S. W. 822), 972, 1185, 1731.
- Ulrich v. Commonwealth (6 Bush, 400), 1237.
- Ulterminova v. Zekind (95 Iowa, 622; 64 N. W. 646; 29 L. R. A. 734; 58 Am. St. 447), 786.
- Umholtz, *In re* (9 Pa. Super. Ct. 450; 43 W. N. C. 495), 480, 695, 696, 701, 705, 800.
- Underhill's Will, *In re* (Prob. Rep. [N. Y.] 196), 2136, 2138, 2142.
- Underwood v. Fairfield County (67 Conn. 411; 35 Atl. 274), 653, 909.
- Underwood v. McDuffee (15 Mich. 361), 1015.
- Union v. State ([Ga.] 66 S. E. 24), 1602, 1579.
- Union Mut. Life Ins. Co. v. Reif (36 Ohio St. 596; 38 Am. Rep. 613, and *note*, pp. 615, 616; 38 Am. Rep. —), 2222, 2223.
- Union Pacific R. Co. v. Diehl (33 Kan. 422; 6 Pac. 566), 2197.
- Uniontown v. State ([Ala.] 39 So. 814), 241, 382.
- United Brethren, etc., Soc. v. O'Hara (120 Pa. 256; 13 Atl. 932), 2223, 2226, 2245.
- United Breweries Co. v. Colby (170 Fed. 100), 153, 165.
- United States v. Abigan (1 Philippine, 83), 2038, 2082.
- United States v. Allen (38 Fed. 736), 76.
- United States v. Ames Mercantile Co. (2 Alaska, 74), 538, 1114.
- United States v. Angell (11 Fed. 34), 81, 498, 500, 527, 1638.
- United States v. Anthony (14 Blatchf. 92), 21.
- United States v. Ash ([D. C.] 75 Fed. 651), 34, 80.
- United States v. Bede (Fed. Cas. No. 14558), 1107, 1109.
- United States v. Belt (128 Fed. 168), 1262.
- United States v. Berner (5 Cranch C. C. 347; Fed. Cas. No. 14569), 1106, 1110.
- United States v. Binns (194 U. S. 486, 495), 1419.
- United States v. Bonham (31 Fed. 808), 1111, 1616, 1617.
- United States v. Boss (160 Fed. 132), 1259.
- United States v. Bowen (4 Cranch C. C. 604), 2039.
- United States v. Britton (107 U. S. 670; 2 Sup. Ct. 512), 1510.
- United States v. Buckles (6 Ind. T. 319; 97 S. W. 1022), 1259.
- United States v. Burch (1 Cranch C. C. 36; Fed. Cas. No. 14682), 1649.
- United States v. Burdick (1 Dak. 142; 46 N. W. 571), 1261, 1262.
- United States v. Calhoun (39 Fed. Rep. 604), 821.
- United States v. Carr (2 Mont. 234), 1260.
- United States v. Celestine ([U. S.] 30 Sup. Ct. 93), 1260.
- U. S. v. Clapox ([D. C.] 35 F. 575), 1262.
- United States v. Clare (2 Fed. 55), 77, 1192.
- United States v. Clarke (2 Cranch C. C. 158), 2054.
- United States v. Claypool (14 Fed. 127), 2039, 2048.
- United States v. Cline (26 Fed. Rep. 515), 1267, 1283, 1727.

[References are to pages.]

- United States v. Cohn (2 Ind. Ty. 474; 52 S. W. 38), 18, 38, 174, 963.
- United States v. Columbus (5 Cranch C. C. 304; Fed. Cas. No. 14841), 1106, 1109.
- United States v. Commissioners 17 D. C. 409), 627, 628.
- United States v. Cook (17 Wall. 168), 1509.
- United States v. The Cora (1 Dak. 1; 46 N. W. 503), 1030.
- United States v. Cornell (2 Mason, 91; Fed. Cas. No. 14868), 2039, 2042, 2048, 2069.
- United States v. Cota (17 Fed. 734), 60.
- United States v. Coulter (1 Cranch C. C. 203; Fed. Cas. No. 14875), 1107, 1110.
- United States v. Cutting (3 Wall. 441; 18 L. Ed. 241), 480.
- United States v. Dalasay (5 Philippine, 41), 2082.
- United States v. Davis (37 Fed. 468), 518, 539.
- United States v. Devlin (Fed. Cas. No. 14955), 1643.
- United States v. De Witt (9 Wall. 41), 91.
- United States v. Distilled Spirits (5 Sawy. 421), 1775.
- United States v. Dodge (Deady, 186; Fed. Cas. No. 14974), 1183.
- United States v. Douglass (19 D. C. 99), 626, 632, 648.
- United States v. Downing (Fed. Cas. No. 14991), 1262.
- United States v. Drew (5 Mason, 28; Fed. Cas. No. 14993), 2050, 2052.
- United States v. Ducournau (54 Fed. 138), 39, 83.
- United States v. Earl (17 Fed. 75), 1259, 1262.
- United States v. 84 Boxes Sugar (7 Pet. [U. S.] 453), 252.
- United States v. Elder (4 Cranch C. C. 507; Fed. Cas. No. 15039), 109, 1107.
- United States v. Ellis (51 Fed. 808), 24, 26, 42, 1263.
- United States v. 50 Cases of Distilled Spirits (83 Fed. 1000), 1030.
- United States v. Fiscus (42 Fed. 395), 154, 307, 313, 327.
- United States v. Fitzgerald (2 Philippine, 419), 2082.
- U. S. v. Flynn (1 Dill, 451; Fed. Cas. No. 15124), 1262.
- United States v. Forbes (Crabbe, 558; Fed. Cas. No. 15129), 2039, 2048, 2051.
- United States v. Fortin (1 Philippine, 299), 351.
- United States v. 43 Gallons of Whisky (3 Wall. 407; 18 L. Ed. 182), 1258.
- United States v. Forty-Three Gallons of Whisky (93 U. S. 188; 23 L. Ed. 846), 210, 1259.
- United States v. Forty-Three Gallons of Whisky (108 U. S. 491; 2 Sup. Ct. 906; 27 L. Ed. 803), 524, 1260.
- United States v. Four Bottles of Sour Mash Whisky (90 Fed. 720), 1260.
- United States v. Fox (Fed. Cas. No. 15155), 1425, 1430, 1434.
- United States v. Gilbert (2 Sum. 19; Fed. Cas. No. 15204), 2247.
- United States v. Git (3 Philippine, 414), 2082.
- United States v. Glab (1 McCrary, 166), 539.
- United States v. Gordon (1 Cranch C. C. 58; Fed. Cas. No. 15233), 1491, 1505.
- United States v. Guillermo (3 Philippine, 329), 2082.
- United States v. Harris (1 Abb. [U. S.] 110), 1767.

[References are to pages.]

- United States v. Heyward (2 Gall, 485), 1642.  
 United States v. Highhill (4 Philippine, 384), 2082.  
 United States v. Holliday (3 Wall. 407; 18 L. Ed. 182), 210, 1261, 1262.  
 United States v. Hull (14 Fed. 324), 1446.  
 United States v. Hurshman (53 Fed. 543), 1261, 1262.  
 United States v. Jackson (1 Hughes, 531), 1113.  
 United States v. Johnson (12 U. S. App. D. C. 92), 560, 592.  
 United States v. Johnson (12 App. D. C. 545), 545, 600, 618, 624, 627, 657.  
 United States v. Kaldenbach (1 Cranch C. C. 132), 396, 413.  
 United States v. Kopp (110 Fed. 160), 1263.  
 United States v. Lackey (120 Fed. 577), 1288.  
 United States v. Le Bris (121 U. S. 278; 7 Sup. Ct. 894; 30 L. Ed. 946), 1260.  
 United States v. Lindsay (1 Cranch C. C. 245; Fed. Cas. No. 15602), 1107, 1110.  
 United States v. Luyties (124 Fed. 977), 23.  
 United States v. McGlue (1 Curt. 1; Fed. Cas. No. 15679), 2039, 2051, 2052, 2054.  
 United States v. Mares ([N. M.] 88 Pac. 1128), 1263.  
 United States v. Meagher (37 Fed. 875), 2061, 2062.  
 United States v. Mickle (1 Cranch C. C. 268; Fed. Cas. No. 15763), 1112.  
 United States v. Morin (4 Biss. 93), 1306, 1323.  
 United States v. Nelson (29 Fed. Rep. 202), 109, 1643.  
 United States v. 1,960 Bags of Coffee (8 Cranch [U. S.] 398), 253.  
 United States v. Odita (4 Philippine, 309), 2082.  
 U. S. v. Osborn ([D. C.] 2 F. 58), 1262.  
 United States v. Overton (2 Cranch C. C. 42; Fed. Cas. No. 15979), 552, 700.  
 United States v. Paxton (1 Cranch C. C. 44; Fed. Cas. No. 16013), 1372.  
 United States v. Powers (1 Alaska, 180), 1268, 1741.  
 United States v. Prout (Fed. Cas. No. 16093), 1107, 1110.  
 United States v. Recano (4 Philippine, 91), 2082.  
 United States v. Renfrow (3 Okla. 161; 41 Pac. 88), 1261.  
 United States v. Rennecke (28 Fed. 847), 76.  
 United States v. Ronan (33 Fed. 117), 132, 400.  
 United States v. Roudenbush (Baldw. 514), 2039.  
 United States v. Seveloff (2 Sawy. 311; Fed. Cas. No. 16252), 1260.  
 United States v. Shaw (Mux. 2 Sawy. 264), 210, 1259.  
 United States v. Sheiver (23 Fed. 134), 1267, 1283, 1727.  
 United States v. Shuck (1 Cranch 56; Fed. Cas. No. 16285), 1372.  
 United States v. 6 Packages of Goods (6 Wheat. U. S. 520), 252.  
 United States v. Six Fermenting Tub (1 Abb. [U. S.] 268), 929.  
 United States v. Smith (45 Fed. 115), 76.  
 United States v. Squagh (1 Cranch C. C. 174; Fed. Cas. No. 16370), 1190.  
 United States v. Stafford (20 Fed. 720), 38, 60, 968.  
 United States v. Stephens (12 Fed. 52), 173, 968, 1260.

[References are to pages.]

- United States v. Stephens (37 Fed. 665), 76.
- United States v. Stofloe (76 Pac. 611), 1263.
- United States v. Stubblefield (40 Fed. 454), 15, 21, 52, 58, 969.
- United States v. Sutton ([U. S.] 30 Sup. Ct. 116), 1260.
- United States v. 350 Chests of Tea (12 Wheat. [U. S.] 486; United States v. 422 Casks of Wine, 1 Pet. [U. S.] 547), 252.
- United States v. Tom (1 Ore. 26), 1260.
- United States v. 29 Gallons of Whisky (45 Fed. 847), 1030, 1260.
- United States v. Twenty Boxes of Corn Liquor (123 Fed. 135; affirmed 133 Fed. 910; 67 C. C. A. 214), 337.
- United States v. Voss (1 Cranch C. C. 101; Fed. Cas. No. 16628), 1349.
- United States v. Winslow (3 Sawy. 337; Fed. Cas. No. 16742), 1262.
- United States v. Wirt (3 Sawy. 161; Fed. Cas. No. 16745), 1260.
- United States v. Wittig (2 Low. Dec. 466), 1338.
- United States v. Woodward (2 Hayw. & H. 119; Fed. Cas. No. 16760a), 2051, 2052.
- United States v. Yape (10 Philippine, 204), 2082.
- United States Distilling Co. v. Chicago (112 Ill. 19; 1 N. E. 166), 169, 184, 199, 444.
- United States Exp. Co. v. Keefer 59 Ind. 263), 1727.
- University Club v. Louisville (11 Ky. L. Rep. 902), 1333.
- Untriner v. State ([Ala.] 41 So. 170), 1612, 1654.
- Upstone v. People (109 Ill. 169), 2041, 2045, 2053, 2055, 2062, 2067.
- Urhahns v. State (72 Ind. 602), 1498.
- Uterminova v. Zekind (95 Iowa, 622; 64 N. W. 646; 29 L. R. A. 734; 58 Am. St. 447), 789.
- Utsler v. Territory (10 Okla. 463; 62 Pac. 287), 372, 1123, 1481, 1650.

## V

- Vaccarezza, *Ex parte* (52 Tex. Cr. App. 311; 106 S. W. 392), 714, 715, 716, 752.
- Vail, *In re* (38 N. Y. Misc. Rep. 392; 77 N. Y. Supp. 903), 584, 590.
- Vallance v. King (3 Barb. 548), 931, 933, 1609.
- Vanaman v. Adams (74 N. J. L. 125; 65 Atl. 204), 714, 727, 743.
- Van Alstine v. Kaniecki (109 Mich. 318; 67 N. W. 502), 1878, 1978.
- Van Buren v. Wells (53 Ark. 368), 216.
- Van Buskirk v. Daugherty (44 Iowa, 42), 2253.
- Vance v. W. A. Vanderecook Co. (170 U. S. 438; 18 Sup. Ct. 674; 42 L. Ed. 1100), 147, 158, 328, 1289, 1428.
- Vandalia v. Carracher (116 Ill. App. 62), 1129.
- Vanderbilt v. Adams (7 Cow. [N. Y.] 349), 129.
- Vanderlip v. Derby (19 Neb. 165; 26 N. W. 707), 601, 616.
- Vandewood v. State (50 Ind. 26, 295), 1442, 1488.
- Van Hook v. Schea (70 Ala. 361; 45 Am. Rep. 85), 167.
- Van Hook v. Selma (70 Ala. 361), 443.
- Vanliew v. Johnson (4 Hun, 415), 2127.
- Van Loan v. Willis (13 Daly, 281), 2258, 2259.



[References are to pages.]

- Vann v. State (140 Ala. 122; 37 So. 158), 1602.
- Vann v. State (83 Ga. 44; 10 S. E. 591), 2041, 2059.
- Vannony v. Patton (5 B. Mon. 248), 1780.
- Van Nortwich v. Bennett (62 N. J. L. 151; 40 Atl. 689), 576, 628.
- Vannoy v. State (64 Ind. 447), 498, 500, 501, 506, 526.
- Van Noy v. State (14 Tex. App. 69), 1760.
- Van Valkenburgh v. Amer. Pop. Ins. Co. (70 N. Y. 605), 2223, 2243, 2244.
- Van Vliet, *In re* (43 Fed. Rep. 761), 321.
- Van Wert v. Brown (47 Ohio St. 477; 25 N. E. 59 [reversing 4 Ohio Cir. Ct. 407]), 233.
- Van Wyck v. Brasher (81 N. Y. 262), 2105, 2121.
- Van Zant v. People (2 Parker Cr. Rep. [N. Y.] 168), 1310.
- Varble v. Commonwealth (3 Ky. L. Rep. [abstract] 694), 1290.
- Vardeman v. State (108 Ga. 774; 33 S. E. 643), 19, 33.
- Vaughan v. State (5 Clarke [La.] 369), 1529, 1531.
- Vaughn v. State ([Tex. Cr. App.] 93 S. W. 741), 1651.
- Vavasour v. Ormrod (6 B. & C. 530), 1509.
- Veasey, *In re* ([Del.] 63 Atl. 801), 588.
- Veeder, *In re* (31 N. Y. Misc. Rep. 569; 65 N. Y. Supp. 517), 582, 584, 592.
- Venus, The (8 Cranch [U. S.] 253), 252.
- Veon v. Creaton (130 Pa. St. 48; 20 A. 865), 1899, 1901.
- Vernon v. State ([Ala.] 50 So. 57), 515.
- Ver Straeten v. Lewis (77 Iowa, 130; 41 N. W. 594), 1002.
- Veruki v. State (127 Ga. 289; 56 S. E. 408), 1130.
- Ververka v. Fullmers ([Neb.] 118 N. W. 1097), 671.
- Victoria v. Union Club (3 B. C. 363), 1332.
- Vidalia v. Falkenheine ([La.] 49 So. 217), 418.
- Viefhaus v. Bohenstehn (71 Ark. 419; 75 S. W. 585), 127.
- Viefhaus v. State (71 Ark. 419; 75 S. W. 585), 1475.
- Viles, *Ex parte* (139 Fed. 68), 1259.
- Vincent v. State (42 Tex. Cr. App. 413; 55 S. W. 819), 1226, 1227, 1247, 1562, 1615.
- Vine v. Leeds (J. J. L. R. 10 Q. B. 195; 39 J. P. 213; 44 L. J. M. C. 60; 31 L. T. 842; 23 W. R. 849), 2168.
- Vines v. State (67 Ala. 73), 156.
- Vinson v. Augusta (38 Ga. 342), 270.
- Vinson v. Monticello (118 Ind. 103; 19 N. E. 734), 144, 410, 415, 439.
- Vinton v. Middlesex R. Co. (11 Allen 304; 87 Am. Dec. 714), 2202.
- Violet's Will (1 Bibb, 617), 2138, 2140.
- Virginia v. Smith (1 Cranch C. C. 46), 1649.
- Virginia Midland R. Co. v. Boswell (82 Va. 932; 4 S. E. 689), 2180, 2184.
- Virginia Pocahontas Coal Co. v. McDowell Co. Ct. (58 W. Va. 86; 51 S. E. 1), 667.
- Viser v. State (10 Tex. App. 86), 1743.
- Vizacchero v. Rhode Island Co. (26 R. I. 392; 59 Atl. 105; 69 L. R. A. 188), 2174.
- Vliet, *In re* (43 Fed. 761), 328.
- Voetsch v. Phelps (112 Mass. 407), 1067, 1068.
- Vogel v. State (31 Ind. 64), 1516.
- Voght v. State (124 Ind. 358; 24 N. E. 680), 264, 1585.

[References are to pages.]

- Voglesong v. State (9 Ind. 113), 215.
- Voight v. Board (59 N. J. L. 358; 36 Atl. 686; 37 L. R. A. 292), 183, 270, 718, 738, 739.
- Volans v. Owen (74 N. Y. 526; 30 Am. Rep. 337), 1864, 1947.
- Volans v. Owen (9 Hun, 55 [N. Y.]), 1901.
- Volmer v. State (34 Ark. 487), 1540, 1544.
- Von der Leith v. State (60 N. J. L. 46; 37 Atl. 436; 60 N. J. L. 590; 40 Atl. 590), 403, 453.
- Vose v. Hundy (2 Mass. 322), 1039.
- Voss v. Haggerty (11 Ohio Dec. 408; 26 Wkly. L. Bull. 268), 541, 542.
- Voss v. Terrell (12 Tex. Civ. App. 439; 34 S. W. 170), 888.
- W**
- Wabash R. Co. v. Monegan (94 Ill. App. 82), 2177.
- Wachholz v. Wachholz (75 Wis. 377; 44 N. W. 506), 2167.
- Waddle v. State ([Miss.] 24 So. 311), 1182, 1604, 1615.
- Wade v. Colvert (2 Mill Const. 26; 12 Am. Dec. 652 [1833]), 2094, 2095, 2098.
- Wade v. State (22 Tex. App. 629; 3 S. W. 786), 797, 1613.
- Wade v. State ([Tex. Cr. App.] 43 S. W. 995), 1201.
- Wade v. State (52 Tex. Cr. App. 608; 109 S. W. 191, 192), 940, 1471, 1472.
- Wade v. State (53 Tex. Cr. App. 184; 109 S. W. 191), 873, 1471.
- Waddell v. Waddell (2 Swab. & T. 584), 2167.
- Wadsworth v. Dunnam (98 Ala. 610; 13 So. 597), 14, 21, 52, 63, 970, 1753, 2032.
- Wadsworth v. Dunnam (117 Ala. 661; 23 So. 699), 962, 1703, 1807.
- Wadsworth v. Sherman (14 Barb. 169), 2119.
- Wagner v. Breed ([Neb.] 46 N. W. 286), 1786, 1788.
- Wagner v. Garrett (118 Ind. 114; 20 N. E. 706), 190, 280, 414, 430, 464, 466, 474, 530, 536.
- Wagner v. Hallack (3 Colo. 184), 1727.
- Wagner v. Holmes (88 Iowa, 728; 55 N. W. 473), 1002.
- Wagner v. Scherer (89 N. Y. App. Div. 202; 85 N. Y. Supp. 894), 1807.
- Wagner v. State (53 Tex. Cr. App. 306; 109 S. W. 169), 1579, 1654, 1693.
- Wah Yum & Co., *In re* (11 B. C. 154), 539.
- Wahl v. Walton (30 Minn. 506; 16 N. W. 397), 2033.
- Waits, *Ex parte* ([Tex. Cr. App.] 64 S. W. 254), 873.
- Wakefield v. State ([Tex.] 28 S. W. 470), 1235, 1236, 1627.
- Wakeman, Appeal of (70 Conn. 733; 50 Atl. 733), 698, 747, 748.
- Wakeman v. Chambers (69 Iowa, 169; 28 N. W. 498), 1221, 1578.
- Wakeman v. Price ([Tex. Civ. App.] 89 S. W. 1093), 772, 782, 784.
- Walbert v. State (17 Ind. App. 350; 46 N. E. 827), 358, 1566.
- Waldo v. Bell (13 La. Ann. 329), 467.
- Waldron v. Angleman (71 N. J. L. 166; 58 Atl. 568), 2095.
- Waldron v. Louisville, etc., R. Co. (111 Ky. 30; 63 S. W. 580; 54 L. R. A. 919), 2211, 2214.
- Waldstien v. State (29 Tex. App. 82; 14 S. W. 394), 1228.
- Wales v. Belcher (3 Pick. 508), 233.

[References are to pages.]

- Walker v. Cincinnati (21 Ohio [N. S.] 14), 228.
- Walker v. Commonwealth ([Ky.] 75 S. W. 242; 25 Ky. L. Rep. 401), 554.
- Walker v. Daily (101 Ill. App. 575), 55, 971, 1843.
- Walker v. Holtsclaw (57 S. C. 459; 35 S. E. 754), 755, 759.
- Walker's License, *In re* (24 Pa. Super. Ct. 90), 562.
- Walker v. Lovell (28 N. H. 138), 1782.
- Walker v. Mobley ([Tex.] 103 S. W. 490), 894, 898.
- Walker v. Mobley ([Tex. Civ. App.] 105 S. W. 61), 898, 900.
- Walker v. McNelly (121 Ga. 114; 48 S. E. 718), 413, 984.
- Walker v. Oswald (68 Md. 146; 11 Atl. 711), 906.
- Walker v. Prescott (44 N. H. 511), 24, 26, 47, 48, 966.
- Walker v. Shook (49 Iowa, 264), 1032, 1777.
- Walker v. Springfield (94 Ill. 364), 791.
- Walker v. State (122 Ga. 747; 50 S. E. 994), 1207.
- Walker v. State (32 Tenn. [2 Swan] 287), 373.
- Walker v. State (85 Ala. 7; 4 So. 686; 7 Am. St. Rep. 17), 2042, 2066, 2074.
- Walker v. State (38 Ark. 656), 85.
- Walker v. State (25 Tex. App. 448; 8 S. W. 644), 1236, 1628.
- Walker v. State ([Tex. Cr. App.] 64 S. W. 1052), 834, 837, 842, 844.
- Walker v. State ([Tex. Cr. App.] 72 S. W. 401), 1584, 1652.
- Walker v. State (49 Tex. Cr. App. 345; 94 S. W. 230), 1611, 1729, 1733.
- Walker v. State (50 Tex. Cr. App. 495; 98 S. W. 843), 1185.
- Walker v. State ([Tex. Cr. App.] 98 S. W. 265), 964, 969.
- Walker v. State (52 Tex. Cr. App. 293; 106 S. W. 376), 948, 1202, 1685, 1597.
- Walker v. Walker (67 J. P. 452; 90 L. T. 88; 20 Cox C. C. 594), 690, 1273.
- Wall, *Ex parte* (48 Cal. 279), 231, 236, 240.
- Wall v. State (78 Ala. 417), 24, 53, 59, 86, 1711.
- Wall v. State (78 Ala. 718), 25.
- Wall v. State (10 Ind. App. 530; 38 N. E. 190), 1849, 1869, 1870, 1935, 1951.
- Wallace v. Cubanola (70 Ark. 395; 68 S. W. 485), 446, 471, 474, 934.
- Wallace v. Reno (27 Nev. 71; 73 Pac. 528), 714, 741.
- Wallace v. Salisbury (147 N. C. 58; 60 S. E. 713), 925.
- Wallace v. State (54 Ark. 542; 16 S. W. 571), 1227.
- Waller v. State (38 Ark. 656), 1366, 1560, 1639, 1641.
- Walling v. Michigan (102 U. S. 123), 156.
- Walling v. Michigan (116 U. S. 446; 6 Sup. Ct. 454), 116, 154, 156, 199, 299, 315.
- Wallis v. Hodson (2 Atk. 115), 1906.
- Wallis v. State ([Tex. Cr. App.] 78 S. W. 231), 1311.
- Walser v. Kerrigan (56 Ind. 301), 1937.
- Walsh, *In re* (208 Pa. 582; 57 Atl. 983; reversing Pa. Super. Ct. 87), 566.
- Walsh v. Bedfell (16 Aust. L. T. 35), 365.
- Walsh v. Porterfield (87 Pa. 376), 2187.
- Walsh v. State (126 Ind. 71; 25 N. E. 883; 9 L. R. A. 664), 190.
- Walter v. Columbia City (61 Ind. 24), 144, 413.

[References are to pages.]

- Walter v. Commonwealth (88 Pa. 137; 32 Am. Rep. 429), 217, 365, 1511.
- Walter v. State (38 Ark. 656), 1365.
- Walter v. State (105 Ind. 389; 5 N. E. 735), 1495, 1497, 1499.
- Walters v. State (5 Clarke [Iowa] 507), 1452, 1764.
- Walton, *Ex parte* (45 Tex. Cr. App. 74; 74 S. W. 314), 871.
- Walton v. Canon City (13 Colo. App. 77; 59 Pac. 840), 1188.
- Walton v. State (62 Ala. 197), 1248, 1252.
- Walton v. Walton (34 Kan. 195; 8 Pac. 110), 65, 2155, 2158, 2161.
- Wanack v. People (187 Ill. 116; 58 N. E. 242; affirming 87 Ill. App. 371), 2008, 2009.
- Wanganni, *In re* (10 N. Z. L. R. 583), 685.
- Ward, *Ex parte* (2 Sel. Cas. N. S. W. 872), 1374.
- Ward v. Chicago, etc., R. Co. (85 Wis. 601; 55 N. W. 771), 2176.
- Ward v. County Court (51 W. Va. 102; 41 S. E. 154), 169, 401, 403.
- Ward v. Greenville (8 Baxt. 228; 35 Am. Rep. 700), 453, 461.
- Ward v. Maryland (12 Wheat. [U. S.] 419; 20 L. Ed. 449), 789, 790.
- Ward v. Mayor, etc. (8 Baxt. 228), 454, 459, 461.
- Ward v. Monaghan ([1895] 59 J. P. 392), 1823.
- Ward v. State (45 Ark. 351), 771, 1220, 1224, 1230.
- Ward v. State (51 Fla. 133; 40 So. 177), 1603.
- Ward v. State (48 Ind. 289), 1240, 1460, 1462.
- Ward v. State (48 Ind. 293), 1460, 1496.
- Ward v. State (2 Cold. 605; 91 Am. Dec. 270), 684.
- Ward v. State (19 Tex. App. 664), 2039, 2054, 2090.
- Ward v. State ([Tex.] 116 S. W. 1154), 1330.
- Ward v. Thompson (48 Iowa, 588), 1889, 1964, 1966.
- Wardell v. McConnell (23 Neb. 152; 36 N. W. 278), 1912, 1922, 1923.
- Warden v. Louisville (11 Ky. L. Rep. 179; 11 S. W. 774), 448, 521.
- Warden v. State ([Tex. Cr. Rep.] 34 S. W. 125), 1463.
- Warden v. Tye (2 C. P. Div. 74; 41 J. P. 120; 46 L. J. M. C. 111; 35 L. T. 852), 361, 2028, 2030.
- Ware v. State ([Ga.] 65 S. E. 333), 44, 965.
- Ware v. State (71 Miss. 204; 13 So. 936), 1608.
- Waring v. The Mayor (75 U. S. 110), 1426.
- Warner v. Brooks (14 Gray, 107), 1665.
- Warner v. Hoagland (22 Vroom, 62; 16 Atl. 166), 233.
- Warner v. Lawrence (62 Mich. 251; 28 N. W. 844), 764.
- Warner v. New York, etc., R. Co. 44 N. Y. 465), 2201.
- Warner v. State (56 N. J. L. 686; 29 Atl. 505), 2060, 2069, 2071.
- Warnock v. Campbell (25 N. J. Eq. 485), 2094, 2095, 2102, 2106, 2107, 2130.
- Warren v. Chapman (105 Mass. 87), 1806, 1807.
- Warren v. Englehart (13 Neb. 283; 13 N. W. 401), 1896.
- Warren v. Moore ([1897] 14 T. L. K. 138), 1831.
- Warrensburg v. McHugh (122 Mo. 649; 27 S. W. 523), 416, 442, 447, 470.
- Warriek v. Rounds (17 Neb. 411; 22 N. W. 785), 1882, 1963, 1993.

[References are to pages.]

- Warwick v. State (48 Ark. 27; 2 S. W. 253), 1124, 1728.
- Wartelsky v. State (33 Tex. Cr. App. 629; 44 S. W. 510), 1694.
- Wasenhut v. State (18 Tex. App. 491), 929.
- Wash v. Lewis (5 Ohio N. P. 391), 790.
- Washburn, *In re* (32 N. Y. Misc. Rep. 303; 66 N. Y. Supp. 732), 729, 750.
- Washington Co., *In re* (8 Pa. Co. Ct. Rep. 169), 622.
- Washington v. Eames (6 Allen, 417), 477.
- Washington v. Gallagher (7 Ohio N. P. 511; 5 Ohio S. & C. P. Dec. 562), 214.
- Washington v. Giddens ([Ky.] 103 S. W. 321; 31 Ky. L. Rep. 647), 936.
- Washington v. Lasky (5 Cranch C. C. 381; Fed. Cas. No. 17230), 463.
- Washington v. State ([Tex. Cr. App.] 85 S. W. 801), 1380.
- Washington v. Young (19 L. J. Exch. 348; 5 Exch. 403), 353.
- Washington Liquor Co. v. Shaw (38 Wash. 398; 80 Pac. 536), 1801.
- Wason v. Underhill (2 N. H. 505), 513, 1372.
- Wasserboehr v. Boulrier (84 Me. 165; 24 Atl. 808; 30 Am. St. 344), 310, 1787.
- Wasserboehr v. Morgan (168 Mass. 291; 47 N. E. 126), 1797, 1798, 1799.
- Wasson v. First Nat. Bank (107 Ind. 206, 219; 8 N. E. 97), 80, 82, 355.
- Wason v. Severance (2 N. H. 501), 509, 691, 1267.
- Waters v. Allen (2 Bradf. 354), 2144.
- Waters v. Campbell (5 Sawy. 17; Fed. Cas. No. 17265), 1263.
- Waters v. Fitzgerald (25 Vict. L. R. 86; 21 Austr. L. T. 17; 5 Austr. L. R. 149), 363.
- Waters v. Leech (3 Ark. 110), 408.
- Waters v. McDowell (126 Ga. 807; 56 S. E. 95), 382, 476.
- Wathan, etc., Co. v. Commonwealth ([Ky.] 116 S. W. 239), 1342, 1344, 1755.
- Watkins v. Grieser (11 Okla. 302; 66 Pac. 332), 480, 534, 535, 571, 602, 609, 617, 621, 623.
- Watkins v. State ([Tex. Cr. App.] 62 S. W. 911), 891.
- Watson, *In re* (34 N. Y. St. Rep. 906), 2148.
- Watson v. Doyle (130 Ill. 415; 22 N. E. 613), 2098.
- Watson v. State (55 Ala. 158), 45, 83, 966.
- Watson v. State (140 Ala. 134; 37 So. 225), 291.
- Watson v. State (13 Tex. App. 160), 370.
- Watson v. State (42 Tex. Cr. App. 13; 57 S. W. 101), 824, 832, 1470, 1474.
- Watson v. State (52 Tex. Cr. App. 551; 107 S. W. 544), 1473.
- Watt v. Glenister (40 J. P. 181; 32 L. T. 856), 1151.
- Watts v. Commonwealth (78 Ky. 329), 183, 435.
- Waugh v. Graham (47 Neb. 153; 66 N. W. 301), 563.
- Wayne Co. v. Detroit (17 Mich. 390), 270.
- Waynell v. Reed (5 T. R. 599), 1790, 1794.
- Wear v. State ([Tex. Cr. App.] 29 S. W. 1082), 1321.
- Weathered v. State ([Tex. Cr. App.] 60 S. W. 876), 950, 957, 1179.
- Weaver, *In re* (20 Pa. Super. Ct. 95), 664, 665.
- Weaver v. Mt. Vernon (6 Ohio Dec. 436), 1322.
- Weaver v. State (89 Ga. 639; 15 S. E. 840), 793.



[References are to pages.]

- Weaver v. State (74 Ohio St. 53; 77 N. E. 273), 1000, 1765.
- Weckerly v. Geyer (11 S. & R. 35), 660.
- Webb v. Baird (11 Lea, 667), 77, 542, 1192.
- Webb v. Catchlove (50 J. P. 795), 368, 535, 724.
- Webb v. Commonwealth (7 Ky. L. Rep. [abstract] 453), 543.
- Webb v. Laird (11 Lea, 667), 1192.
- Webb v. Nickerson (11 Ore. 382; 4 Pac. 1126), 1030, 1263.
- Webb v. State ([Kan. App.] 53 Pac. 276), 1652.
- Webb v. State (51 N. J. L. 189; 17 Atl. 113), 2033.
- Webb v. State (11 Lea, 662), 541, 542, 1450.
- Webb v. State ([Tex. Cr. App.] 58 S. W. 82), 958, 1650.
- Webb v. State ([Tex. Cr. App.] 86 S. W. 331), 1214, 1726.
- Webb City v. Parker (103 Mo. App. 295; 77 S. W. 119), 1633.
- Webber v. Birkenhead (61 J. P. 664), 620, 679.
- Webber v. Curtis (104 Ill. 309), 571.
- Webber v. Donnelly (33 Mich. 469), 1786, 1788, 1790, 1798, 1801.
- Webber v. Lane (99 Mo. App. 69; 71 S. W. 1099), 645, 647.
- Webber v. State ([Tex. Cr. App.] 109 S. W. 182), 139, 247, 288, 1110.
- Webber v. Virginia (103 U. S. 344), 156, 315.
- Webber v. Williams (36 Me. 512), 518.
- Webbs v. State (4 Cold. 199), 779, 2008.
- Weed v. Page (7 Wis. 512), 2127.
- Weed v. State (55 Ala. 13), 1241, 1514, 1563.
- Weeks v. Milwaukee (10 Wis. 242), 394.
- Weeks v. New Orleans, etc., R. Co. (32 La. Ann. 615), 2174, 2185.
- Weidman v. People (7 Bradw. [Ill.] 38), 1129.
- Weightman v. Weightman (462 [1906] 70 J. P. 120; 94 L. T. 621; 22 T. L. R. 362), 2169.
- Weikman v. City Council (2 Speers [S. C.] 371), 1758.
- Weil v. Calhoun (25 Fed. 865), 125, 156, 158, 232, 235.
- Weil v. Golden (141 Mass. 364; 6 N. E. 229), 1799, 1806.
- Weil v. State (48 Tex. Cr. App. 603; 90 S. W. 644), 949, 1288, 1555, 1559.
- Weinandt v. State (80 Neb. 161; 113 N. W. 1040), 1661, 1662, 1663, 1703.
- Weir v. Allen (47 Iowa, 482), 1016, 1028, 1777.
- Weir v. Cram (37 Iowa, 649), 231.
- Weireter v. State (69 Ind. 269), 1253, 1637.
- Weis v. State (33 Ind. 204), 83.
- Weis v. State (22 Ohio St. 486), 2251, 2252.
- Weisbrodt v. State (50 Ohio St. 192; 33 N. E. 603), 12, 1496.
- Weischelbaum v. Hayslip (127 Ga. 417; 56 S. E. 413), 1792.
- Weiser v. Welch (112 Mich. 134; 70 N. W. 438), 1955, 1962, 1973, 1991.
- Weisman's Estate (45 Phila. Leg. Int. 274), 2138.
- Weiss v. Green (26 N. Z. 942), 1184.
- Weitzel v. Slavin (13 Ohio Cir. Ct. Rep. 221; 7 Ohio Dec. 155), 1771, 1810.
- Welch v. Jugenheimer (56 Iowa, 11; 8 N. W. 673; 41 Am. Rep. 77), 1846, 1861, 1966, 1967.
- Welch v. McKane (55 Conn. 25; 10 Atl. 168), 779.
- Welch v. Marion (48 Ala. 291), 812.
- Weldon v. Colquitt (62 Ga. 449; 35 Am. Rep. 128), 2116, 2128.

[References are to pages.]

- Weldon v. State (36 Tex. Cr. App. 34; 35 S. W. 176), 1281.
- Welker v. Potter (18 Ohio [N. S.] 85), 228.
- Weller v. Jersey City H. & P. St. Ry. Co. (57 A. 730), 2095.
- Wellington, Petitioner (16 Pick. [Mass.] 95), 294.
- Wells, *Ex parte* (45 Tex. Cr. App. 170; 78 S. W. 928), 245.
- Wells v. State (118 Ga. 556; 45 S. E. 443), 957, 1475, 1490, 1505.
- Wells v. State (18 Tex. App. 417), 1111.
- Wells v. State (24 Tex. App. 230; 5 S. W. 830), 492, 883.
- Wells v. Torrey (144 Mich. 689; 108 N. W. 423; 13 Detroit Leg. N. 378), 282, 414, 415, 443, 472.
- Wells v. Wells (6 Ind. 447), 1564.
- Welsford v. Weidlein (23 Kan. 601), 575, 576.
- Welsh, *In re* (11 Pa. Super. Ct. 558), 665.
- Welsh v. State (126 Ind. 71; 25 N. E. 883; 9 L. R. A. 664), 11, 42, 84, 101, 104, 144, 150, 152, 209, 312, 313, 486, 503, 1106, 1160, 1490.
- Welsch v. State (19 Ind. App. 389; 46 N. E. 1050), 356.
- Welton v. Missouri (91 U. S. 275), 157, 199, 315.
- Welty v. Indianapolis, etc., R. Co. (105 Ind. 55; 4 N. E. 410), 2173, 2174.
- Wempen v. Girard (84 Ill. App. 130), 1779, 1791.
- Wendell, *In re* (1 Johns. Ch. 600), 2016.
- Wendt v. State (32 Neb. 182; 19 N. W. 351), 1553.
- Wenham v. Dodge (98 Mass. 474), 355, 384, 385.
- Wenz v. State (1 Tex. App. 36), 2073.
- W quinton v. State (51 Tex. Cr. App. 492; 102 S. W. 1124), 1698.
- Werdman v. People (7 Ill. App. 8), 1124.
- Werneke v. State (50 Ind. 22), 1240, 1252, 1461, 1564.
- Werneke v. State (49 Ohio, 202), 1478.
- Werner v. Citizens' St. Ry. Co. (81 Mo. 368), 2178.
- Werner v. Edmiston (24 Kan. 147), 223, 1840, 1882, 1913.
- Werner v. Kelley (9 La. Ann. 60), 2153.
- Werner v. Washington (2 Hayw. & H. 175; Fed. Cas. No. 17416a), 463.
- Wert v. Brown (+7 Ohio St. 477; 25 N. E. 59), 281.
- Werth v. Roche (92 Me. 383; 42 Atl. 794), 1799.
- Werthheimer & Sons v. Habineck (131 Iowa, 643; 109 N. W. 189), 1779.
- Weser v. Welty (18 Ind. App. 664; 47 N. E. 639), 2035.
- Wesley v. State ([Tex. Cr. App.] 122 S. W. 550), 926.
- Wesnieski v. Vanek (99 N. W. 258), 1844.
- West v. Bishop (110 Iowa, 410; 81 N. W. 696), 488, 943, 944, 1002.
- West v. Columbus (20 Kan. 633), 1479.
- West v. Greenville (39 Ala. 69), 448.
- West v. State (32 Ind. App. 161; 69 N. E. 465), 1699.
- West v. State (70 Miss. 598; 12 So. 903), 1280, 1464, 1468, 1513.
- West v. State (28 Tenn. [9 Humph.] 66), 136.
- West v. State (40 Tex. Cr. App. 575; 51 S. W. 247), 844.

[References are to pages.]

- West London Syndicate v. Inland Revenue Commissioners ([1898] 2 Q. B. 507; 67 L. J. Q. B. 936; 79 L. T. 289; 47 W. R. 125; 14 T. L. R. 569), 1833.
- Westbrook v. Miller (90 N. Y. Supp. 558; 98 App. Div. 590), 1838, 1843.
- Westbrook v. State ([Miss.] 25 So. 491), 1544.
- Western Express Co. v. United States (141 Fed. 28; 76 C. C. A. 516), 794.
- Western U. T. Co. v. Mayer (28 Ohio St. 521), 791.
- Western U. T. Co. v. Pendleton (122 U. S. 347; 7 Sup. Ct. 1126, reversing 95 Ind. 12; 48 Am. Rep. 692), 99, 298.
- Westheimer & Sons v. Habrinck 131 Iowa, 643; 109 N. W. 189), 1806.
- Westheimer v. Weisman (60 Kan. 753; 57 Pac. 969), 1798.
- Westinghausen v. People (44 Mich. 265; 6 N. W. 645), 198, 790.
- Westmoreland v. State (45 Ga. 225), 2247.
- Weston v. Carr (71 Me. 356), 1077.
- Weston v. Monroe (84 Mich. 341; 46 N. W. 446), 878.
- Weston v. Territory (1 Okla. Cr. App. 407; 98 Pac. 360), 1502.
- Wetzler v. State (18 Ind. 35), 1357.
- Weymire v. Wolfe (52 Iowa, 533), 1890, 2171, 2179, 2180, 2189.
- Whalen, *Ex parte* (32 N. B. 274), 1717.
- Whalen, *In re* (47 N. Y. St. Rep. 313; 19 N. Y. 915), 2261.
- Whalen v. Macomb (76 Ill. 49), 1767.
- Whalen v. St. Louis, etc., R. Co. (60 Mo. 323), 2172, 2180.
- Whaley v. State (87 Ala. 83; 6 So. 380), 1189, 1293.
- Wharton v. King (69 Ala. 365), 518, 539, 1364.
- Whealkate Min. Co. v. Mulari (152 Mich. 607; 116 N. W. 360; 15 Det. Leg. N. 278), 1809.
- Wheaton v. Slattery (96 N. Y. App. Div. 102; 88 N. Y. Supp. 1074), 990.
- Wheeler v. Alderson (Hagg. Eccl. Rep. 574), 2144, 2147.
- Wheeler v. Grand Trunk, etc., R. Co. (70 N. H. 607; 50 Atl. 103; 54 L. R. A. 955), 2176, 2192, 2212, 2218.
- Wheeler v. State (4 Ga. App. 325; 61 S. E. 409), 1504, 1650.
- Wheeler v. State (64 Miss. 462), 124, 488, 495, 929, 930.
- Wheeler v. Wheeler (53 Iowa, 511; 36 Am. Rep. 240), 67, 2167.
- Wheelin, *In re* (134 Pa. 554; 19 Atl. 755; 26 W. N. C. 72), 622.
- Wheeton v. Hardisty (8 El. & Bl. 239; 92 E. C. L. 232), 2230.
- Whiffin v. Malling ([1892] 1 Q. B. 362; 56 J. P. 325; 66 L. T. 333; 40 W. R. 292; 61 L. J. M. C. 82), 680, 681.
- Whisenhurst v. State (18 Tex. App. 491), 938, 939.
- Whissen v. Furth (73 Ark. 366; 84 S. W. 500; 68 L. R. A. 161), 532, 609, 621, 669.
- Whitbread & Co. v. Grain ([1907] 23 T. L. R. 462), 1829.
- Whitcomb v. State (2 Tex. Civ. App. 301; 21 S. W. 976), 768, 781.
- White, *Ex parte* (20 N. B. 552), 1681.
- White v. Atlantic City (62 N. J. L. 644; 42 Atl. 170), 639, 676.
- White v. Beckham (26 N. S. 50), 351.
- White v. Bracelin (144 Mich. 332; 107 N. W. 1055; 13 Detroit Leg. N. 156), 134.

[References are to pages.]

- White v. Buss (3 Cush. 448), 1796.
- White v. City of London Brewing Co. (58 L. J. Ch. 98; 39 Ch. D. 559; 60 L. T. 19; 36 W. R. 881; affirmed 58 L. J. Ch. 855; 42 Ch. D. 237; 38 W. R. 82), 1818.
- White v. Commonwealth ([Ky.] 50 S. W. 678; 20 Ky. L. Rep. 1942), 935.
- White v. Commonwealth (107 Va. 901; 59 S. E. 1101), 1479, 1652, 1730, 1732, 1733.
- White v. Coquetdale (7 Q. B. Div. 238; 50 L. J. M. C. 128; 44 L. T. 715; 45 J. P. 539), 708.
- White v. Cox (3 Hayw. [Tenn.] 79), 2093, 2099, 2100, 2116.
- White v. Creamer (175 Mass. 567; 56 N. E. 832), 722.
- White v. Ferguson (29 App. 145; 64 N. E. 409), 606, 855.
- White v. Kent (11 Ohio St. 550), 2035.
- White v. McCullough ([Neb.] 123 N. W. 1034), 577.
- White v. Manning (46 Tex. Civ. App. 298; 102 S. W. 1160), 23.
- White v. Mayor, etc. (2 Swan. [Tenn.] 364), 408.
- White v. Morley ([1899] 2 Q. B. 34; 63 J. P. 550; 66 L. J. Q. B. 702; 47 W. R. 883; 80 L. T. 761; 15 T. L. R. 360), 380.
- White v. Neilson (6 F. [Just. Cas.] 51), 1131, 1148.
- White v. Nestor (13 N. Z. L. R. 751), 1116, 1313, 1316.
- White v. Prifogle (146 Ind. 64; 44 N. E. 926), 610, 612, 859.
- White v. Provident, etc., Soc. (163 Mass. 108; 39 N. E. 771), 2232.
- White v. Southend Hotel Co. ([1897] 1 Ch. 767; 66 L. J. Ch. 387; 76 L. T. 273; 45 W. R. 434; 13 L. T. R. 310), 1816.
- White v. State (103 Ala. 72; 16 So. 63), 1736.
- White v. State (74 Ark. 491; 86 S. W. 296), 2056.
- White v. State (80 Ark. 598; 98 S. W. 377), 1017, 1065.
- White v. State (93 Ga. 47; 19 S. E. 49), 1180, 1650, 1651.
- White v. State (11 Tex. App. 476), 1500, 1759, 1763.
- White v. State ([Tex. Cr. App.] 30 S. W. 556), 2091.
- White v. State (24 Tex. App. 230; 5 S. W. 857), 929.
- White v. State (32 Tex. Cr. Rep. 625; 25 S. W. 784), 1583.
- White v. State (45 Tex. Cr. App. 597; 78 S. W. 1066), 1690.
- White v. State (47 Tex. Cr. App. 551; 85 S. W. 9), 1213, 1283, 1284, 1286.
- White v. White (1 Swab. & T. 592; 6 Jur. [N. S.] 28; 1 L. T. [N. S.] 197), 2166.
- Whitehorse v. State (43 Ind. 473), 929.
- Whitehurst v. Fincher (62 L. T. 433; 54 J. P. 565), 378.
- Whitehurst v. State (43 Ind. 473), 1740.
- Whiteneck v. Stryker (2 N. J. Eq. 8), 2135, 2136, 2139.
- Whitesides v. Greenlee (2 Dev. Eq. [N. C.] 152), 2100.
- Whitfield v. Bainbridge (30 J. P. 644), 367.
- Whitfield v. State (2 Ga. App. 124; 38 S. E. 385), 1606, 1607.
- Whitlock's License, *In re* (39 Pa. Super. Ct. 34), 480, 703.
- Whitlock v. Bartholomew (91 Iowa, 246; 59 N. W. 76), 572.

[References are to pages.]

- Whitlow, *Ex parte* (59 Tex. 273), 925.
- Whitlock v. Workman (15 Iowa, 351), 1790.
- Whitmore v. State (72 Ark. 14; 77 S. W. 598), 1166, 1187.
- Whitney, *In re* (142 N. Y. 531; 37 N. E. 621, affirmed 3 N. Y. Supp. 838), 1123.
- Whitney v. State (10 Ind. 404), 1441.
- Whitney v. State (8 Mo. 165), 2040.
- Whitney v. Swensen (43 Minn. 337; 45 N. W. 609), 1027.
- Whitney v. Township, etc. (71 Mich. 234; 39 N. E. 40), 119, 131, 132.
- Whittaker, *In re* (63 N. Y. App. Div. 442; 71 N. Y. Supp. 497), 731.
- Whitten v. State (115 Ala. 72; 22 So. 483), 2039, 2076.
- Whitten v. Covington (43 Ga. 421), 418, 439, 471.
- Whittington, *Ex parte* (34 Ark. 394), 627, 628, 635.
- Whittelsey v. Acme Brewing Co. (127 Ga. 208; 56 S. E. 299), 798.
- Whitton v. State (37 Miss. 379), 1252, 1255, 1365, 1366.
- Whyte v. Williams (29 Vict. L. R. 69; 24 Austr. L. T. 222; 9 Austr. L. R. 98), 701.
- Wichita v. Murphy (78 Kan. 859; 99 Pac. 272), 1741, 1762.
- Wicker v. Siesel (80 Ga. 724; 6 S. E. 817), 799, 804.
- Wickwire v. State (19 Conn. 477), 1631, 1632.
- Widdlesfield v. Metcalfe (12 Up. Can. 247; affirmed, 8 Can. L. Jr. 74), 1321.
- Wieke v. People (14 Ill. App. 447), 1621.
- Wiedemann (92 Ill. 314), 1564.
- Wiggenhorn v. Kountz (23 Neb. 669; 37 N. W. 600), 1856.
- Wiggins v. Chicago (68 Ill. 372), 471.
- Wiggins v. Ferry Co. (102 Ill. 560), 786.
- Wiggins v. Warner (67 Ga. 583), 558, 627, 628.
- Wigglesworth v. Steers (1 Hen. & M. 70; 3 Am. Dec. 202), 2099, 2128.
- Wightman v. Devere (33 Wis. 570), 1864, 1977, 1978.
- Wightman v. State (10 Ohio, 452), 448.
- Wiginton v. State (51 Tex. Cr. App. 492; 102 S. W. 1124), 958, 1699.
- Wilber v. Dwyer (69 Hun, 507; 23 N. Y. Supp. 395), 1954, 1984.
- Wilber v. Ress (78 Neb. 835; 112 N. W. 379), 849.
- Wilbur, *Ex parte* (31 N. B. 678), 1571.
- Wilbur v. Flood (16 Mich. 40; 93 Am. Dec. 203), 2127.
- Wilcox v. Bryant (156 Ind. 379; 59 N. E. 1049), 611, 635.
- Wilcox v. Jackson (51 Iowa, 208; 1 N. W. 512), 2093, 2100.
- Wilcox v. People (17<sub>9</sub> Colo. App. 109; 67 Pac. 343), 1188.
- Wilcox v. State (94 Tenn. 106; 28 S. W. 312), 2040.
- Wilcoxson v. State ([Tex. Cr. App.] 91 S. W. 581), 80.
- Wildermuth v. Cole (77 Mich. 483; 43 N. W. 889), 552.
- Wilds v. Brunswick R. Co. (62 Ga. 667; 9 S. E. 595), 2180.
- Wiles v. State (33 Ind. 206), 8, 10, 47, 82, 497, 500, 1561, 1714.
- Wiley v. Bluffton (111 Ind. 152; 12 N. E. 165), 227.
- Wiley v. Ewalt (66 Ill. 26), 2143.
- Wiley v. Owens (39 Ind. 429), 144, 397, 412, 428, 429, 443, 444, 795.
- Wiley v. State (74 Miss. 727; 21 So. 797), 1181, 1199.



[References are to pages.]

- Wiley v. Strickland** (8 Ind. 453), 1018.  
**Wilkerson v. Commonwealth** (88 Ky. 29; 9 S. W. 836; 10 Ky. L. Rep. 656), 2056, 2061, 2068.  
**Wilkins v. State** (113 Ind. 514; 16 N. E. 192), 1024.  
**Willard v. State** (4 Ind. 407), 1498.  
**Willett v. Viens** (2 Que. S. C. 514), 1839.  
**Williams, *Ex parte*** (87 Ala. 547; 6 So. 314), 869, 2021.  
**Williams v. Augusta** (111 Ga. 849; 36 S. E. 607), 1322, 1739.  
**Williams v. Bayonne** (55 N. J. L. 60; 25 Atl. 407), 586.  
**Williams v. Berry** (8 How. 495), 1162.  
**Williams v. Citizens** (40 Ark. 290), 856, 858, 859.  
**Williams v. Commonwealth** (13 Bush, 304), 800, 801.  
**Williams v. Davidson** (64 Kan. 607; 68 Pac. 650), 1797.  
**Williams v. Davidson** ([Tex. Civ. App.] 70 S. W. 989), 854, 887, 934.  
**Williams v. Edmunds** (75 Mich. 92; 42 N. W. 534), 2188, 2191, 2193.  
**Williams v. Feriman** (14 Kan. 248), 1288, 1788.  
**Williams v. Goss** (43 La. Ann. 868; 9 So. 750), 67, 2155, 2157, 2158, 2166.  
**Williams v. Iredell Co.** (132 N. C. 300; 43 S. E. 896), 798.  
**Willis v. Kalmback** ([Va.] 64 S. E. 342), 901.  
**Williams v. Lassell & Sharman, Limited** ([1906] 22 T. L. R. 443), 1822.  
**Williams v. Louis** (14 Kan. 605), 554, 683, 684, 688.  
**Williams v. McDonald** (58 Cal. 527), 605.  
**Williams v. Macdonald** ([1899] 2 Q. B. 308; 63 J. P. 501; 68 L. J. Q. B. 678; 47 W. R. 701; 80 L. T. 758; 15 T. L. R. 343), 1155.  
**Williams v. Mabrecht** (1 Bailey, 343), 2093.  
**Williams v. Missouri Pac. R. Co.** (109 Mo. 475; 18 S. W. 1098), 2195, 2196, 2197, 2198, 2199, 2200.  
**Williams v. Pagson** (14 La. Ann. 7), 294.  
**Williams v. State** (81 Ala. 1; 1 So. 179; 60 Am. Rep. 133), 2041, 2063, 2068.  
**Williams v. State** (91 Ala. 14; 8 So. 668), 1176, 1621.  
**Williams v. State** (72 Ark. 19; 77 S. W. 597), 43, 964, 1697.  
**Williams v. State** (35 Ark. 430), 60, 1643, 1713.  
**Williams v. State** (47 Ark. 230; 1 S. W. 149), 1490.  
**Williams v. State** (89 Ga. 483; 15 S. E. 552), 1465, 1469.  
**Williams v. State** (100 Ga. 511; 28 S. E. 624; 39 L. R. A. 269), 1119, 1134.  
**Williams v. State** (107 Ga. 693; 33 S. E. 641), 953, 1379, 1452, 1654.  
**Williams v. State** (4 Ga. App. 853; 62 S. E. 671), 1090.  
**Williams v. State** (48 Ind. 306), 211, 439, 1253, 1256.  
**Williams v. State** (12 Lea, 211), 1583.  
**Williams v. State** (23 Tex. App. 70; 3 S. W. 661), 1235.  
**Williams v. State** (23 Tex. App. 499; 5 S. W. 136), 1111.  
**Williams v. State** (25 Tex. App. 76; 7 S. W. 661), 2039, 2059, 2090.  
**Williams v. State** (37 Tex. Cr. App. 238; 39 S. W. 664), 1472, 1474.

[References are to pages.]

- Williams v. State (38 Tex. Cr. App. 377; 43 S. W. 115), 1472.
- Williams v. State ([Tex. Cr. App.] 57 S. W. 650), 1235.
- Williams v. State (44 Tex. Cr. App. 235; 70 S. W. 213), 1472.
- Williams v. State (45 Tex. Cr. App. 477; 77 S. W. 215), 949, 1185, 1284.
- Williams v. State ([Tex. Cr. App.] 77 S. W. 783), 845.
- Williams v. State ([Tex. Cr. App.] 81 S. W. 1209), 845, 1573.
- Williams v. State (48 Tex. Cr. App. 75; 85 S. W. 1144), 1214.
- Williams v. State ([Tex. Cr. App.] 107 S. W. 825), 1473.
- Williams v. State (52 Tex. Cr. App. 371; 107 S. W. 1121), 132, 245, 420, 550.
- Williams v. State (52 Tex. Cr. App. 430; 107 S. W. 825, 826), 1464.
- Williams v. State (53 Tex. Cr. App. 156; 109 S. W. 189), 832, 887, 889.
- Williams v. Throop (17 Wis. 463), 552, 700.
- Williams v. Warsaw (60 Ind. 457), 216.
- Williams v. West Point (68 Ga. 816), 812.
- Williams v. Williams ([1904] P. 31; 73 L. J. P. 31; 68 J. P. 188; 90 L. T. 174; 20 T. L. R. 213), 2169.
- Williamson v. Lane (52 Tex. 335), 925.
- Williamson v. Norris ([1899] 1 Q. B. 7; 62 J. P. 790; 61 L. J. Q. B. 31; 47 W. R. 94; 79 L. T. 415; 15 T. L. R. 18; 19 Cox C. C. 203), 512, 546.
- Williamson v. State ([Tex. Cr. App.] 40 S. W. 286), 1197, 1693, 1694.
- Williamson v. State (41 Tex. Cr. App. 461; 55 S. W. 568), 1524, 1526, 1731.
- Williamson v. State ([Tex. Cr. App.] 43 S. W. 983), 1210.
- Williamsport v. Wenner (172 Pa. St. 173; 33 Atl. 544), 191.
- Willis v. Commonwealth (32 Gratt. 929), 2039, 2048, 2061, 2067, 2081.
- Willis v. State (43 Neb. 102; 61 N. W. 254), 2258.
- Willis v. State (37 Tex. Cr. App. 82; 38 S. W. 776), 1197, 1210.
- Willoughby v. Moulton (47 N. H. 205), 2099, 2108.
- Wilmans v. Bordwell (73 Ark. 418; 84 S. W. 474), 854.
- Wilmot v. Johnson ([Iowa] 123 N. W. 336), 980.
- Wilmurt v. Morgan (March 1827 [N. J. Eq.]), 2129.
- Wilson, *In re* (32 Minn. 145; 19 N. W. 723), 405, 419, 420, 424, 437.
- Wilson v. Abrahams (1 Hill [N. Y.] 207), 2253.
- Wilson v. Bigger (7 Watts & S. 111), 2106, 2108.
- Wilson v. Bohstedt (135 Iowa, 451; 110 N. W. 898), 861, 944.
- Wilson v. Booth (57 Mich. 249; 23 N. W. 799), 1854, 1975.
- Wilson v. Brigger (7 Watts & S. 111), 2095.
- Wilson v. Commonwealth (12 B. Mon. 2), 1094, 1102, 1106, 1110.
- Wilson v. Commonwealth (14 Bush 159), 1502.
- Wilson v. Commonwealth ([Ky.] 76 S. W. 1077; 25 Ky. L. Rep. 1085), 1343.
- Wilson v. Crewe, J. J. ([1905] 1 K. B. 491; 74 L. J. K. B. 394; 69 J. P. 111; 92 L. T. 164; 53 W. R. 382; 21 T. L. R. 233), 711.

[References are to pages.]

- Wilson v. Hart ([1866] L. R. 1 Ch. 463), 1813.  
 Wilson v. Herink (64 Kan. 607; 68 Pac. 72), 289.  
 Wilson v. Hines (99 Ky. 221; 35 S. W. 627; 37 S. W. 148), 249, 866.  
 Wilson v. Lawrence (70 Ark. 545; 69 S. W. 570), 901.  
 Wiltshire v. Marshall (14 Wkly. Rep. 602; 14 L. T. [N. S.] 396), 2104.  
 Wilson v. Mathis (145 Ind. 493; 44 N. E. 486), 603, 662, 663, 668.  
 Wilson v. Peters (24 N. S. W. 9), 1147.  
 Wilson v. Shorick (21 Ia. 332), 467.  
 Wilson v. State (136 Ala. 144; 33 So. 831), 1654.  
 Wilson v. State (35 Ark. 414), 134, 136, 157, 347, 509, 1466, 1467.  
 Wilson v. State (64 Ark. 586; 43 S. W. 972), 375, 1356.  
 Wilson v. State (19 Ind. App. 389; 46 N. E. 1050), 1147, 1248, 1257, 1364, 1565, 1615, 1616, 1620, 1631, 1633.  
 Wilson v. State (60 N. J. L. 171; 37 Atl. 954), 2060, 2068, 2069.  
 Wilson v. State ([Tex. Cr. App.] 55 S. W. 68), 1473, 1495, 1611.  
 Wilson v. State ([Tex. Civ. App.] 107 S. W. 818), 923.  
 Wilson v. State (53 Tex. Cr. App. 556; 110 S. W. 904), 1366.  
 Wilson v. State (54 Tex. Cr. App. 13; 111 S. W. 1018), 1168, 1605, 1637.  
 Wilson v. Stratton (47 Me. 120), 1787, 1798.  
 Wilson v. Stuart (32 L. J. M. C. 198; 3 B. & S. 913; 27 J. P. 661; 8 L. T. 277), 512.  
 Wilson v. Thompson (56 Ark. 110; 19 S. W. 321), 860.  
 Wilson v. Twamley ([1904] 2 K. B. 99; 88 L. T. 803; 52 W. R. 529; 20 T. L. R. 440), 1824.  
 Wilson v. Whelan (91 Ga. 461; 17 S. E. 906), 395.  
 Wilson v. White (29 Tex. Civ. App. 588; 69 S. W. 989), 66.  
 Winants v. Bayonne (44 N. J. L. 114), 420, 462.  
 Winchester, *In re* (8 Austr. L. R. [C. N.] 19), 644.  
 Wind v. Iler (93 Iowa 316; 61 N. W. 1001; 27 L. R. A. 219), 310, 335, 1787, 1799.  
 Winder, *In re* (24 Pa. Co. Ct. Rep. 90), 626, 630.  
 Windham v. State (26 Ala. 69), 371.  
 Winerton v. State (65 Miss. 238; 3 So. 735), 931.  
 Wing v. Benham (76 Iowa, 17; 39 N. W. 21), 1929, 2011.  
 Wing v. Burgess (13 Me. 111), 1039.  
 Wing v. Commonwealth (7 Ky. L. Rep. 216), 2033.  
 Wing v. Ford (89 Me. 140; 35 Atl. 1023), 1807.  
 Wingo v. State ([Tex. Cr. App.] 108 S. W. 372), 1604, 1707.  
 Winn v. State (43 Ark. 151), 16, 81, 961).  
 Winneconne v. Winneconne (122 Wis. 348; 99 N. W. 1055), 809.  
 Winona v. Whipple (24 Minn. 61), 139, 170, 444, 787, 807.  
 Winoski v. Gokey (49 Vt. 282), 470, 479.  
 Winslow v. Gallagher (27 N. B. 25), 2025.  
 Winslow v. Newlan (45 Ill. 145), 610.  
 Winslow v. State ([Tex. Cr. App.] 98 S. W. 241), 953, 1380, 1696.  
 Winslow v. State (50 Tex. Cr. App. 465; 98 S. W. 866), 1609.

[References are to pages.]

- Winslow v. Winslow (95 N. C. 24), 97.
- Winston v. State (32 Tex. Cr. Rep. 59, 22 S. W. 138), 893, 894.
- Winter v. State (133 Ala. 176; 31 So. 717), 1177, 1180, 1204, 1205, 1373, 1599, 162.
- Winters v. State (33 Tex. Cr. Rep. 395; 26 S. W. 839), 370, 373, 330, 1637.
- Wintermute v. Clark (5 Sandf. 242), 544.
- Winterton v. State (65 Miss. 238; 3 So. 735), 928, 929.
- Winton v. State (77 Ark. 143; 91 S. W. 7), 1730, 1731.
- Wintz v. Girardy (31 La. Ann. 381), 791.
- Wirth v. Roche (92 Me. 383; 42 Atl. 794), 1782.
- Wisconsin Keeley Institute Co. v. Milwaukee Co. (95 Wis. 153; 70 N. W. 68; 36 L. R. A. 55), 278, 2023.
- Wiseman's Estate (5 Pa. Co. Ct. Rep. 561), 2135, 2137.
- Wiseman v. Dugas (6 Mon. S. C. 138; 6 Quebec Q. B. 133), 610.
- Wiseman v. St. Laurent (3 Man. S. C. 108), 576.
- Witherspoon v. State (39 Tex. Cr. App. 65; 44 S. W. 164, 1096), 1371, 1651, 1665.
- Wragg v. People (94 Ill. 11), 216, 271.
- Wray v. Harrison (116 Ga. 93; 42 S. E. 351), 587.
- Wray v. Toke (12 Q. B. 492; 17 L. J. M. C. 183; 12 J. P. 804), 367, 726.
- Wreidt v. State (48 Ind. 579), 1351, 1353, 1357, 1359, 1362.
- Wright, Appeal of (1 Wilcox 85), 598, 638.
- Wright, *Ex parte* ([Tex.] 120 S. W. 868), 1304.
- Wright v. Board (75 N. J. L. 28; 66 Atl. 1061), 581.
- Wright v. Commonwealth ([Ky.] 72 S. W. 340; 24 Ky. L. Rep. 1838), 2038.
- Wright v. Defrees (8 Ind. 298), 106.
- Wright v. Dunham (13 Mich. 414), 264, 1585.
- Wright v. Fawcett (42 Tex. 206), 925.
- Wright v. Fisher (65 Mich. 275; 32 N. E. 605; 8 Am. St. 886), 67, 2094, 2098.
- Wright v. Harris (49 J. P. 628), 1267, 1300.
- Wright v. Hughes (119 Ind. 324; 21 N. E. 662), 1801.
- Wright v. Macon ([Ga.] 64 S. E. 807), 1333.
- Wright v. O'Brien (98 Me. 196; 56 Atl. 647), 990.
- Wright v. People (101 Ill. 126), 73, 549, 553, 822, 1336.
- Wright v. Smith (28 Ga. 432; 57 S. E. 684), 1991.
- Wright v. State (129 Ala. 123; 29 So. 864), 1602.
- Wright v. State (36 Tex. Cr. App. 35; 35 S. W. 287), 1687.
- Wright v. State (37 Tex. Cr. Rep. 3; 35 S. W. 150; 38 S. W. 811), 959, 1682), 1686.
- Wright v. State (37 Tex. Cr. App. 627; 40 S. W. 491), 2079.
- Wright v. State ([Tex. Cr. App.] 90 S. W. 24), 1280.
- Wright v. Tipton (46 S. W. 629 [Texas]), 1898.
- Wright v. Treat (83 Mich. 110; 47 N. W. 243) 766, 774, 781, 1855, 1866, 1884, 1937.
- Wright v. Waller (127 Ala. 557; 29 So. 57), 2094, 2095.
- Wrockledge v. State (1 Clarke [Ia.] 167), 1289, 1479, 1488, 1500, 1554, 1765.
- Wrought Iron, etc., Co. v. Johnson (84 Ga. 754; 11 S. E. 233), 156.

[References are to pages.]

- Wolecott v. Burlingame (112 Mich. 311; 70 N. W. 831), 139, 761.
- Wolecott v. Judge (112 Mich. 311; 70 N. W. 831), 498.
- Wolf, *Ex parte* (14 Neb. 24; 14 N. W. 660), 263, 452, 457, 459.
- Wolf v. Johnson (152 Ill. 280; 38 N. E. 886), 1960, 1984.
- Wolfe v. Johnson (45 Ill. App. 122), 1255.
- Wolf v. Lansing (53 Mich. 367; 19 N. W. 38), 69, 397, 403, 449.
- Wolf v. State (59 Ark. 297; 27 S. W. 77; 43 Am. St. 34), 19, 967, 1319, 1321.
- Wolfe v. State (38 Tex. Cr. Rep. 537), 1374, 1378.
- Wolf v. State ([Tex. Cr. App.] 85 S. W. 8), 1623.
- Wolfson v. Rubicon Tp. (63 Mich. 49; 29 N. W. 486), 764.
- Wolters, *Ex parte* (65 Cal. 269; 3 Pac. 894), 412, 413, 417.
- Wolton v. Missouri (91 U. S. 275), 156.
- Wong v. Astoria (13 Ore. 538), 216, 271.
- Wong Sing v. Independence (47 Ore. 231; 83 Pac. 387), 1490, 1498.
- Wood, *Ex parte* ([Tex. Cr. App.] 81 S. W. 529), 915.
- Wood v. Andes (11 Hun, 543), 2172, 2196.
- Wood v. Baer (91 Iowa, 475; 59 N. W. 289), 988.
- Wood v. Brooklyn (14 Barb. [N. Y.] 428), 216, 441, 471.
- Wood v. Lentz (116 Mich. 275; 74 N. W. 462), 1939.
- Wood v. Pindall (Wright, 507), 2094, 2099, 2100, 2105, 2108.
- Wood v. Ross (11 Mass. 276), 1058.
- Wood v. School District (80 Neb. 722; 115 N. W. 308), 816.
- Wood v. State (34 Ark. 341), 2078.
- Wood v. State (21 Ind. 276), 1306, 1498.
- Wood v. State (9 Ind. App. 42; 36 N. E. 158), 1292, 1488, 1635.
- Wood v. State ([Tex.] 116 S. W. 1154), 691.
- Wood v. Territory (1 Ore. 223), 1177, 1621.
- Wood v. Thomas (38 Mich. 686), 802.
- Woodbridge, *In re* (30 Mo. App. 612), 885, 886, 893.
- Woodford v. Hamilton (139 Ind. 481; 39 N. E. 47), 464, 536, 1780, 1789, 1791.
- Woodhouse, *Ex parte* (3 Low. Can. Rep. 92), 1516.
- Woodley v. Simmonds (60 J. P. 150), 1345, 1346.
- Woodlief v. State (21 Tex. App. 412; 2 S. W. 812), 938, 939.
- Woodlock v. Dickie (6 R. & G. [N. S.] 86; 6 Can. L. T. 142), 1478.
- Woodring v. Jacobson ([Wash.] 103 Pac. 809), 1866.
- Woodruff v. Northern Pac. R. Co. (47 Fed. 689), 2182.
- Woodruff v. Parham (8 Wall 123; 19 L. Ed. 382), 154, 331, 790.
- Woods v. Board (128 Ind. 289; 27 N. E. 611), 2173, 2186.
- Woods v. Commonwealth (1 B. Mon. 74), 71, 1540.
- Woods v. Dailey (211 Ill. 495; 71 N. E. 1068), 1974.
- Woods v. Garvey (82 Neb. 776; 118 N. W. 1114), 600.
- Woods v. Kirschlavek ([Neb.] 118 N. W. 1115), 345.
- Woods v. Pineville (19 Ore. 108; 23 Pac. 880), 64, 462, 1564.
- Woods v. Pratt (5 Blackf. 377), 603, 611.
- Woods v. State (36 Ark. 36; 38 Am. Rep. 22), 109, 822, 934.
- Woods v. State ([Tex. Cr. App.] 20 S. W. 915), 1461.



## [References are to pages.]

- Woods v. State ([Tex. Cr. App.] 75 S. W. 37), 940, 1473.  
 Woods v. Town, etc. (19 Ore. 108), 432.  
 Woods v. Varley ([Neb.] 118 N. W. 1114), 345.  
 Woodson v. Gordon (Peck [Tenn.] 186; 14 Am. Dec. 743), 2102.  
 Woodward v. Squires (41 Iowa, 677), 1804.  
 Woodward v. State (103 Ga. 496; 30 S. E. 522), 908.  
 Wooldridge, *In re* (30 Mo. App. 635), 885.  
 Wooler v. Knott ([1876] 1 Ex. D. 265; 45 L. J. Ex. 884; 35 L. T. 121; 24 W. R. 1004; 40 J. P. 788), 1820.  
 Woolheather v. Risley (38 Iowa, 486), 1856, 1857, 1861, 1882, 1912, 1971.  
 Woolner & Co. v. Remnick (170 Fed. 662), 78, 1386.  
 Woolstein v. Welch (42 Fed. 566), 327.  
 Woolston, *In re* (35 N. Y. Misc. Rep. 735; 72 N. Y. Supp. 406), 889.  
 Wooster v. State (6 Baxt. 533), 71, 1125, 1304, 1320.  
 Wooten v. State ([Tex.] 121 S. W. 703), 1609.  
 Wooton v. Commonwealth (15 Ky. L. Rep. [abstract] 495), 945, 957.  
 Word v. Greenville (8 Baxt. 228), 263.  
 Workam v. Workam (31 Miss. 154), 2167.  
 Worley v. Spurgeon (38 Iowa, 467), 8, 27, 28, 29, 1350, 1351, 1907, 1908.  
 Wormley v. Hamberg (40 Ia. 22), 225.  
 Worth v. Brown (40 Sol. J. 515; 62 J. P. 658), 361, 1253.  
 Wortham v. State (80 Miss. 205; 32 So. 50), 1181, 1184, 1381, 1654.  
 Wurts v. Hoagland (114 U. S. 606; 5 Sup. Ct. 1086), 97.  
 Wyatt v. Commonwealth (2 Ky. L. Rep. 61), 2086.  
 Wyatt v. Ryan (113 Ky. 306; 68 N. W. 134; 24 Ky. L. Rep. 228), 850, 852.  
 Wycott, *In re* (38 Up. Can. 533), 914.  
 Wynants v. Bayonne (44 N. J. L. [15 Vroom] 114), 405.  
 Wynehamer v. People (13 N. Y. 378; 2 Parker Cr. Rep. 421; affirming 2 Parker Cr. Rep. 377; 12 How. Pr. 238 and reversing 20 Barb. 567), 111, 112, 125, 149, 199, 306, 316.  
 Wynn v. Allard (5 Watts & S. 524), 2172, 2191.  
 Wynn v. Allrod (5 W. & S. 525), 2193, 2195.  
 Wynne v. State ([Ala.] 46 So. 459), 1652.  
 Wynne v. Williamson (94 Ga. 603; 20 S. E. 436), 932.

## Y

- Yahn v. Merritt (117 Ala. 485; 23 So. 71), 291.  
 Yakel v. State (30 Tex. App. 391; 17 S. W. 943; 20 S. W. 205), 1228.  
 Yankton v. Douglass (8 S. D. 441; 66 N. W. 923), 1543.  
 Yarnall v. St. Louis, etc., R. Co. 75 Mo. 575), 2178, 2180.  
 Yates v. City of Milwaukee (1 Wall. [U. S.] 497), 408.  
 Yates v. Nunnally (125 Ky. 664; 102 S. W. 292; 30 Ky. L. Rep. 984), 936.  
 Yates v. State ([Tex. Cr. App.] 59 S. W. 275), 892.  
 Yazel v. State (170 Ind. 535; 84 N. E. 972), 1447.  
 Yazoo City v. State (48 Miss. 440), 169.

[References are to pages.]

- Yeager, *Ex parte* (11 Gratt. 655), 635.
- Yeartean v. Bacon (65 Vt. 516; 27 Atl. 198), 307.
- Yeoman v. State (81 Neb. 244; 115 N. W. 784), 1090, 1624.
- Yerger, *Ex parte* (8 Wall [U. S.] 85, 105), 467.
- Yick Wo v. Hopkins (118 U. S. 356; 6 Sup. Ct. 1069), 116, 206, 208, 454.
- Yodlard v. Jacksonville (15 Ill. 588), 456.
- Yost v. Commonwealth (6 Ky. L. Rep. 110), 1504, 1626.
- Youn v. Lamont (56 Minn. 216; 57 N. W. 478), 2106, 2107, 2122, 2123.
- Young, *In re* (15 R. I. 243; 3 Atl. 3), 1044.
- Young v. Beveridge (81 Neb. 180; 115 N. W. 766), 86, 1608, 1707, 1907, 1982.
- Young v. Blaisdell (138 Mass. 344), 752, 740.
- Young v. Commonwealth (14 Bush 161), 559, 920, 928, 930, 934, 957, 1478, 1480, 1588, 1679, 1680, 1682.
- Young v. Higgin (6 M. & W. 49), 569.
- Young v. Miller (145 Ind. 652; 44 N. E. 757), 2137.
- Young v. State (58 Ala. 358), 1176, 1230, 1252, 1779.
- Young v. State ([Ala.] 48 So. 490), 1120.
- Young v. State (34 Ind. 46), 671.
- Young v. State ([Tex. Cr. App.] 66 S. W. 567), 952, 1611, 1692.
- Young v. Stevenson (73 Ark. 480; 86 S. W. 1000), 510.
- Young v. Stevenson (75 Ark. 181; 86 S. W. 1000), 694.
- Young v. Wilmington, etc., R. Co. (116 N. C. 932; 21 S. E. 177), 2188.
- Youngs v. Youngs (130 Ill. 230; 22 N. E. 806; 6 L. R. A. 548; 17 Am. St. 313), 63, 66, 2154.
- Youngblood v. Sexton (32 Mich. 406; 20 Am. Rep. 654), 200, 202, 479, 483, 793, 800.
- Youngman v. State (38 Tex. Cr. App. 459; 42 S. W. 988; 43 S. W. 519), 1743.
- Youngson v. Kemp (22 N. Z. 609), 1022.
- Yowell v. State (41 Ark. 355), 137, 1285.
- Yunger v. State (78 Md. 574; 28 Atl. 404), 932.
- Yunnarsson v. Sterling (92 Ill. 569), 398.

## Z

- Zanone v. Mound City (11 Bradw. 334), 506, 627.
- Zanone v. Mound City (103 Ind. 552), 636, 649.
- Zarresseller v. People (17 Ill. 101), 930, 1498.
- Zeglin v. Carver Co. (72 Minn. 17; 74 N. W. 901), 497, 816.
- Zeizer v. State (47 Ind. 129), 1256, 1565, 1631.
- Zeller v. Crawfordsville 90 Ind. 262), 403.
- Zeller v. State (46 Ind. 304), 1357, 1359, 1615, 1616.
- Ziegler v. Commonwealth ([Pa.] 14 Atl. 237), 1349.
- Ziegler v. Ziegler (1 Wkly. L. Bul. 163), 2158.
- Zielke v. State (42 Neb. 750; 60 N. W. 1010), 567, 688, 798, 799.
- Zigler v. Kammel (30 Wkly. L. Bull. 115; 4 Ohio L. D. 472), 1929.
- Zimmerman v. Smiley (62 Neb. 204; 86 N. W. 1059), 1892.

[References are to pages.]

Zinn v. State ([Tex.] 120 S. W. 893), 1609.	Zoo City v. Woodbury County ([Iowa] 122 Pac. 940), 809.
Zinn v. State ([Ark.] 114 S. W. 227), 278, 336.	Zumhoff v. State (4 Greene [Iowa] 526), 109, 256, 1445, 1479, 1550.
Zinner v. Commonwealth ([Pa. St.] 14 Atl. 431), 69, 509, 691, 1267.	Zumwalt v. Chicago, etc., R. Co. (35 Mo. App. 661), 2199.
Zinzow, In re (18 N. Y. Misc. Rep. 653; 43 N. Y. Supp. 714), 581, 591, 592.	Zweifel v. State (16 Tex. App. 154), 1568.
Zollicoffer v. State ([Tex. Cr. App.] 38 S. W. 775), 911.	Zylstra v. Charleston (1 Bay [S. C.] 382), 442.
	Zystra v. Charleston (1 Bay [S. C.] 387), 270.



PART I.

---

INTOXICATING LIQUORS.





# INTOXICATING LIQUORS

---

## CHAPTER I.

### DEFINITIONS—JUDICIAL NOTICE.

ART. I. DEFINITIONS.

ART. II. JUDICIAL NOTICE.

#### ARTICLE I.—DEFINITIONS.

##### SECTION.

1. Liquor, meaning and strength.
2. Liquor, continued.
3. Mixed liquors.
4. "Intoxicating," statute defining—Evidence — Statute constitutional.
5. Intoxicating liquors—Use as a beverage.
6. Intoxicating liquors—Amount necessary to produce intoxication.
7. Intoxicating and spirituous liquors distinguished.
8. Intoxicating and non-intoxicating, how distinguished.
9. Alcohol an intoxicant—Judicial notice.
10. Alcohol continued.
11. Fermented liquor—Cider.
12. Compound liquors—Mixtures.
13. Distilled liquors.

##### SECTION.

14. Spirit or spirits—Judicial notice.
15. Spirituous liquors distinguished.
26. Malt liquor not included in "vinous and spirituous liquors."
27. Whisky an intoxicant—How made—Judicial notice.
16. Spirituous and intoxicating liquors distinguished.
17. Wine as an intoxicating liquor.
18. Wine, intoxicating quality when not a question.
19. Wine as a spirituous or fermented liquor.
20. Wine, when a question of fact—Burden of proof.
21. Port wine an intoxicant.
22. Blackberry wine an intoxicant.

## SECTION.

23. Champagne, when included as a liquor.
24. Sherry wine.
25. Spirits and wine distin-
28. Whisky cocktail—Sale, when a violation of law.
29. Gin and alcoholic liquor—Judicial notice.
30. Brandy an intoxicant—Burden of proof.
31. Brandy peaches, sale of not prohibited.
32. Malt liquors—Judicial notice.
33. Beer and ale distinguished—History.
34. Beer defined—Presumption—Judicial notice.
35. Lager beer a malt liquor and intoxicant.
36. Schenk beer, intoxicating quality a question of fact.
37. Strong and spirituous liquors—Beer.
38. Ale.
39. Cider.
40. Medicines—Compounds.
41. Camphor gum not an intoxicant.
42. Cinnamon and lemon essence—Cologne.
43. Common cordial a spirituous liquor—Godfrey's Cordial.

## SECTION.

44. Empire Tonic Bitters—Proprietary medicines.
45. Home bitters—Medicines—Instructions—Evidence.
46. Busby's Bitters—Judicial notice.
47. Mead—Metheglin.
48. Wilson's Rocky Mountain Herb Bitters.
49. Intoxication—Drunkenness—Drunkard.
50. Intemperate habit.
51. Habitual drunkenness.
52. Habitual drunkard.
53. Habitual intemperance.
54. Confirmed drunkard.
55. Saloon defined—Limited to one room.
56. Saloon keeper.
57. Tippling house.
58. Liquor shop.
59. Tavern keeper.
60. Sample room.
61. Dramshop—Dramshop keeper.
62. Bar defined.
63. Barroom.
64. Barroom fixtures.
65. Barkeeper.
66. Dram.
67. Dealer.
68. Wholesaler and retailer.
69. Common seller.
70. Rectifier.
71. Distiller.

**Sec. 1. Liquor, meaning and strength.**

In its most comprehensive significance, the term "liquor" implies a fluid substance such as water, milk, blood, sap, juice, but in its more limited sense it means spirituous fluids, whether fermented or distilled, such as brandy, whisky, rum, gin, ale, beer and wine, and also decoctions, solutions and tinctures made from them or any of them.<sup>1</sup> When

<sup>1</sup> State v. Brittain, 89 N. C. 720; 4 S. E. 193; People v. Crilley, 574; State v. Giersch, 98 N. C. 248.

used in a statute forbidding the sale of liquors it refers only to spirituous or intoxicating liquors. The strength of liquors and their intoxicating powers depend upon the quantity of alcohol which they contain. According to Perard's Manual of Chemistry,<sup>2</sup> spirituous liquors contain from 53 to 56 per cent. of alcohol; wines from 13 (champagne) to 26 (port) per cent.; currant and sherry wine over 10 per cent; cider an average of about  $7\frac{1}{2}$  per cent.; Metheglen about  $7\frac{1}{4}$  per cent., and ale an average of about  $6\frac{1}{4}$  per cent.<sup>3</sup>

<sup>2</sup> 1645, 1646.

<sup>3</sup> People v. Crilley, 20 Barb. (N. Y.) 248.

The meaning of the word "liquor" must always be ascertained by considering the sense in which it is used, and that sense is ascertained by considering its connection with the words with which it is connected. The primary meaning assigned it in the Standard Dictionary is, "An alcoholic or intoxicating liquor;" and a quotation is made from Henry Ward Beecher (Plain and Pleasant Talk, Warmth, p. 11 [D. & J. '59]), as follows: "He that keeps warm on *liquor* is like a man who pulls his house to pieces to feed the fireplace." No one can mistake the sense in which the word is used in this quotation.

"A strong or active fluid of any sort. Specifically, an alcoholic or spirituous liquid, either distilled or fermented; an intoxicating beverage; especially a spirituous or distilled drink as distinguished from fermented beverages, as wine and beer." "Spirituous liquors, liquors produced by distillation." "Vinous liquors, liquors made from grapes; wine." Century Dictionary, the word "liquor."

Where liquor was defined by a statute as "any wine, spirits, ale, beer, porter, cider, sherry, or other spirituous or fermented liquor of an intoxicating character," it was held that "liquor" meant a liquid which is commonly known and adopted for use as a drink or beverage for human consumption, or which is reasonably capable of being used as a substitute for such beverages, or being converted into such beverage; and in a prosecution for a sale of proprietary medicines it is not necessarily sufficient for the prosecution to prove that it contains even a large percentage of alcohol, if the alcohol is essential for its use as a medicine or is necessary for intoxication or as a preservative, or if the other ingredients are, as compared with the contained alcohol, of such potency or of such a disagreeable character that the use of the liquor as a beverage could ordinarily result in danger to life or health, or in nausea or sickness; and that in considering whether a liquid is a liquor within the meaning of the statute, regard should be had to the uses to which it is usually put, the purpose for which it is usually

## Sec. 2. Liquor—Continued.

“The word ‘liquor,’” said the Supreme Court of Florida, “may be used in either of two senses. The first is practically synonymous with ‘liquid;’ the second, as given in Webster’s Dictionary, is, specifically, alcohol or spirituous fluid, either distilled or fermented, as brandy, wine, whisky, beer, etc.<sup>4</sup> In common parlance the word is universally understood in the latter sense when used in speaking of a dealer in liquors. This being true, when the statute first prescribes a penalty for dealing in intoxicating liquors, and then prescribes a form of indictment to be used in prosecuting for a breach of this law, using therein the word ‘liquors,’ it is beyond cavil that the word is used in the special sense of intoxicating liquors, as above defined, and that under such an indictment the sale only of such liquors can be shown.”<sup>5</sup>

bought, and its usual effect upon the system. *Gleason v. Hobson* [1907] Vict. L. R. 148 (Australia).

In Georgia proof that the accused sold “liquor” was held sufficient proof that the fluid sold was intoxicating, especially where it looked like rye whisky. *Carswell v. State* (Ga. App.), 66 S. E. 488.

<sup>4</sup> Liqueur is “an alcoholic cordial sweetened and flavored with aromatic substances.” Among the commercial liqueurs the following are the main ones: absinthe, allasch, anisette, benedictine, cassis, chartreuse, creme de menthe, creme de rosa, creme de vanilla, curacao, kirschwasser, kummel, mandarine, maraschino, moyan, pomeranzen, ratafia, trappistine, and vermuth.” *Standard Dictionary*.

<sup>5</sup> *Brass v. State*, 45 Fla. 1; 34 So. 307; *State v. Brittain*, 89 N. C. 574; *Hollender v. Magone*, 38 Fed. 912; *Kizer v. Randleman*, 5

*Jones* (N. C.), 428; *Carswell v. State* (Ga. App.), 66 S. E. 488.

In Texas, by one statute, intoxicating liquors are defined; and this is held to apply to the statute relating to nuisances. *State v. Frederickson*, 101 Me. 37; 63 Atl. 535.

Failure to use the word “intoxicating” before the word “liquors” in the title of an act providing for the prosecution of those selling liquor in counties voting against such sale, does not render it unconstitutional. *Ladson v. State* (Fla.), 47 So. 517.

“The term ‘liquor’ applies only to liquors containing a sufficient percentage of alcohol to cause intoxication.” *Board v. Taylor*, 21 N. Y. 173, 177; *Roberts v. State* 4 Ga. App. 207; 60 S. E. 1082; *James v. State*, 49 Tex. Cr. App. 334; 91 S. W. 227. “Its most common application is to spirituous fluids, whether distilled or fermented; to decoctions, solu-



### Sec. 3. Mixed Liquors.

A statute forbade the sale of "mixed liquors" in less quantity than five gallons; and it was held that this meant a mixture of intoxicating liquors, and an indictment charging a sale of mixed liquors must set forth by name the general appellation of the mixture. It was also held not to include a mixture of water and milk, or water and vine-

tions, tincture." *Houser v. State*, 18 Ind. 106; *State v. Giersch*, 98 N. C. 720; 4 S. E. 193.

In Arkansas it has been held that the term "liquor" does not include alcohol. *State v. Martin*, 34 Ark. 340; but under the Revised Code of North Carolina, Chap. 79, § 4, forbidding a credit of more than \$10 for liquor sold, it has been held to include champagne. *Kizer v. Randleman*, 50 N. C. 428; and in New York it is said, "The word 'liquors,' as commonly used, includes all that are spirituous, vinous or fermented, including malt." *People v. Crilley*, 20 Barb. 248. So in Louisiana, it is held that liquors include all fermented liquors. *Mandeville v. Baudot*, 40 La. Ann. 236; 21 So. 258.

An indictment charging a sale of liquor does not charge any offense under a statute prohibiting the sale of spirituous, vinous, fermented or malt liquors. *State v. Quinlan*, 40 Minn. 55; 41 N. W. 299; and proof of a sale in a saloon of liquor to deceased, where it was also shown that the defendant had at least on one occasion sold him seltzer, was held not to authorize the court to charge the jury that "the sale of intoxicating liquors may be proven by circumstantial evidence; and where it is shown that the person was sold or furnished liquor at a license"

saloon, the presumption is that such liquor was intoxicating." *Dolan v. McLaughlin*, 46 Neb. 449; 64 N. W. 1076.

Where liquor was defined by statute as meaning distilled or rectified spirits, wine, fermented or malt liquors, it was held that evidence showing the defendant sold beer was not sufficient to show a sale of liquor, as it would not be presumed that beer means fermented or malt liquor. *In re Hunter*, 34 Misc. Rep. (N. Y.) 389; 69 N. Y. Supp. 908.

Under the Tariff Act of March 3, 1883 (22 U. S. Stat. at L. 505, schedule H), prohibiting any allowance for leakage in respect to wines, liquors, cordials, or distilled spirits, it is held that beer was not embraced within any of the terms used, quoting the definition given in the *Century Dictionary*. *Hollender v. Magone*, 149 U. S. 586; 37 L. Ed. 860; 13 Sup. Ct. Rep. 932; reversing 38 Fed. Rep. 912.

In Mississippi the term "alcoholic or vinous liquors," used in a statute prohibiting the sale of such liquor, is held to include wine made from grapes and from blackberries, even though there be evidence it is not intoxicating. *Reyfelt v. State*, 73 Miss. 415; 18 So. 925; *State v. York*, 74 N. H. 125; 65 Atl. 685.

gar, or tea and coffee, and that the term must be limited to a mixture of intoxicants.<sup>6</sup> A statute forbade the sale of wine, brandy, whisky, rum, or any spirituous liquors in a less quantity than a quart, or any punch or mixed liquor in any quantity. It was held that the term "mixed liquor" as it followed the word "punch," meant any mixture of spirituous liquor or other liquors prohibited, where the basis or the substance of the liquor sold is spirituous and not mixed by the vendor, to come within the previous prohibition of selling spirituous liquor.<sup>7</sup> A complaint charging a sale of "mixed liquor, a part of which was intoxicating," does not charge a sale of any well-known kind of intoxicating liquor, but is sufficient, not being inconsistent with the general words "intoxicating liquor," and proof of a sale of any of the well-known forms of distilled spirits which are used as a beverage, and which contain alcohol mixed with water and other substances, as whisky, would be sufficient.<sup>8</sup>

**Sec. 4. "Intoxicating," statute defining—Evidence—Statute constitutional.**

A statute which provides that the word "intoxicating" shall include any liquor or mixture of liquors which shall contain more than a certain per cent. by weight of alcohol, which prohibits the sale of intoxicating liquors, and which prescribes a form of complaint or indictment that is to be sufficient if substantially followed, is constitutional and a valid exercise of the police powers of the State.<sup>9</sup> Thus a statute which provides that the words "intoxicating liquors," as used therein, "shall be construed to mean alcohol, wine, beer, spirituous, vinous and malt liquors, and all intoxicating liquors whatever" has been sustained regardless of the fact as to whether or not the quantity

<sup>6</sup> State v. Townley, 3 Har. (N. J.) 311.

<sup>7</sup> State v. Bennett, Har. (Del.) 565.

<sup>8</sup> Commonwealth v. Morgan, 149 Mass. 314; 21 N. E. 369.

<sup>9</sup> State v. Guinness, 16 R. I. 401; 16 Atl. 910; State v. Gravelin, 16 R. I. 407; 16 Atl. 914; Jackson v. State, 19 Ind. 312; James v. State, 21 Tex. App. 353; 17 S. W. 422.

drank at any time would have the effect of causing intoxication, the court saying, "It is immaterial, in a statutory sense, what effect alcohol may have on the human system; it is an intoxicating liquor. However much it may be diluted, it must remain an intoxicant when and however it is used as a beverage, and no matter how it may be diluted or disguised, it so remains, simply because the statute so declares."<sup>10</sup> Such a statute is not the subject of construction by the courts, the meaning of the term "intoxicating liquors" being declared by the act itself, and for this reason evidence to show the meaning of the term is inadmissible. Nor does such a statute violate a constitutional provision that "in all criminal prosecutions the accused shall enjoy the right . . . to be informed of the nature and cause of accusation."<sup>11</sup> It has been contended that a Legislature has no power to declare that to be intoxicating which in fact is not.<sup>12</sup> In Massachusetts, however, it has been held that liquors not actually intoxicating, but which a statute declares "shall be considered intoxicating within the meaning of the act," may be described as "intoxicating" in an indictment under a statute for keeping intoxicating liquors with intent to sell them in the Commonwealth, without a more particular description of the liquors kept, the court holding that such an enactment "is within the discretion of the Legislature to pass."<sup>13</sup> And in Rhode Island it has been held that a complaint under such a statute which charged that the defendant unlawfully did "keep and suffer to be kept on his premises, in his possession and under his charge, ale, wine, rum, and other strong

<sup>10</sup> *State v. Intoxicating Liquors*, 76 Ia. 243; 41 N. W. 6; 2 L. R. A. 418; *Francis v. State* (Tex.), 119 S. W. 97; *Mason v. State* (Tex.), 119 S. W. 852.

A statute making it an offense to sell without license malt liquors, does not apply to a non-intoxicating malt liquor. *Hardwick v. State*, 55 Tex. Cr. App. 140; 114 S. W. 832.

<sup>11</sup> *State v. Wittmar*, 12 Mo. 407; *State v. Lemp*, 16 Mo. 389; *State v. Houts*, 36 Mo. App. 265.

<sup>12</sup> *State v. McKenna*, 16 R. I. 398; 17 Atl. 51.

<sup>13</sup> *Commonwealth v. Timothy*, 74 Mass. (8 Gray), 480; *Commonwealth v. Dean*, 14 Gray, 99; *State v. York*, 74 N. H. 125; 65 Atl. 685.

and malt and intoxicating liquors and mixed liquors, a part of which was ale, wine, rum and other strong and intoxicating liquors, with intent to sell the same in this State, against the statute," should not be quashed for uncertainty because of not stating whether it covered liquors intoxicating in fact or defined as intoxicating liquors by the statute; and under such a statutory provision and indictment, evidence of an expert is admissible on the part of the prosecution and defense to show the amount of alcohol contained in the liquor in controversy.<sup>14</sup> The intoxicating properties of such a liquor may also be proved by witnesses testifying to their observation of its appearance, taste and odor, the kind of vessels in which it was contained, the labels or marks on such vessels, the presence of men engaged in drinking, the presence of the paraphernalia of the room in which it was sold, and other like pertinent facts.<sup>15</sup>

### Sec. 5. Intoxicating liquor used as a beverage.

"Any liquor intended for use as a beverage, or capable of being so used, which contains alcohol, either obtained by fermentation or by the additional process of distillation, in such proportion that it will produce intoxication, when taken in such quantities as may be practically drank, is an intoxicant."<sup>16</sup> The phrase "intoxicating liquors" is a

<sup>14</sup> State v. McKenna, 16 R. I. 398; 17 Atl. 51.

<sup>15</sup> State v. Liquor, 38 Vt. 387.

For statutory definitions of "intoxicating liquors," see Commonwealth v. Shea, 14 Gray, 386; Worley v. Spurgeon, 38 Iowa, 467; State v. Stapp, 29 Iowa, 551; State v. Bindle, 28 Iowa, 512; Tredway v. Riley, 32 Neb. 495; 49 N. W. 268; 29 Am. St. 447; Bell v. State, 91 Ga. 227; 18 S. E. 288; State v. Volmer, 6 Kan. 371; Commonwealth v. Snow, 133 Mass. 575; Commonwealth v.

Chappel, 116 Mass. 7; Wiles v. State, 33 Ind. 206; Commonwealth v. Blos, 116 Mass. 56; State v. Houts, 36 Mo. App. 265; State v. Rush, 13 R. I. 198; Commonwealth v. Anthes, 12 Gray, 29; Jones v. Surprise, 64 N. H. 243; 9 Atl. 384; State v. Packer, 80 N. C. 439.

<sup>16</sup> Decker v. State, 39 Tex. Civ. App. 20; 44 S. W. 845; Pike v. State, 40 Tex. Civ. App. 613; 51 S. W. 395; Malone v. State (Tex.), 51 S. W. 381. (In Pike v. State, *supra*, it was held that



broad term, embracing all liquors used as a beverage, which, when so used, may or will produce intoxication.<sup>17</sup> The term "intoxicating liquors" covers *alcohol*.<sup>18</sup> But the courts cannot say that a certain percentage of alcohol in a beverage renders the beverage intoxicating; nor that a particular ingredient in a compound does or does not destroy the intoxicating influence of the alcohol, or prevent it becoming an intoxicating beverage. "Of course, the larger per cent. of alcohol, and the more potent the other ingredients, the more probable does it fall within or without the prohibition of the statute, but in each case the question is a question of fact, and to be settled as other questions of fact." <sup>19</sup> But under a statute defining intoxicating liquors

an instruction to the jury was correct which defined intoxicating liquors as follows: "By intoxicating liquors, as used herein, is meant any spirituous, vinous, or malt liquors, or medicated bitters, or medicated liquors, capable of producing intoxication when used in sufficient quantity.") *Frickie v. State*, 40 Tex. Civ. App. 626; 51 S. W. 394; *Sebastian v. State*, 44 Tex. Civ. App. 508; 72 S. W. 849; *Taylor v. State (Tex.)*, 49 S. W. 845.

<sup>17</sup> *People v. Hawley*, 3 Mich. 330; *People v. Sweetser*, 1 Dak. 308; 46 N. W. 452; *State v. Oliver*, 26 W. Va. 422; 53 Am. Rep. 79; *In re Intoxicating Liquors*, 25 Kan. 761; 37 Am. Rep. 284.

<sup>18</sup> *Emerson v. State*, 43 Ark. 372; *Rucker v. State (Tex.)*, 24 S. W. 902; *In re Intoxicating Liquors*, 25 Kan. 761; 37 Am. Rep. 284; *Shaw v. Carpenter*, 54 Vt. 155; 41 Am. Rep. 837; *Kelley Drug Co. v. Truett (Tex.)*, 75 S. W. 536.

It has been held that where an indictment charges a sale of al-

cohol it does not charge a sale of "intoxicating liquor." *State v. Witt*, 39 Ark. 216. The court says it does not judicially know alcohol is intoxicating, but this case, outside of its own state, cannot be regarded as an authority.

"That alcohol is an intoxicant is as well known and established as any other physical fact. There is not one man in 10,000 or 100,000 who, if asked whether alcohol is intoxicating, would not reply immediately in the affirmative. It is not a purely scientific fact; it is a fact that every person of the commonest understanding knows. Indeed, it is a matter of common knowledge that alcohol is the intoxicating element of various forms of beverages known as spirituous or intoxicating liquors. In a prosecution for the sale of intoxicating liquors, where the proof was of the sale of pure alcohol, it was not necessary to prove that the alcohol was intoxicating." *Snider v. State*, 81 Ga. 753; 7 S. E. 631; 17 Am. St. 350.

<sup>19</sup> *Topeka v. Zufall*, 40 Kan. 47; 19 Pac. 359; 1 L. R. A. 387. See



to mean "alcohol, wine, beer, spirituous, vinous and malt liquors, and all intoxicating liquors whatever," a beverage containing any alcohol is an intoxicant, regardless of the fact that the amount drunk at any one time will not have that effect.<sup>20</sup> *Ale* and *porter* are regarded in law as intoxicating liquors,<sup>21</sup> although they may be in a changed condition;<sup>22</sup> and this is particularly true where the statute so defines or classes them.<sup>23</sup> *Bay rum* cannot be classed as an intoxicating liquor, even though it contains enough liquor to intoxicate, for it is not commonly used as a beverage.<sup>24</sup> Proof of a sale of *beer* in the usual places where beer is sold, or even when not sold in such places, raises a presumption that it is intoxicating;<sup>25</sup> and it is sufficient to

Commonwealth v. Morgan, 149 Mass. 314; 21 N. E. 369; State v. May, 52 Kan. 53; 34 Pac. 407; State v. Biddle, 54 N. H. 379.

<sup>20</sup> State v. Intoxicating Liquors, 76 Iowa, 243; 41 N. W. 6; 2 L. R. A. 408; Commonwealth v. Snow, 133 Mass. 575; State v. Guinness, 16 R. I. 401; 16 Atl. 910; State v. McKenna, 16 R. I. 398; 17 Atl. 51; James v. State, 49 Tex. Civ. App. 334; 91 S. W. 227; Roberts v. State, 4 Ga. App. 207; 60 S. E. 1082; Smith v. State (Tex.), 120 S. W. 801; Commonwealth v. Burns, 38 Pa. Super. Ct. 514.

<sup>21</sup> State v. Barron, 37 Vt. 60; Nevins v. Ladue, 1 N. Y. Code Rep. 43; 3 Denio, 43, 437; Haines v. Hanrahan, 105 Mass. 480.

<sup>22</sup> Shaw v. Carpenter, 54 Vt. 155; 41 Am. Rep. 837.

<sup>23</sup> Commonwealth v. Chappel, 116 Mass. 7; Commonwealth v. Dean, 14 Gray, 99; State v. York, 74 N. H. 125; 65 Atl. 685; Wiles v. State, 33 Ind. 208; State v. Gravelin, 16 R. I. 407; 16 Atl. 914; State v. Wadsworth, 30 Conn. 55.

But under the Ohio Act of May 1, 1854, § 4, making it an offense to keep a public resort where "intoxicating liquors" are sold, the sale of ale is not included. Johnson v. State, 23 Ohio St. 556. And in New Hampshire, where the indictment charged a sale of "intoxicating liquors," on proof of a sale of ale and cider it was held that the court could rule that they, after fermentation was completed, were intoxicating liquors, without proof of the amount of alcohol which they contained; whether or not they were intoxicating was a question of fact for the jury. State v. Biddle, 54 N. H. 379.

<sup>24</sup> *In re* Intoxicating Liquor Cases, 25 Kan. 751; 37 Am. Rep. 284.

<sup>25</sup> State v. Stout, 96 Ind. 407; Myers v. State, 93 Ind. 251; Douglass v. State, 21 Ind. App. 302; 52 N. E. 238; State v. Jenkins, 32 Kan. 477; 4 Pac. 809; State v. Spiers, 103 Iowa, 711; 73 Pac. 343; Mullen v. State, 96 Ind. 304. See Commonwealth v. Heywood, 105 Mass. 187. *Contra*,

allege in the indictment a sale of beer without alleging it is intoxicating;<sup>26</sup> and this is especially true where a statute so shows it.<sup>27</sup> *Brandy* is an intoxicating liquor;<sup>28</sup> and a sale of *brandy peaches* and *cherries* is a sale of intoxicating liquors;<sup>29</sup> but it is not if the liquor is very weak and incapable of producing intoxication unless drank in large quantities.<sup>30</sup> *Cider* is not an intoxicating liquor unless the evidence shows the particular liquor in question was intoxicating,<sup>31</sup> and that is a question of fact for the jury.<sup>32</sup> *Cologne* is not classed as an intoxicating liquor,<sup>33</sup> nor are *drugs*.<sup>34</sup> *Essence of cinnamon* may be shown to be intoxicating,<sup>35</sup> but *extract of lemon* is not so classed.<sup>36</sup> *Gin* is universally recognized as an intoxicant,<sup>37</sup> but *hop ale* is not

Kurz v. State, 79 Ind. 488; Plunket v. State, 69 Ind. 68; State v. Sioux Falls, etc., Co., 5 S. D. 39; 58 N. W. 1; 26 L. R. A. 138; Klare v. State, 43 Ind. 483; Commonwealth v. Bloss, 116 Mass. 56; Johnston v. State, 23 Ohio St., 556; Commonwealth v. Hardman, 9 Gray, 133. In Kentucky a beer having less than two per cent. of alcohol is not intoxicating. Bowling Green v. McMullen (Ky.), 122 S. W. 823.

<sup>26</sup> Welsh v. State, 126 Ind. 71; 25 N. E. 883; 9 L. R. A. 664.

<sup>27</sup> State v. Houts, 36 Mo. App. 265; State v. Lemp, 16 Mo. 389; State v. Cloughly, 73 Iowa, 626; 35 N. W. 652.

<sup>28</sup> State v. Lewis, 86 Minn. 174; 90 N. W. 318; Malett v. Stevenson, 26 Conn. 428; Snider v. State, 81 Ga. 753; 7 S. E. 631; 12 Am. St. 350; State v. Wadsworth, 30 Conn. 55.

<sup>29</sup> Ryall v. State, 78 Ala. 410. See Holland v. Commonwealth, 7 Ky. L. Rep. 223.

<sup>30</sup> Rabe v. State, 39 Ark. 204 (six peaches to a gallon of liquor

tasting like alcohol). In Kentucky it is held that a sale of brandy peaches is not a sale of intoxicating liquors within the statute. Holland v. Commonwealth, 7 Ky. Law Rep. 223.

<sup>31</sup> Commonwealth v. Chappel, 116 Mass. 7; Hewitt v. People, 186 Ill. 336; 57 N. E. 1077; Johnston v. State, 23 Ohio St. 556; State v. Biddle, 54 N. H. 379.

<sup>32</sup> State v. Page, 66 Me. 418.

Of course, a statute may declare cider to be an intoxicating liquor. Commonwealth v. Dean, 14 Gray, 99; Commonwealth v. Smith, 102 Mass. 144.

<sup>33</sup> *In re* Intoxicating Liquor Cases, 25 Kan. 751; 37 Am. Rep. 284.

<sup>34</sup> Anderson v. Commonwealth, 9 Bush, 569.

<sup>35</sup> State v. Muncy, 28 W. Va. 494.

<sup>36</sup> Holcomb v. People, 49 Ill. App. 73; *In re* Intoxicating Liquor Cases, 25 Kan. 751; 37 Am. Rep. 284.

<sup>37</sup> Commonwealth v. Peckham, 2 Gray, 514; Snider v. State, 81

unless so shown by evidence.<sup>38</sup> *Lager beer* is so classed without proof of its intoxicating quality;<sup>39</sup> especially if a statute so classifies it.<sup>40</sup> *Paregoric* is not classed as an intoxicating liquor, but it may be shown that it is intoxicating,<sup>41</sup> and so may be *pop.*<sup>42</sup> *Rum* has always been classed as an intoxicating liquor.<sup>43</sup> *Spirituuous* liquors is not synonymous with intoxicating liquors;<sup>44</sup> and under an indictment charging a sale of spirituous liquor it cannot be shown the sale was of ale or beer and that ale or beer is intoxicating;<sup>45</sup> but under a charge of a sale of intoxicating liquor a sale of spirituous liquors may be shown; for spirituous liquors are intoxicating.<sup>46</sup> *Whisky* is an intoxicating liquor, which "is as well known as that fire will burn or water will drown."<sup>47</sup> *Wine* is judicially known as an intoxicating liquor.<sup>48</sup> Where a statute declares that "by the words

Ga. 753; 7 S. E. 631; 12 Am. St. 350; Dr. C. Bouvier Specialty Co. v. James (Ky.), 118 S. W. 381.

<sup>38</sup> Barnes v. State (Tex.), 44 S. W. 491.

<sup>39</sup> State v. Church, 6 S. D. 89; 60 N. W. 143; Rau v. People, 63 N. Y. 277; State v. Gravelin, 16 R. I. 407; 16 Atl. 914. *Contra*, People v. Schewe, 29 Hun, 122; People v. Zeiger, 6 Parker Civ. Rep. 355.

<sup>40</sup> State v. Rush, 13 R. I. 198; People v. O'Riely (N. Y.), 88 N. E. 1128; affirming 129 N. Y. App. Div. 522; 114 N. Y. Supp. 258; Commonwealth v. Chappel, 116 Mass. 7; Commonwealth v. Anthes, 12 Gray, 29.

<sup>41</sup> *In re* Intoxicating Liquor Cases, 25 Kan. 751; 37 Am. Rep. 284.

<sup>42</sup> Godfreidson v. People, 88 Ill. 284.

<sup>43</sup> Snider v. State, 81 Ga. 753; 7 S. E. 631; 12 Am. St. 350.

<sup>44</sup> Clifford v. State, 29 Wis. 327; Commonwealth v. Livermore,

4 Gray, 18; Allred v. State, 89 Ala. 112; 8 So. 56; Weisbrodt v. State, 50 Ohio St. 192; 33 N. E. 603.

<sup>45</sup> State v. Adams, 51 N. H. 568; Commonwealth v. Herrick, 6 Cush. 465.

<sup>46</sup> State v. Pritchard, 16 S. D. 166; 91 N. W. 583; Clifford v. State, 29 Wis. 327; State v. York, 74 N. H. 125; 65 Atl. 685.

The term "intoxicating liquors" and "spirituous liquors" when inserted in a license law have been held synonymous. State v. Jefferson County, 20 Fla. 425.

<sup>47</sup> Eagan v. State, 53 Ind. 162; *In re* Intoxicating Liquors, 25 Kan. 761; 37 Am. Rep. 284; Carmon v. State, 18 Ind. 450; Edgar v. State, 37 Ark. 219; State v. Lewis, 86 Minn. 374; 90 N. W. 318; Schlicht v. State, 56 Ind. 173; Snider v. State, 81 Ga. 753; 7 S. E. 631; 12 Am. St. 350.

<sup>48</sup> Wolf v. State, 59 Ark. 297; 27 S. W. 77; 43 Am. St. 34; Jackson v. State, 19 Ind. 312.

'spirit,' '*spirituous or intoxicating liquors*,' shall be intended all spirituous or intoxicating liquor and all mixed liquor, any part of which is spirituous or intoxicating, unless otherwise expressly declared," another statute noting it an offense to keep or sell spirituous liquors covers the keeping or sale of intoxicating *wines*.<sup>49</sup> But a liquor which does not contain alcohol is not an intoxicating liquor within the meaning of the liquor statutes; and it is therefore error to charge the jury that any liquor producing intoxication is intoxicating liquor within the meaning of the statutes.<sup>50</sup>

### Sec. 6. Intoxicating liquor—Amount necessary to produce intoxication.

It is immaterial how much liquor is necessary to produce intoxication to render it an "intoxicating liquor," if it is

<sup>49</sup> *Jones v. Surprise*, 64 N. H. 243; 9 Atl. 384; *State v. Frederickson*, 101 Me. 37; 63 Atl. 535.

Statutes frequently expressly include wine under the head of intoxicating liquors. *Commonwealth v. Dean*, 14 Gray, 99; *Commonwealth v. Chappel*, 116 Mass. 7; *State v. Packer*, 80 N. C. 439 (port wine); *State v. Houts*, 36 Mo. App. 265.

The Ohio Act of May 1, 1854, § 4, making it an offense to keep a place where intoxicating liquors are sold, does not cover a wine made of the pure juice of the grape cultivated in the state. *Johnston v. State*, 23 Ohio St. 553.

<sup>50</sup> *Thompson v. State*, (Tex. Cr. App.), 97 S. W. 316.

Diluted lager beer having 2.05 per cent. of alcohol has been held to be an intoxicating liquor. *Queen v. McLean*, 3 Can. Cr. Cas. 323. And so "blue ribbon beer." *Regina v. Walton*, 34 C. L. J. 746.

If a liquid is intoxicating its

name is immaterial. *James v. State*, 49 Tex. Civ. App. 334; 91 S. W. 227.

Proof that a particular liquor resembles intoxicating liquor is not proof that it is intoxicating liquor. *Regina v. Bennett*, 1 Ont. 405. But it may be on a charge of a sale of intoxicating liquor when sold at the bar of a saloon in the quantity usually purchased for ten cents per dram. *Dant v. State*, 83 Ind. 60.

In North Dakota intoxicating liquor is defined as "any kind of beverage whatsoever, which, retaining the alcoholic principle or other intoxicating qualities as a distinctive force, may be used as a beverage and become a substitute for the ordinary intoxicating drinks." This is held to include a drug having an alcoholic base that can be used for intoxication. *State v. Fargo Bottling Works Co.* (N. D.), 124 N. W. 387.



possible to drink enough to intoxicate a person of ordinary habits.<sup>51</sup> But the mere presence of alcohol in the article sold is not sufficient to make it an intoxicating liquor nor to bring it within the terms of a statute prohibiting the sale of intoxicating liquor;<sup>52</sup> and probably the true rule is, aside from statutory definitions, that it must produce intoxication when drank in reasonable quantities, such as the human stomach can hold. The name under which it is sold is immaterial.<sup>53</sup>

### Sec. 7. Intoxicating and spirituous liquors distinguished.

The word "intoxicating" includes a larger class of cases than "spirituous." They bear the relation to each other of genus and species; all spirituous liquors are intoxicating, but all intoxicating liquors are not spirituous.<sup>54</sup> The words are not synonymous. In common parlance spirituous liquor means distilled liquor, and such is its meaning when used in a penal statute. Fermented liquor, though intoxicating, is not spirituous. Accordingly it has been held that an indictment for unlawfully selling "spirituous and intoxicating liquors" is not supported by proof of sales of liquors which are intoxicating, but not spirituous, the court saying that, "A defendant indicted for stealing a black and white horse might as well be convicted, on proof that he stole either a black horse or a white one, by holding that he was properly charged with stealing a black horse and also a white one."<sup>55</sup>

<sup>51</sup> Wadsworth v. Dunnan, 98 Ala. 610; 13 So. 597. See Commissioners v. Taylor, 21 N. Y. 173; Prussia v. Guenther, 6 Abb. (N. S.) 230 ("sun smile"); State v. Kennard, 74 N. H. 76; 65 Atl. 376.

<sup>52</sup> Roberts v. State, 4 Ga. App. 207; 60 S. E. 1082.

<sup>53</sup> James v. State, 49 Tex. Civ. App. 334; 91 S. W. 227.

It is error not to so charge the jury. Ross v. State, 52 Tex. Civ. App. 604; 108 S. W. 375; Stoner

v. State, 5 Ga. App. 716; 63 S. E. 602 (burden).

Diluted lager beer having 2.05 per cent. of alcohol, has been held to be an intoxicating liquor. Queen v. McLean, 3 Can. Cr. Cas. 323. See Regina v. Walton, 34 C. L. J. 746 ("blue ribbon beer"); Commonwealth v. Burns, 38 Pa. Super. Ct. 514.

<sup>54</sup> Commonwealth v. Herrick, 60 Mass. (6 Cush.) 465.

<sup>55</sup> Commonwealth v. Grey, 68 Mass. (2 Gray) 501; Common-



### Sec. 8. Intoxicating and non-intoxicating—How distinguished.

In determining whether liquors containing alcohol are intoxicating or non-intoxicating, there is but one safe line of distinction to follow, and that is that those which contain so small a percentage of alcohol that the human stomach cannot contain a sufficient quantity of the liquor to produce intoxication, as is said to be the case with respect to spruce beer, ginger beer and some others, must be regarded as non-intoxicating, and those, whether obtained by distillation or fermentation, of which enough can be taken to produce inebriation, must be considered as intoxicating.<sup>56</sup>

### Sec. 9. Alcohol an intoxicant—Judicial notice.

Alcohol is the intoxicating principle, the basis of all intoxicating drinks. Whatever contains alcohol will, if a sufficient quantity be taken, produce intoxication.<sup>57</sup> That it is an intoxicant is as well known and established as any other physical fact. There is not one man in ten thousand who, if asked whether alcohol is intoxicating, would not reply immediately in the affirmative. It is not a purely scientific fact; it is a fact that every person of common

wealth v. Livermore, 70 Mass. (4 Gray) 501; Allred v. State, 89 Ala. 112; 8 So. 56.

Under an indictment for a sale of intoxicating liquor, a sale of spirituous liquors may be shown, for spirituous liquors are intoxicating. Clifford v. State, 29 Wis. 327; State v. York, 74 N. H. 125; 65 Atl. 685; State v. Pritchard, 16 S. Dak. 166; 91 N. W. 583. But under a charge of a sale of spirituous liquors it cannot be shown that the liquor sold was ale and that ale was intoxicating. State v. Adams, 51 N. H. 568;

Commonwealth v. Herrick, 6 Cush. 465.

In Washington a sale of liquor to a minor which is intoxicating is an offense, though not spirituous. State v. McCormick (Wash.), 105 Pac. 1037.

<sup>56</sup> Board v. Taylor, 21 N. Y. (7 Smith) 173; People v. Zeiger, 6 Parker's Crim. Cas. (N. Y.) 355; Bertrand v. State, 73 Miss. 51; 18 So. 545; United States v. Stubblefield, 40 Fed. 454; Russell v. Sloan, 33 Vt. 656.

<sup>57</sup> *In re* Intoxicating Liquor Cases, 25 Kan. 767; 37 Am. Rep. 284.

understanding knows. Indeed, it is a matter of common knowledge that alcohol is the intoxicating element of the various forms of beverages known as spirituous and intoxicating liquors. It is known by the people generally as well as they know that the sun produces heat, that summer is succeeded by winter, that flowers bloom in the spring, that the earth revolves, or that the blood circulates in the human system.<sup>58</sup> Yet notwithstanding this, it has been held that because alcohol is extensively used in the arts, employed in medicine as a solvent, in the preparation of tinctures and by painters in making varnish, a court cannot take judicial notice that it is an intoxicating beverage like whisky, nor that it is in common use for purposes of dissipation, nor even that it is capable of being applied to such an use.<sup>59</sup>

#### Sec. 10. Alcohol—Continued.

In the Century Dictionary the definition and description of "alcohol" is given, after giving the derivation of the word: "A liquid, ethyl hydrate,  $C H_5 O H$ , formed by the fermentation of aqueous sugar solutions, or by the destructive distillation of organic bodies, as wood. Absolute or pure alcohol is a colorless, mobile liquid, of a pleasant spirituous smell and burning taste, of specific gravity .793 at 60 degrees Fahrenheit, and boiling at 173 degrees Fahrenheit." "Different grades of alcohol are sometimes designated in trade, according to the source from which they are derived, as grain alcohol, prepared from maize or other grain; root alcohol, from potatoes and beets; moss alcohol, which is made in larger quantity from reindeer moss and Iceland moss in Norway, Sweden and Russia." "Proof spirit contains 49.3 per cent. by weight of pure alcohol, or 57.1 per cent. by volume. Under-proof and over-proof are designations of weaker and stronger solu-

<sup>58</sup> Snider v. State, 81 Ga. 753;  
70 S. E. 631; State v. Martin, 34  
Ark. 340.

<sup>59</sup> State v. Witt, 39 Ark. 216;  
Winn v. State, 43 Ark. 151. See,  
also, Bennett v. People, 30 Ill.  
389.

tions. Distilled liquors or ardent spirits, whisky, brandy, gin, etc., contain 40 to 50 per cent. of absolute alcohol, wines from 7 or 8 to 20, ale and porter from 5 to 7 and beer from 2 to 10.”<sup>60</sup> In common parlance, alcohol is not considered either ardent or vinous spirits, or liquor of any kind.<sup>61</sup> It is the essential element in all spirituous liquors, and is a limpid, colorless liquid. To the taste it is hot and pungent, and it has a slight and not disagreeable scent. Alcohol that can be drunk has but one source—fermentation of sugar and saccharine matter. It comes through fermentation of substances that contain sugar proper, or that contain starch, which may be turned into sugar. All substances that contain either sugar or starch, or both, will produce fermentation. It is a mistake to suppose, as many persons do, that it is really produced by distillation. It is produced only by fermentation, and the process of distillation simply serves to separate the spirit, the alcohol, from the mixture, whatever it may be, in which it exists.<sup>62</sup>

<sup>60</sup> This same authority defines methylic or methyl alcohol, or wood alcohol, to be “alcohol obtained by the destruction of wood. When pure it is a colorless mobile liquid (C. H<sub>3</sub> O. H.) with an odor and taste like ordinary alcohol (ethyl hydrate C<sub>2</sub> H<sub>5</sub> O. H.), though the commercial article has a strong pyroligneous smell. It is inflammable.” *Century Dictionary*, alcohol.

The Vermont statute, c. 187, prohibiting the sale of intoxicating liquor, is no defense to an action for the purchase price of methyl or wood alcohol; because such alcohol is a poison, which is not intended and cannot be used as a beverage. *Fabor v. Green*, 72 Vt. 117; 47 Atl. 391; *Roberts v. State*, 4 Ga. App. 207; 60 S. E. 1082.

<sup>61</sup> *State v. Martin*, 34 Ark. 340; *Bennett v. People*, 30 Ill. 389.

<sup>62</sup> *State v. Giersch*, 98 N. C. 720; 4 S. E. 193.

A statute forbidding the sale of intoxicating liquor to a minor without the written consent of his parents, is violated by a sale of alcohol to him without such consent. *Rucker v. State* (Tex.), 24 S. W. 902; *Shaw v. Carpenter*, 54 Vt. 155; 41 Am. Rep. 837; *Emerson v. State*, 43 Ark. 372; *Greiner-Kelly Drug Co. v. Truett*, 97 Tex. 377; 79 S. W. 4. But it has also been held that an indictment charging merely a sale of “alcohol,” does not charge a sale of intoxicating liquors, because “the court does not know judicially that it is an intoxicating beverage like whisky, nor that it is in common use for pur-

### Sec. 11. Fermented liquor—Cider.

Fermented liquor is a liquor produced by fermentation and not by distillation; and a statute regulating the sale

poses of dissipation, nor even that it is capable of being applied to such use. A bare charge of selling 'alcohol' discloses no criminal offense." *State v. Witt*, 39 Ark. 216. On the contrary, it is held that courts will take judicial notice that alcohol is intoxicating. *Snider v. State*, 81 Ga. 753; 7 S. E. 631; 12 Am. St. Rep. 350.

"Pure alcohol is not in common parlance, a spirituous liquor, although it is a basis of all spirituous liquors. But we are not prepared to say that 'selling pure alcohol' is not selling spirituous liquors." *Bennett v. People*, 30 Ill. 389. See, also, *State v. Haywood*, 20 W. Va. 18; 43 Am. Rep. 787; and *Lemly v. State*, 70 Miss. 241; 12 So. 22; 20 L. R. A. 645.

"Alcohol is the intoxicating principle—the basis—of all intoxicating drinks. Whatever contains alcohol will, if a sufficient quantity be taken, produce intoxication." *Intoxicating Liquor Cases*, 25 Kan. 751; 37 Am. Rep. 284.

"But it is a matter of common knowledge that alcohol is the intoxicating element in intoxicating liquor, that pure alcohol is not used as a beverage, and that all intoxicating liquors that are so used contain alcohol mixed with other things, particularly with water. Whisky is alcohol mixed with water and other elements, of which the alcohol alone is intoxicating." *Commonwealth v. Morgan*, 149 Mass. 314; 21 N. E. 369. See, also, *Eureka Vine-*

*gar Co. v. Gazette Printing Co.*, 35 Fed. 570; *United States v. Cohn*, 52 S. W. 38; 2 Ind. Ty. 474.

"It is a mistake to suppose that it [alcohol] is really produced by distillation. It is produced by fermentation, and the process of distillation simply serves to separate the spirit from the mixture in which it exists." *State v. Giersch*, 98 N. C. 720; 4 S. E. 193.

• As used in the Tariff Act of October 1, 1890, par. 8, § 1, the term "alcoholic compound" includes a preparation of cherry juice with the watery parts eliminated and seventeen per cent. of alcohol added, the preparation being thicker, darker, heavier and stronger than the natural juice. *Smith v. Rheimstrom*, 65 Fed. 989; 13 C. C. A. 261. So it includes a compound composed principally of raisins and prunes crushed in water and fermented, to which, after fermentation, a mixture of alcohol is added to preserve the compound. *Mackie v. Erhardt*, 59 Fed. 771. The immersion of aconite and belladonna leaves and fresh nuts of bryonia in their natural condition in alcohol for preservation, does not make the mixture an "alcoholic compound" within 30 U. S. Stat. 151. *Boericke & Runyan Co. v. United States*, 126 Fed. 1018.

It cannot be said as a matter of law that a liquor containing only three per cent. or more of



of spirituous liquors has no reference to sale of fermented liquors,<sup>63</sup> but one regulating the sale of fermented liquors does include the sale of malt liquors.<sup>64</sup> And regulating the sale of malt, spirituous, brewed, fermented and vinous liquors covers a sale of fermented or hard cider.<sup>65</sup> Fermented beer includes spruce beer, ginger beer and molasses beer,<sup>66</sup> and the ordinary beer of commerce.<sup>67</sup>

## Sec. 12. Compound liquors—Mixtures.

In Kansas a statute defined intoxicating liquors to be "all liquors mentioned in Section 1 of this act [*e. g.*, spirituous, malt, vinous, fermented and other intoxicating liquors] and all other liquors or mixtures thereof, by whatever name called, that will produce intoxication." Under this statute, speaking of compounds, the Supreme Court of that State said: "If the compound or preparation be such that the distinctive character and effect of intoxicating liquor is gone, that to use it as an intoxicating beverage is practically impossible by reason of the other ingredients, it is not within the statute. The mere presence of alcohol does not necessarily bring the article within the prohibition. The influence of alcohol may be counteracted

alcohol is intoxicating. *State v. Picke*, 98 Me. 348; 56 Atl. 1052.

It is not error to refuse to charge the jury that a liquor is not intoxicating, which, if drank in "reasonable quantities" will not intoxicate, because what is a reasonable quantity is left undefined, it not being equivalent to such quantity as may be practically drank. *Murry v. State*, 46 Tex. Cr. Rep. 128; 79 S. W. 568; *Decker v. State*, 39 Tex. Cr. Rep. 20; 44 S. W. 845.

The word "liquor," associated with the word "drinks" in a statute forbidding the sale of intoxicating liquor, has been held to mean an alcoholic beverage. *Pen-*

*nell v. State (Wis.)*, 123 N. W. 115.

A statute allowing a sale of "pure alcohol" in dry territory, does not allow a sale of "whisky." *Vardeman v. State*, 108 Ga. 774; 33 S. E. 643.

<sup>63</sup> *State v. Adams*, 51 N. H. 568.

<sup>64</sup> *State v. Gill*, 89 Minn. 502; 95 N. W. 449.

<sup>65</sup> *People v. Foster*, 64 Mich. 715; 31 N. W. 596; *People v. Adams*, 95 Mich. 541; 55 N. W. 461. See *Commonwealth v. Smith*, 102 Mass. 144 (by statute).

<sup>66</sup> *State v. Biddle*, 54 N. H. 379.

<sup>67</sup> *State v. Watts*, 101 Mo. App. 658; 74 S. W. 377.



by the other elements, and the compound be strictly and fairly only a medicine.<sup>68</sup> On the other hand the intoxicating liquor remains as a distinctive force in the compound, and such compound is reasonably liable to be used as an intoxicating beverage, it is within the statute, and this though it contain many other ingredients and ingredients of an independent and beneficial force in counteracting disease or strengthening the system. Intoxicating liquors or mixtures thereof: This, reasonably construed, means liquors which will intoxicate and which are commonly used as beverages for such purposes, and also any mixtures of such liquors as, retaining their intoxicating qualities, it may fairly be presumed, may be used as a beverage and become a substitute for the ordinary intoxicating drinks. Whether any particular compound or preparation of this class is then within or without the statute is a question of fact, to be established by the testimony and determined by the jury. The courts may not say as a matter of law that the presence of a certain percentage of alcohol brings the compound within the prohibition, or that any particular ingredient does or does not destroy the intoxicating influence of the alcohol or prevent it from ever becoming an intoxicating beverage. Of course, the larger the percentage of alcohol and the more potent the other ingredients, the more probable does it fall within or without the statute; but in each case the question is one of fact, and to be settled as other questions of fact."<sup>69</sup>

<sup>68</sup> It is a well known fact that some men are so far sunk in habitual drunkenness—old "topers" frequently called—that they will readily drink cologne and other like substances and medicines for the purpose of bringing on themselves a state of intoxication. If the vendor of these articles should know that the purchaser was addicted to their use, was an habitual drunkard (and was buying them for that purpose), would he

not be guilty of the offense of selling intoxicating liquor to an habitual drunkard? See *State v. Kezer*, 74 Vt. 50; 52 Atl. 116.

<sup>69</sup> *In re* Intoxicating Liquor Cases, 25 Kan. 751; 37 Am. Rep. 284, citing *State v. Laffer*, 38 Iowa, 426; *Russell v. Sloan*, 33 Vt. 659; *Commonwealth v. Ramsdell*, 130 Mass. 68; 24 Alb. L. Jr. 414; *James v. State*, 21 Tex. App. 353; 17 S. W. 422; *Parrott v. Commonwealth*, 6 Ky. L. Rep.

### Sec. 13. Distilled liquor.

The term "distilled liquor" is never applied to wine, ale or beer or other fermented or malt liquors. It applies to such liquors as are obtained by distillation, as whisky, brandy, gin, rum, the cordials. In the revenue laws of the United States it applies to all spirituous liquors whether rectified or not.<sup>70</sup>

### Sec. 14. Spirit or spirits—Judicial notice.

The term "spirit" or "spirits" has a general meaning, as applied to fluids, mostly of a lighter character than ordinary water, obtained, but not produced, by distillation. But as applied particularly to liquors, they signify an inflammable liquor produced by distillation, the essence, the extract, the purest solution, the highly rectified spirit, the pure alcohol contained in them. The spirits of liquors is really the alcohol in them; it is this characteristic, this essential element, that makes them spirituous—that gives to all liquors of whatever kind, their intoxicating quality and effect. A court will take judicial notice that such a liquor is intoxicating.<sup>71</sup>

221; *United States v. Stubblefield*, 40 Fed. 454; *Gastorf v. State*, 39 Ark. 450; *Wadsworth v. Dusman*, 98 Ala. 610; 13 So. 597; *State v. Lillard*, 78 Mo. 136; *State v. Gray*, 61 Conn. 39; 22 Atl. 675; *Howell v. State*, 71 Ga. 224; 51 Am. Rep. 259; *King v. State*, 58 Miss. 737; 38 Am. Rep. 344; *State v. Laffer*, 38 Iowa, 422; *Carl v. State*, 87 Ala. 17; 6 So. 118; 4 L. R. A. 380; *State v. Percy*, 72 N. J. L. 375; 61 Atl. 148; affirmed 73 N. J. L. 554; 64 Atl. 113.

A statute forbade the sale, without a license, of "wine, ardent spirits, malt liquors, or any mixtures thereof," and also provided that "all mixtures, preparations

and liquors (except pure apple cider) which will produce intoxication, shall be deemed ardent spirits within the meaning of its provisions. An indictment based upon this statute alleging a sale of "intoxicating liquors and mixtures thereof," was held sufficient. *Fletcher v. Commonwealth*, 106 Va. 840; 56 S. E. 149; *Rose v. Commonwealth*, 106 Va. 850; 56 S. E. 151.

<sup>70</sup> *United States v. Anthony*, 14 Blatchf. 92.

<sup>71</sup> *State v. More*, 5 Blackf. 118; *State v. Giersch*, 98 N. C. 720; 4 S. E. 193.

*Spirits*. "A strong alcoholic liquor, in a restricted sense, such a liquor variously treated in the

### Sec. 15. Spirituous liquors.

It has been said of spirituous liquors that they "technically and strictly include all liquors which contain alcohol in appreciable quantities. In this sense vinous and malt liquors are also spirituous, in that each contains spirits of alcohol; but in ordinary acceptation of the term, 'spirituous liquors,' imports distilled liquors, and in a statute requiring a license to sell spirituous, vinous or malt liquors the term is employed in its ordinary sense, as indicated by the use of the safer terms 'vinous' and 'malt,' which have no office to perform unless the phrase 'spirituous liquors' is confined to the definition which it has in common parlance, denoting liquids which are the results of distillation."<sup>72</sup> The word "Spirituous" means containing and partaking of spirit and having the refined, strong, ardent quality of alcohol in greater or less degree. It follows that the phrase, spirituous liquors, implies such liquors as contain alcohol, and thus have spirit, no matter by what particular name denominated, or in what liquid form or combination they may appear. Hence also, distilled liquors, fermented liquors and vinous liquors are all, alike, spirituous liquors. These liquors respectively may have different degrees of spirit in point of fineness and strength. Distilled liquors may be stronger or weaker according to quantity and quality of the alcohol in them, and so of the other kinds mentioned.<sup>73</sup>

process of distillation, and used as a beverage or medicinally, as brandy, whisky and gin; in the plural, any strong distilled liquor." Century Dictionary.

<sup>72</sup> Blankenship v. State, 93 Ga. 814; 21 S. E. 130; State v. Giersch, 98 N. C. 720; 4 S. E. 193.

"Spirituous liquor" mixed with other ingredients, even if the latter be not known, is still "spirituous liquor." Commonwealth v. Bathrick, 6 Cush. 247.

<sup>73</sup> State v. Giersch, 98 N. C. 720; 4 S. E. 193.

A statute making the sale of spirituous, vinous or malt liquors without a license an offense does not apply to non-intoxicating liquors. Hardwick v. State, 55 Tex. Cr. App. 140; 114 S. W. 832.

*Sweet spirits of nitre* are not spirits within the meaning of a statute forbidding the sale of spirits, although containing a very high percentage of alcohol. Nor is *sal volatile* and most kinds

## Sec. 16. Spirituous and intoxicating liquors distinguished.

All spirituous liquors are considered intoxicating, as gin, whisky, rum (Marks v. State [Ala.] 48 So. 864); but all

of *varnish*. Attorney General v. Bailey, 1 Exch. 281.

"Spiritous" liquor and "spirituous" liquor is the same thing. Commonwealth v. Burke, 15 Gray, 408. And a charge of a sale of "spiritous" liquor is the same as a charge of a sale of "spirituous" liquor. Brumley v. State, 11 Tex. App. 114; White v. Manning, 46 Tex. Civ. App. 298; 102 S. W. 1160. So an indictment is not bad which charges a sale of "spirital" liquors. State v. Clark, 3 Ind. 451.

"Spirits are liquors manufactured by distillation. The class does not include ale, as it is produced by fermentation." People v. Crilley, 20 Barb. 246. Nor wine. State v. Moore, 5 Blackf. 118. Nor spirits of niter under 6 Geo. IV., Chap. 80, § 132. Attorney General v. Bailey, 1 Welsh H. & G. 281. But in the reciprocity agreement between the United States and France the phrase "brandies and other spirits" is included absinthe. United States v. Luyties, 124 Fed. 977.

And it has been held that an indictment charging a sale of "spirituous liquors" is sufficiently certain without specifying the kind of liquor sold. State v. Witt, 39 Ark. 216; State v. Blaisdell, 33 N. H. 388. And this is true under a statute prohibiting a sale without a license of brandy, rum, or other spirituous liquors. Commonwealth v. Odin,

23 Pick. 275. Under a statute forbidding a sale of "spirituous liquors," a charge of a sale of rum, brandy and gin is sufficient without alleging they are spirituous liquors, for the former are included in the latter. State v. Munger, 15 Vt. 290. See, also, Marks v. State (Ala.), 48 So. 864. And in an indictment charging an unlawful sale of "spirituous liquors," it is not necessary to aver that it was intoxicating. State v. Reily, 66 N. J. L. 399; 52 Atl. 1005. But see Commonwealth v. Elos, 116 Mass. 56.

Under a statute forbidding the sale of "spirituous liquor," a charge of a sale of "intoxicating liquor" cannot be made without alleging that the liquor sold was "spirituous liquor." All spirituous liquors are intoxicating, but all intoxicating liquors are not spirituous. Commonwealth v. Herrick, 6 Cush. 465; *In re Kwong Wo*, 2 B. C. 336; Commonwealth v. Grey, 2 Gray, 501; 61 Am. Dec. 476; Commonwealth v. Livermore, 4 Gray, 18; Clifford v. State, 29 Wis. 327. But under a statute forbidding the sale on Sunday of "spirituous liquors," it has been held that it comprehends a sale of any alcoholic or intoxicating liquor, whether the alcohol is separated by distillation or developed by fermentation. State v. Sharrer, 2 Cold. 323; but see Gooch v. Commonwealth, 8 Ky.



intoxicating liquors are not spirituous liquors. Thus ale, beer and wine are not spirituous, and ale and beer are intoxicating,

L. Rep. (abstract) 437; and *Marks v. State* (Ala.), 48 So. 564. And their use in a license to sell "spirituous liquors" and "intoxicating liquors" is a synonymous use. *State v. Jefferson*, 20 Fla. 425.

The term "spirituous liquor" does not include alcohol in which gum camphor has been dissolved. *State v. Haymond*, 20 W. Va. 18; 43 Am. Rep. 787.

"Ale" is not a spirituous liquor; and proof of a sale of ale will not justify a conviction for selling spirituous liquor. *Fleming v. New Brunswick*, 41 N. J. L. 231; *Walker v. Prescott*, 44 N. H. 511; *Gooch v. Commonwealth*, 8 Ky. Law Rep. (abstract) 437. The term "spirituous liquor" means distilled and not fermented liquor, and, therefore, does not include "beer." *Fritz v. State*, 1 Baxt. 15; *Sarlls v. United States*, 152 U. S. 570; 38 L. Ed. 556; 14 Sup. Ct. Rep. 720; reversing *In re McDonough*, 49 Fed. 360; *United States v. Ellis*, 51 Fed. 808; *State v. Quinlan*, 40 Minn. 55; 41 N. W. 299; *Gnadinger v. Commonwealth*, 4 Ky. L. Rep. 514; *King v. Commonwealth*, 4 Fy. Law Rep. 623. But a statute forbidding a sale on Sunday of "spirituous and strong liquors" includes lager beer if it be proved to be intoxicating. *Dillman v. People*, 4 N. Y. Wkly. Dig. 251; and ale, *Cayuga County v. Freeoff*, 17 How. Prac. 442; *Nevin v. Ladue*, 3 Denio, 43; *Tompkins County v. Taylor*, 19 How. Prac. 259; *Tomp-*

*kins County v. Taylor*, 21 N. Y. 173; *Schwab v. People*, 4 Hun, 520; and a complaint charging a sale of "spirituous liquor, to-wit, beer," is equivalent to an allegation that the beer is a "spirituous liquor." *State v. Brown*, 51 Conn. 1.

Alleging a sale of "brandy" brings an indictment within a statute forbidding a sale of spirituous liquors. *State v. Munger*, 15 Vt. 290.

The term spirituous liquor does not cover "cider." *State v. Oliver*, 26 W. Va. 422; 53 Am. Rep. 79; *Allred v. State*, 89 Ala. 112; 8 So. 56. But it may be mixed with other spirituous liquor. *Commonwealth v. Reyburg*, 122 Pa. St. 299; 16 Atl. 351; 2 L. R. A. 415.

So "spirituous liquor," mixed with water and sugar, is still a spirituous liquor. *Commonwealth v. White*, 10 Met. 14; *Wall v. State*, 78 Ala. 417; and likewise peppermint essence containing fifty per cent. of alcohol, which is purchased, to the vendor's knowledge, to be used as a beverage. *State v. Kezer*, 74 Vt. 50; 52 Atl. 116; and so a sale of peaches and cherries preserved in brandy. *Ryall v. State*, 78 Ala. 410.

"Cordial" is a spirituous liquor. *State v. Bennett*, 3 Har. (Del.) 565. This case held, however, that the sale of Godfrey's Cordial was not forbidden by a statute prohibiting a sale of spirituous liquor.

"Spirituous liquors" does not



yet not spirituous liquors, and this is true of wine. "In ordinary acceptance of the term 'spirituous liquors' imports dis-

include "fermented liquors." *Klare v. State*, 43 Ind. 483; *State v. Moore*, 5 Blackf. 118; *Caswell v. State*, 2 Humph. 202; (*Contra* under North Carolina Code, §§ 3110, 3116. *State v. Giersch*, 98 N. C. 720; 4 S. E. 193); *State v. Adams*, 51 N. H. 568; *State v. Thompson*, 20 W. Va. 674; *Tinker v. State*, 90 Ala. 647; 8 So. 855. A license to sell wine, beer, ale, cider, and other fermented liquors will not protect the holder of it in selling "spirituous liquors." *Commonwealth v. Thayer*, 5 Met. 246. See also *Gooch v. Commonwealth*, 8 Ky. L. Rep. (abstract) 437.

Under a statute forbidding a sale of "spirituous liquors" without a license, an indictment charging a sale of "gin" without a license is sufficient. *State v. Munger*, 15 Vt. 290.

Under an indictment charging a sale of "spirituous liquors," a conviction may be had on proof of a sale of "rum." *Commonwealth v. Odlin*, 23 Pick. 275; and an indictment charging a sale of rum is good under a statute forbidding a sale of "spirituous liquors." *State v. Munger*, 15 Vt. 290.

A statute requiring a license for sale of wine, brandy, rum, or other spirituous liquors, covers a sale of "whisky." *People v. Webster*, 2 Doug. (Mich.) 92; *Frese v. State*, 23 Fla. 267; 2 So. 1; *Wall v. State*, 78 Ala. 718; *State v. Murphy*, 23 N. W. 390; 48 Pac. 628; *Marks v. State* (Ala.), 48 So. 824.

Whether or not "wine" is a spirituous liquor has been held to be a question for the jury. *State v. Stewart*, 31 Me. 516; *State v. Lowry*, 74 N. C. 121; but the rule is that "spirituous liquors" do not include wines. *State v. Oliver*, 26 W. Va. 422; 53 Am. Rep. 79; *Caswell v. State*, 2 Humph. 402; *State v. Moore*, 5 Blackf. 118; *State v. Nash*, 97 N. C. 514; 2 S. E. 645. But in New Hampshire the provision in the General Laws, Chap. 109, § 13, prohibiting the sale of spirituous liquors is construed to include a sale of intoxicating wine. *Jones v. Surprise*, 64 N. H. 243; 9 Atl. 384. This case is in line with the cases from Maine and North Carolina cited just above.

A statute forbidding the sale of "spirituous liquors" covers a sale of "bitters" capable of producing intoxication. *Prinzel v. State*, 35 Tex. Cr. Rep. 274; 33 S. W. 350; and also medicinal preparations that will produce a like result. *Chapman v. State*, 100 Ga. 311; 27 S. E. 789; *State v. Gray*, 61 Conn. 39; 22 Atl. Rep. 675; *State v. Bennett*, 3 Har. (Del.) 565.

It has been held that the term "ardent spirits" does not include alcohol. *State v. Martin*, 34 Ark. 340; and the Federal statute (Rev. Stat., § 2139), forbidding the introduction of ardent spirits or wines into the Indian country, has been held not to include lager beer. *Sarlls v. United States*, 152 U. S. 570; 38 L. Ed. 556; 14 Sup. Ct. 720, reversing *United States*

tilled liquors, and such is the sense in which it is used in the statute. Spirituous liquors may be intoxicating, but the term does not include all intoxicating liquors, beverages, or other bitters. A given liquor may be in a high degree intoxicating, and yet not be 'spirituous liquor' within the sense of the statute. Fermented or hard cider is an illustration. Cane beer is another."<sup>74</sup>

### Sec. 17 Wine as an intoxicating liquor.

The word "vinous" is derived from the Latin *vinum*, wine, and so named because made from the fruit of the vine.

v. Ellis, 51 Fed. Rep. 808. See *In re McDonough*, 49 Fed. 360. In *Sarlls v. United States*, 152 U. S. 570; 38 L. Ed. 556; 14 Sup. Ct. Rep. 720, it is held that the term is applied to liquors obtained by distillation, such as rum, gin, whisky or brandy. A statute forbidding the sale, without a license, of wine, gin, rum, brandy, whisky, cider spirits, and other kinds of "ardent spirits," means the kind of spirits named in the statute. Those words were construed to be a general term, the meaning of which was designated by a particular naming of the spirits intended to be included in the words used; and in an indictment, therefore, for selling ardent spirits, the State must prove that the defendant sold one of the samples named in the statute. *State v. Townley*, 3 Har. (N. J.) 311.

The words "spirituous liquors" imply that the beverage is composed, in part or wholly, of alcohol extracted by distillation. It does not apply to a liquor whose alcoholic properties are latent and exist substantially in the same form as in the original material from which the liquor was made.

*State v. Adams*, 51 N. H. 568.

<sup>74</sup> *Allred v. State*, 89 Ala. 112; 8 So. 56.

Under a statute forbidding the sale of "spirituous liquors," a charge of a sale of "intoxicating liquors" cannot be made without alleging the liquor sold was "spirituous liquor." *Commonwealth v. Herrick*, 6 Cush. 465; *Commonwealth v. Grey*, 2 Gray, 501; 61 Am. Dec. 476; *Commonwealth v. Livermore*, 4 Gray, 18; *Clifford v. State*, 29 Wis. 327; and proof of a sale of ale will not authorize a conviction under a charge of selling "spirituous liquors." *Fleming v. New Brunswick*, 41 N. J. L. 231; *Walker v. Prescott*, 44 N. H. 511; and so as to beer. *Fritz v. State*, 1 Baxt. 15; *Sarlls v. United States*, 152 U. S. 570; 38 L. Ed. 556; 14 Sup. Ct. Rep. 720; *In re McDonough*, 49 Fed. 360; *State v. Quinlan*, 40 Minn. 55; 41 N. W. 299; *Guadinger v. Commonwealth*, 4 Ky. L. Rep. 514; *King v. Commonwealth*, 4 Fy. L. Rep. 623; *Klare v. State*, 43 Ind. 483; *State v. Moore*, 5 Blackf. 118; *Caswell v. State*, 2 Humph. 202; *Commonwealth v. Thayer*, 5 Met. 246.

*Ex vi termini.* The phrase means a wine made from the fermented juice of the grape. In the second place, wine may mean a fermented juice of certain fruits resembling in many respects the wine obtained from grapes, but distinguished therefrom by the source whence it is derived, as ginger wine, gooseberry wine, currant wine, etc.<sup>75</sup> Wine is included in the term "intoxicating liquors" where a statute by that phrase makes it a criminal offense to sell without defining what are intoxicating liquors; and the same is true under a statute against selling "spirituous and intoxicating" liquors. In either of such cases it is sufficient on the part of the prosecution to prove that there was an unlawful sale of wine. If, in fact, the liquor sold was not intoxicating, that is a matter of defense and must be established by sufficient evidence.<sup>76</sup> The courts will not take judicial notice that wine is not an intoxicating liquor.<sup>77</sup> If a statute provides that spirituous liquors shall include "intoxicating liquors" also, "and all mixed liquors, any part of which is \* \* \* intoxicating," then intoxicating wines are included.<sup>78</sup>

<sup>75</sup> Alder v. State, 55 Ala. 16; Allred v. State, 89 Ala. 112; 8 So. 56; Feldman v. City of Morrison, 1 Ill. App. 460; Harris v. Jenness, 9 C. B. (N. S.) 152; 30 L. J. M. C. 183; 9 W. R. 36; 3 L. T. (N. S.) 408; 22 J. P. 807. See definitions under Pure Food Laws, § 841.

<sup>76</sup> Jones v. Surprise, 64 N. H. 243; 9 Atl. 384; Worley v. Spurgeon, 38 Ia. 467; Higgins v. Rinker, 47 Tex. 393.

<sup>77</sup> Jackson v. State, 19 Ind. 312.

Wine is still wine though some water be added. Read v. Bishop of Lincoln [1892], App. Cas. at p. 656; see Scott v. Gilmore, 3 Taunt. 226; and also Harris v. Jenness, 9 C. B. (N. S.) 152; 22 J. P. 807; 30 L. J. M. C. 183; 9 W. R. 36; 3 L. T. (N. S.) 408, where

British wine which contains a large proportion of alcohol is treated as fermented wine.

<sup>78</sup> Jones v. Surprise, 64 N. H. 243; 9 Atl. 384.

A statute prohibiting the sale of "vinous liquor" covers a sale of domestic non-intoxicating wine. Hatfield v. Commonwealth, 120 Pa. St. 395; 14 Atl. 151.

For a list of names of the several kinds of wines, their classification, the country of their origin and characteristics, see the word "wine" in the Standard Dictionary. A list of one hundred and sixty-three names of wines are given, and yet it is said not to be complete. See, also, Wines of the World, by H. Vizetelly [W. L. & Co., 1875].

**Sec. 18. Wine—Intoxicating quality—When not a question.**

If it be provided that "spirituous, vinous, malt and brewed liquors" shall not be sold within a certain district, and the statute is violated, upon the trial of the vendor for its violation, he may not, in support of his plea of not guilty, show by evidence that what he sold was domestic wine, and that it was not intoxicating, it being immaterial in such case whether the liquor sold by the defendant was intoxicating or not, or how much alcohol it contained.<sup>79</sup>

**Sec. 19. Wine as a spirituous or fermented liquor.**

Notwithstanding what has been elsewhere said, whether wine is a spirituous liquor, does not appear to be well established. As early as 1839 the Supreme Court of Indiana said: "Spirit is the name of an inflammable liquor produced by distillation. Wine is the fermented juice of the grape or a preparation of other vegetables by fermentation. We cannot so far confound the signification of these general terms as to call wine a spirituous liquor."<sup>80</sup> And to the same effect has been the ruling of the Supreme Court of Tennessee,<sup>81</sup> but in North Carolina the ruling has been otherwise. In that State the court held that under a statute which prohibited the sale of "spirituous liquors" that beer and wine were included. The court said: "We know from common observation and knowledge, and it is a generally admitted fact that beer and wine contain alcohol, and generally in such quantity and degree as to produce intoxication. These liquors are, therefore, spirituous, and obviously come within the meaning and are embraced by the words 'spirituous liquors' as used in the statute, for the reason that the word 'spirituous' means containing, partaking of spirit, having the refined, strong, ardent quality of alcohol in a greater or less degree."<sup>82</sup> In Maine it has

<sup>79</sup> Hatfield v. Commonwealth, 120 Pa. St. 395; 14 Atl. 151.

<sup>80</sup> State v. Moore, 5 Blackf. (Ind.) 118; Adler v. State, 55 Ala. 16; Worley v. Spurgeon, 38 Iowa, 467; Allred v. State, 89 Ala. 112; 8 So. 56.

<sup>81</sup> Caswell v. State, 21 Tenn. 402.

<sup>82</sup> State v. Giersch, 98 N. C. 720; 4 S. E. 193. See, also, State v. Sharrar, 2 Cold. 323. The last case is overruled in Fritz v. State, 1 Baxt. 15.

been held that whether wine is a spirituous liquor, is a question of fact, a jury matter, not a question of law.<sup>83</sup> The general rule is accepted by nearly all the courts, that wine is neither a spirituous nor a fermented liquor.<sup>84</sup>

## Sec. 20. Wine, when a question of fact—Burden of proof.

Under a statute which provides that it shall not extend to the manufacture and sale of wine made from fruit grown in the State, it has been held that the question whether wine is an intoxicating liquor, is one of fact to be determined by the jury and not one of law of which judicial notice is to be taken by the court. In such case the burden of showing that the wine so made from fruit grown in the State is upon the defendant or the party who would be exempted from liability.<sup>85</sup>

## Sec. 21. Port wine—An intoxicant.

Port wine is a dark purple wine, having its origin in Portugal. It takes its name from Oporto, the chief place

<sup>83</sup> State v. Stewart, 31 Me. 515.

<sup>84</sup> Commonwealth v. Grey, 2 Gray, 501; 61 Am. Dec. 476; State v. Thompson, 20 W. Va. 674; Commonwealth v. Jordan, 18 Pick. 228; Clifford v. State, 29 Wis. 327; Commonwealth v. Livermore, 4 Gray, 18; Attorney General v. Bailey, 1 Exch. 281.

<sup>85</sup> State v. Stewart, 3 Me. 515; State v. Page, 66 Me. 418; State v. Stapp, 29 Ia. 551; Worley v. Spurgeon, 38 Ia. 465.

"Without endeavoring to trace it any further back, we may say that it is derived from the Latin *vinum*, wine, and so named because made from the fruit of the vine. Wine is defined in Worcester's Dictionary, after the statement of its derivation, and after reference to the word in the language of many nations, as mean-

ing, first, the fermented juice of the grape; second, the fermented juice of certain fruits resembling in many respects the wine obtained from grapes, but distinguished therefrom by naming the source whence it is derived, as ginger wine, gooseberry wine, currant wine, etc. Nothing is said about apple wine or pear wine, unless they are included in the 'etc.' \* \* \* If the statute might include among the 'vinous fluids' those which come from the juice of fruits which grow on vines and bushes, and are named wine, we do not think it should be construed so liberally as to apply the term 'vinous' to the juice of fruits which grow on trees." Feldman v. Morrison, 1 Bradw. (Ill. App.) 460.



of its manufacture. It is not a spirituous liquor.<sup>86</sup> After proof of a sale of liquor and that the liquor was port wine, a jury may rightfully find that the liquor was an intoxicating liquor. Everybody who knows what port wine is knows that it is a liquor and also that it is intoxicating. A jury may so find as to matters of common knowledge and experience without any testimony as to such matters.<sup>87</sup>

### **Sec. 22. Blackberry wine as an intoxicant.**

It is a matter of common knowledge that when first pressed from the berries blackberry wine contains no alcohol. After it has remained a certain time, the length of which depends upon the temperature and perhaps on other causes, it will, especially if the berries were fully ripe, or if sugar has been added, undergo a fermentation by which alcohol is generated; and after a certain longer time it may undergo another fermentation in which the alcohol will be converted into vinegar. So, whether at any time alcohol is present is a question of fact to be determined by some tests known to scientific men or by evidence of its effects in producing intoxication and the like, and it is not a question of law or a matter of which a court will take judicial notice.<sup>88</sup>

### **Sec. 23. Champagne wine, when included as a liquor.**

Under a statute forbidding the sale of "liquors" in certain quantities, it has been held that under a proper construction of the statute, both in letter and spirit, the term "liquors" was broad enough in its meaning to embrace champagne wine.<sup>89</sup>

<sup>86</sup> But see previous sections.

<sup>87</sup> *State v. Packer*, 80 N. C. 439; *State v. Moore*, 5 Blackf. (Ind.) 118.

<sup>88</sup> *State v. Lowry*, 74 N. C. 121; *Lord v. State*, 104 Ga. 726; 30 S. E. 949.

<sup>89</sup> *Kizer v. Rundleman*, 50 N. C. 428.

Champagne wine takes the name from a district of France where it was first manufactured, and where the best champagne is to this day made. *Century Dictionary*, wine.

**Sec. 24. Sherry wine.**

A license to sell "sweets and made wine" in England does not cover a sale of "sherry" or "Best Sherry, British," for sherry is ranked a foreign wine.<sup>90</sup>

**Sec. 25. Spirits and wine distinguished—Aqua vitæ.**

Spirits are distilled liquors. Wine is fermented liquor. This distinction exists not only in common parlance, but is recognized by chemists and philologists. The word "spirit" is derived from the Latin word "*spiritus*," one meaning of which is life. The discovery of the art of distillation belongs to the alchemists, who made it in the course of their investigation after what they called *elixir vitæ*, a liquid the discovery of which was to render man immortal. When, by distillation, they had procured pure alcohol, judging from its effects, they for a while were deluded by the hope that the great secret had been discovered, and called it *aqua vitæ*—water of life. Brandy is so called by the French *eau de vie*. The English adopting the name, have taken the word "*spiritus*" as the root from which to form it instead of the more common word "*vitæ*." Therefore, the words "spirituous liquors" embrace all those which are procured by distillation, but not those procured by fermentation.<sup>91</sup>

**Sec. 26. Malt liquor not included in "vinous and spirituous."**

A vinous liquor is a liquor made from the juice of the grape, and the general meaning of spirituous liquor is that of a liquor which is in whole or in part composed of alcohol extracted by distillation. Any liquor in which vinous or spirituous liquor, as thus defined by our decisions, are present as a predominating element, regardless of the name

<sup>90</sup> Richards v. Banks, 58 L. T. 634; 52 J. P. 23.

"Sherry" is a corruption of the Spanish name "Jerez," a city in Andalusia, Spain, where this wine

was first made, the greatest sherry wine market in the world.

<sup>91</sup> Laswell v. State, 21 Tenn. (2 Humph.) 402.

or other ingredients of the mixture, is embraced by the words "vinous or spirituous liquors." Malt liquor has neither vinous nor spirituous liquors as an ingredient in it. It has alcohol, produced by fermentation, through which it must pass before it becomes a beverage. "Vinous liquor," or "spirituous liquor" and "malt liquor" are not synonymous terms, but each refer to a liquor separate and distinct from each other. Therefore a statute which prohibits the sale or giving away of "vinous or spirituous liquors" does not include malt liquors, and no conviction can be had thereunder for a sale of such liquor, where it is not shown that vinous or spirituous liquors were mixed with it.<sup>92</sup>

### Sec. 27. Whisky an intoxicant—How made—Judicial notice.

Every person of common intelligence knows that whisky is an intoxicating liquor, and the courts will take judicial notice of that fact.<sup>93</sup> Hence, an indictment which charges an unlawful sale of whisky is sufficient, although it does not state that it was intoxicating nor that it was a "fermented or distilled" liquor. The courts are presumed to be acquainted with the meaning of the words of the English language, and must take notice of the fact that whisky is a spirit distilled from grain, such as maize, wheat and rye.<sup>94</sup>

<sup>92</sup> King v. State, 81 Ala. 92; 8 So. 159; Pennell v. State (Wis.), 123 N. W. 114.

A statute making it an offense to sell malt liquors without a license does not cover a sale of non-intoxicating malt liquors. Hardwick v. State, 55 Tex. Civ. App. 140; 114 S. W. 832.

"Pop" has been held to be a malted liquor, but under evidence showing that it was a malt liquor and intoxicating if drank in sufficient quantities. Godfriedson v. People, 88 Ill. 284.

<sup>93</sup> Edgar v. State, 37 Ark. 219; Carmon v. State, 18 Ind. 450.

For a discussion of the meaning of whisky, see President Taft's decision in the note to Sec. 842.

<sup>94</sup> State v. Williamson, 21 Mo. 496; State v. Dengolensky, 82 Mo. 44; People v. Webster, 2 Doug. (Mich.) 92; Egan v. State, 53 Ind. 162; Schlicht v. State, 56 Ind. 174; State v. Jones, 3 Ind. App. 121; 29 N. E. 274; Gault v. State, 34 Ga. 533; Frese v. State, 23 Fla. 267; 2 So. 1; Carmon v. State, 18 Ind. 450; Commonwealth v. Morgan, 149 Mass. 314; 21 N. E. 369; Snider v. State, 81 Ga. 753; 7 S. E. 631; 12 Am. St. 350; State v. Lewis,

Whisky cannot be classed as a drug.<sup>95</sup> An allegation of a sale of whisky is sufficient to admit proof of a sale of "distilled liquors."<sup>96</sup>

### Sec. 28 Whisky cocktail—Sale—When a violation of law.

A charge of a sale of whisky is sustained by proof of a sale of "whisky cocktail," where the proof also shows that what is called "whisky cocktail" is only a mode of preparing whisky as a beverage, and that whisky is the predominant ingredient. If whisky be present as the predominant element in a mixture, it is immaterial that biters and tonics are used to qualify or render it more palatable as a beverage.<sup>97</sup> Mr. Wharton says: "If pretexts such as these are sustained, the worst vendors of the worst liquors would be the best protected by law."<sup>98</sup> The court

86 Minn. 174; 90 N. W. 318; *Pedigo v. Commonwealth*, 24 Ky. L. Rep. 1029; 70 S. W. 659; *Smith v. State* (Tex.), 120 S. W. 881.

"That whisky will intoxicate is as well known as that fire will burn or water will drown." *Egan v. State*, 53 Ind. 162.

"An ardent spirit distilled chiefly from grain. The term was originally applied to spirit obtained from malt in Ireland, Scotland, etc., in which sense whisky is synonymous with usquebaugh. Such Irish and Scotch whiskies are still made from malt, and are known by numerous names, as poteen, mountain dew, etc. In the United States whisky is commonly made either from Indian corn (corn whisky) or from rye (rye whisky). The name wheat whisky has, however, been applied to certain brands, and wheat is probably used in the making of many different kinds and qualities." *Century Dictionary*.

<sup>95</sup> *Gault v. State*, 34 Ga. 533.

<sup>96</sup> *State v. Dengolensky*, 82 Mo.

44; *In re Intoxicating Liquors*, 25 Kan. 751; 37 Am. Rep. 284.

Proof of a sale of a "common cordial" is sufficient proof of a sale of whisky where it is shown to contain whisky sweetened with sugar and flavored with peppermint. *State v. Bennett*, 3 Har. (Del.) 565.

A statute authorizing a sale of "pure alcohol" does not apply to a sale of "rye whisky" in a dry local option district. *Vardeman v. State*, 108 Ga. 774; 33 S. E. 643.

Where a question is raised whether the liquor sold was intoxicating, the court must define in its instructions the meaning of the words "intoxicating liquors;" but if the evidence shows a sale of "whisky," it is not necessary to define those words. *Smith v. State* (Tex.), 120 S. W. 881.

<sup>97</sup> *Galloway v. State*, 23 Tex. App. 398; 5 S. W. 246.

<sup>98</sup> *Wharton's Criminal Law*, 8th ed., § 1507.



will take judicial notice that a whisky<sup>99</sup> or Manhattan cocktail is intoxicating.<sup>1</sup>

### Sec. 29. Gin an alcoholic liquor—Judicial notice.

Gin is a distilled spirit or alcoholic liquor manufactured from rye or barley, flavored with juniper berries and sometimes with hops.<sup>2</sup> In a prosecution for its unlawful sale it is not necessary to allege in the indictment or prove upon the trial that it is an intoxicating liquor; it will be sufficient if it is alleged and proven that it was gin.<sup>3</sup> Judicial notice will be taken of that fact, and the court may so instruct the jury.<sup>4</sup> In so deciding it was said: "Jurors are not to be presumed ignorant of what everybody else knows. And they are allowed to act upon matters within their general knowledge, without any testimony on these matters. Now, everybody who knows what gin is, knows not only that it is a liquor, but also that it is intoxicating. And it might as well have been objected that the jury could not find that gin is a liquor without evidence that it was not a solid substance, as that they could not find that it was intoxicating without testimony to show it to be so. No jury can be supposed to be so ignorant as not to know what gin is. Proof, therefore, that the defendant sold gin is proof that he sold intoxicating liquor."<sup>5</sup> That the liquor sold was gin is not a subject requiring expert knowledge, but is a matter, as heretofore stated, of general knowledge, and may be proved by any witness competent to testify in any other case.<sup>6</sup>

"Whisky cocktail, whisky smash, whisky sour and whisky toddy are beverages of which whisky is the principal ingredient." Century Dictionary.

<sup>99</sup> United States v. Ash, 75 Fed. 451.

<sup>1</sup> State v. Pigg, 78 Kan. 618; 97 Pac. 859.

<sup>2</sup> Webster's Unabridged Dictionary.

<sup>3</sup> State v. Munger, 15 Vt. 290.

<sup>4</sup> State v. Wadsworth, 30 Conn. 55; *In re* Intoxicating Liquors, 25 Kan. 751; 37 Am. Rep. 284.

<sup>5</sup> Commonwealth v. Peckham, 68 Mass. (2 Gray) 514.

<sup>6</sup> Commonwealth v. Timothy, 74 Mass. (8 Gray), —. "The court, jury and accused must have known that gin and water is a drink. That is the usual acceptance and meaning of those words, and in that sense they must have been



### Sec. 30. Brandy an intoxicant—Burden of proof.

Brandy is ranked as an intoxicating liquor by writers upon the general subject, and that it is a liquor of that character is generally and commonly known. The fact is, therefore, 'one of which the courts will take judicial knowledge.'<sup>7</sup> The addition to the word "brandy" of the word "blackberry" does no more than designate it as a particular brandy; it does not indicate that the liquor is not brandy of some kind. The natural and reasonable presumption is that the basis of the liquor is brandy, and therefore intoxicating, and in a prosecution for selling it in violation of a law against the sale of intoxicating liquors, evidence that the liquor sold was "blackberry brandy" is sufficient to sustain a conviction. If, in fact, the liquor sold was not an intoxicating liquor, the burden of proof is upon the defendant to establish that fact.<sup>8</sup>

taken." *Madden v. State*, 1 Kan. 340.

"An aromatic spirit prepared from rye or other grain and flavored with juniper berries. The two imported varieties are Dutch gin, also called Holland and Schiedam, and English gin, known by the name of Old Tom. Holland gin is almost free from sweetness and is generally purer than English." *Century Dictionary*.

Cordial gin is "gin sweetened and flavored with aromatic substances so as to form a sort of cordial." *Century Dictionary*.

A statute imposing a tax on the business of compounding distilled spirits applies to the manufacture of "Buchu Gin," which is made by pouring pure gin on a bed of buchu and allowing it to percolate through, and then adding distilled water and syrup, the gin comprising some fifty per cent. or more of the compound, which is

forty-six per cent. alcohol and used as a beverage. *Dr. C. Bouvier Specialty Co. v. James* (Ky.), 118 S. W. 381.

<sup>7</sup> *Thomas v. Commonwealth*, 90 Va. 92; 17 S. E. 788; *State v. Wadsworth*, 30 Conn. 55.

<sup>8</sup> *Fenton v. State*, 100 Ind. 598; *State v. Munger*, 15 Vt. 290. So also of "peach brandy." *Howard v. State*, 65 S. E. 1076.

Brandy. "A spirituous liquor obtained by the distillation of wine or the refuse of the wine press. The average proportion of alcohol in brandy ranges from forty-eight to fifty-four per cent. The name brandy is now given to spirit distilled from other liquors, and in the United States to that which is distilled from peaches." *Century Dictionary*.

*British Brandy*. "A common kind of brandy distilled in England from malt liquors and given the flavor and color of French

### Sec. 31. Brandy Peaches—Sale of not prohibited.

Under a statute requiring a license to sell intoxicating liquors it is not a violation of the statute to sell fruits preserved in brandy, for instance a bottle containing six peaches surrounded by one gill of a fluid, or syrup, which tastes like strong drink.<sup>9</sup> In such case, however, if one puts a few peaches or cherries in a bottle of liquor to evade the law and sells them, he is guilty.<sup>10</sup>

brandy by artificial means." Century Dictionary.

*Cognac.* "Properly a French brandy of superior quality distilled from wines produced in the neighborhood of Charente, France. Hence, in Europe, any brandy of good quality; in the United States, French brandy." Century Dictionary.

<sup>9</sup> *Holland v. Commonwealth*, 7 Ky. L. Rep. (abstract) 223.

<sup>10</sup> *Rabe v. State*, 39 Ark. 204; *Ryall v. State*, 78 Ala. 410; *Musick v. State*, 51 Ark. 165; 10 S. W. 225.

"The so-called 'brandy peaches' and 'brandy cherries' seem to be the latest and most popular device for dealing in spirits without paying the special tax. This is particularly the case in the districts in which the sale of liquor is prohibited by state law. The witnesses tell you there is little or no demand for these articles in localities where there are licensed dealers in liquor, and where it can be had without the incumbrance of peaches or cherries. The introduction of peaches or cherries into liquor does not necessarily change its character any more than did the introduction of drugs in the cases of the 'tonics' and 'bitters' which I have

mentioned. There is probably not a package of genuine brandied peach or cherry preserves in the State, outside of those put up by housewives for family use. Between the genuine brandied peach or cherry preserves put up for legitimate domestic use as confectionery, and the so-called 'brandied cherries,' described by the witnesses in this case, and sold by the defendant, there is not the faintest resemblance. One is an edible and palatable preserve, and used as such; the other, as the proof shows, is neither edible nor palatable, and is not used as a preserve or for food, but as a stimulating beverage, for the spirits it contains. The method of making brandied peach preserves is laid down in the standard authorities on the subject of the preservation of food. The fruit, after being properly prepared, is boiled in a syrup made of refined sugar, and is then placed in a bottle, the syrup poured over it, and a sufficient quantity of pure pale brandy added to impart to it the desired brandy flavor, just as brandy is used as an ingredient in our pudding sauce or mince pies, for the purpose of improving their flavor. It is obvious the defendant sold no such preserves.

**Sec. 32. Malt Liquors—Judicial notice.**

The term "malt liquors" embraces porter, ale, beer and the like, which are the result or product of a process by

Alcohol is used to preserve specimens of fruits for exhibitions at fairs, or to advertise the products of the country; but fruits so preserved are not put up for sale and are not known in the trade.

"It is quite clear that the so-called brandy cherries described by the witnesses in this case are not an edible preserve and are not put up for ornament. What, then, is the proper definition for the brandy peaches and brandy cherries now so popular in the prohibition districts of this state? If they are not used as a confectionery, nor as a food, nor for ornament, what is their use? I know not what definition you gentlemen may give them, and it rests with you to define them in the light of the evidence; but from the proof in this case, I confess it seems to me the proper definition to be: a compound of drugged whisky and poor peaches or cherries, the fruit being added as a mere disguise, and with a view to evade the payment of the license tax imposed on liquor dealers by the United States, and to escape the penalties of the State law for selling liquors in districts where it is prohibited. I repeat that the quantity of liquor sold is not material, nor is the size, form, or chemical composition of the vessel or thing that contains the spirits, material. If a cocoanut or gourd was filled with spirits and labeled brandy cocoanut or brandy gourd, it would be idle

to say that one selling liquor in that way would escape payment of the license tax. So, if one were to stuff sponges in bottles and then fill them with liquor and label them brandy sponges, he could not escape payment of the tax on the plea that the sponges absorbed the liquor and that there was, therefore, no liquor in the bottles. Such a plea would not be entitled to respectful consideration. It is, then, wholly immaterial whether the liquor sold is contained in a bottle, cocoanut, gourd, sponge, peach or cherry, or what label is put upon it, if the package contains distilled spirits in a form to be got at by squeezing, suction, or any other process, and the spirits in the package, and not the other ingredients, are the inducement to its sale and purchase.

"To sum up the law applicable to the case, I instruct you that if you find from the evidence that the bottles of so-called 'brandy cherries,' sold by the defendant, contained whisky or other distilled spirits, and they were purchased by his customers not for the fruit in them but on account of the distilled spirits they contained, and for the purpose of using the spirits contained therein as a beverage, and that the contents of bottles were, in fact, used as a beverage, and for the purpose of obtaining the effects produced by the use of intoxicating liquor, and that such effects were, in fact,

which grain—usually barley—is steeped in water to the point of fermentation, the starch of the grain being thus converted into saccharine matter, which is kiln-dried, then mixed with hops, and, by a further process of brewing, made into a beverage.<sup>11</sup> A court will take judicial notice of the meaning of these words as used in a penal statute, and may in a proper case give this definition in a charge to the jury. It will also take judicial notice that “Webster’s Unabridged Dictionary” is a standard authority as to the meaning of English words, and may permit its definition of these words to be given in evidence to the jury.<sup>12</sup>

produced by their use, and that the defendant knew these facts,—then you will find him guilty. If you find these facts, it makes no difference whether the defendant opened the bottles or not when he sold them, nor whether the purchaser drank the contents of the bottle at the defendant’s counter, or took it elsewhere for that purpose, and it makes no difference that the bottles were sealed up, and that the sales were made in what has been spoken of in the course of the trial as original packages.” *United States v. Stafford*, 20 Fed. 720.

An indictment charging a sale of “brandied peaches” without a license states no offense. *Holland v. Commonwealth*, 7 Ky. L. Rep. (abstract) 223.

<sup>11</sup> *Allred v. State*, 89 Ala. 112; 8 So. 56; *People v. O’Reily* (N. Y.), 88 N. E. 1128; affirming 129 N. Y. App. Div. 522; 114 N. Y. Supp. 258.

<sup>12</sup> *Adler v. State*, 55 Ala. 16; *State v. Starr*, 67 Me. 242; see *State v. Volmer*, 6 Kan. 371; *State v. Teissedre*, 30 Kan. 210. 476: 2 Pac. 108; *State v. Mitchell*, 134 Mo.

App. 540; 114 S. W. 1113; *Merkinson v. State* (Okla.), 101 Pac. 353; *Coe v. State*, (Okla.), 104 Pac. 1074. That courts will take judicial notice that beer is intoxicating is not always uniformly held. The question is discussed elsewhere.

“Malt liquor” is an alcoholic liquor, or beer, ale, porter, prepared by fermentation and an infusion of hops. *State v. Gill*, 89 Minn. 502; 95 N. W. 449; *Adler v. State*, 56 Ala. 16; *United States v. Cohn*, 2 Ind. Ty. 474; 52 S. W. 38. It has “neither vinous nor spirituous liquor as an ingredient. It has alcohol produced by fermentation, through which it must pass before it becomes a beverage.” *Tinker v. State*, 90 Ala. 647; 8 S. E. 855. It is a broader term than lager beer, and includes other beverages, as well as ale and porter. *Sampton v. State*, 107 Ala. 76; 18 S. E. 207.

A statute forbidding the introduction of malted liquors into the Indian country includes a malted liquor that is not even intoxicating, such as “Rochester tonic.” *United States v. Cohn*, 2 Ind. Ty. 474; 52 S. W. 38. See, however,



### Sec. 33. Beer and ale distinguished—History.

“Beer” is a liquor made from any farinaceous grain, but generally from barley, which is malted and ground, and its fermentable substance extracted by hot water. This extract or infusion is evaporated by boiling in caldrons, and hops or some other plant of agreeable bitterness added. The liquor is then suffered to ferment in vats. “Ale” is a liquor made from an infusion of malt by fermentation. It chiefly differs from beer in having a smaller proportion of hops—and both are intoxicating liquors. The manufacture of beer and its use as an intoxicating drink are of very high antiquity. Herodotus tells us that owing to the want of wine the Egyptians drank a liquor fermented from barley.<sup>13</sup> Ale or beer was in common use in Germany in the time of Tacitus. “All the nations,” says Pliny, “who inhabit the west of Europe have a liquor with which they intoxicate themselves, of corn and water,” The manufacture of ale was early introduced into England. It is mentioned in the laws of Ina, King of Wessex, and is

Sarells v. United States, 152 U. S. 570; 38 L. Ed. 556; 14 Sup. Ct. 720.

So a statute referring to malt liquors includes “beer;” and proof of a sale of beer has been held to support an indictment for the sale of malt liquor. United States v. Ducournau, 54 Fed. 138. A statute declaring that the words “intoxicating liquor” shall apply to any spirituous, vinous or malt liquor, includes beer, for the courts take judicial knowledge that beer is a malt liquor prepared by fermentation. State v. Stapp, 29 Iowa, 551; and so of lager beer. State v. Gazette, 11 R. I. 592; Watson v. State, 55 Ala. 158; Sarlls v. United States, 152 U. S. 570; 38 L. Ed. 556; 14 Sup. Ct. Rep. 720.

When the word “beer” is used without any prefix, common, lager or bock beer is meant. Such is the common usage. State v. Kauffman, 68 Ohio St. 635; 67 N. E. 1062; State v. Teissedre, 30 Kan. 210, 476; 2 Pac. 180. *Contra*, Netso v. State, 24 Fla. 363; 5 So. 8; 1 L. R. A. 825.

When a statute forbade the sale of intoxicating liquor, a charge of a sale of malt liquor is insufficient; for the courts cannot say a malt liquor is an intoxicating liquor. Shaw v. State, 56 Ind. 188. See Lincoln Center v. Linker, 7 Kan. App. 282; 53 Pac. 787, and Allred v. State, 89 Ala. 112; 8 So. 56. *Contra*, State v. Reily, 66 N. J. L. 399; 52 Atl. 1005.

<sup>13</sup> Lib. 2, Chap. 77.



particularly specified among the liquors provided for a royal banquet in the reign of Edward the Confessor.<sup>14</sup>

#### Sec. 34. Beer defined—Presumption—Judicial notice.

The word "beer" is defined to be: "1. A fermented liquor made from any malted grain, with hops and other bitter flavoring matters. 2. A fermented extract of the roots and other parts of various plants, as spruce, ginger, sassafras, etc. Beer has different names, as small beer, ale, porter, brown stout, lager beer, etc., according to its strength or other qualities."<sup>15</sup> It will be observed that the primary meaning of the word beer is a liquor infused with malt, and prepared by fermentation. As a consequence when "beer" is called for at a place at which intoxicating drinks are sold, the bartender having in view the primary meaning as well as the common use of the word, is justified in inferring, and must reasonably infer, that malted and fermented beer is wanted. If any other kind of beer is desired it is expected that qualifying words will be used, such as spruce beer, root beer, small beer, ginger beer, and the like, thus attaching a remote and secondary meaning to the word "beer," as descriptive of particular beverages. When, therefore, a witness testifies to the sale or giving away of beer under circumstances which make the sale or giving away of any intoxicating liquor unlawful, the *prima facie* inference is that the beer was of that malted and fermented quality declared by the law to be an intoxicating liquor, and the court trying the cause ought to take judicial notice of the inference which thus arises from the use of the word "beer" in its primary and general sense. The mere question, then, as to whether beer is an intoxicating liquor is not one for the determination of the jury in a case arising under a penal statute. If the court, as a matter of law, must know that beer is a malt liquor, it is not necessary to a conviction for the jury.

<sup>14</sup> McCulloch's Com. Dic., Vol. 1, p. 9; *Nevin v. Ladue*, 3 Denio, 43; <sup>15</sup> Webster's Unabridged Dictionary. *Nevin v. Ladue*, 3 Denio, 437.

besides finding a sale or gift of beer, to find also, as a matter of fact that beer—that is, malt beer—is intoxicating. If, however, qualifying words were used in connection with the word “beer,” such as spruce beer, when the sale or gift was made, then it may be shown that in fact it was not an intoxicating drink by proving the materials and the mode of production of what was called for, and in such case whether or not such beer was an intoxicating liquor will be a question of fact to be determined by the jury from the evidence in the case.<sup>16</sup> If the name of a beer is unusual

<sup>16</sup> *Myers v. State*, 93 Ind. 251; *Mullen v. State*, 96 Ind. 304; *Stout v. State*, 96 Ind. 407; *Dant v. State*, 106 Ind. 79; *State v. Volener*, 6 Kan. 371; *State v. Teissedre*, 30 Kan. 476; *State v. Jenkins*, 32 Kan. 477; *Markle v. Akron*, 14 Ohio, 586; *State v. Thompson*, 20 W. Va. 674; *Briffett v. State*, 58 Wis. 39; *Ran. v. People*, 63 N. Y. 279.

The Century Dictionary defines and describes beer to be “An alcoholic liquor made from any farinaceous grain, but generally from barley, which is first malted and ground, and its fermentable substance extracted by hot water. To this extract an infusion of hops or some other vegetable product of an agreeable bitterness is added, and it is thereupon boiled for some time, both to concentrate it and to extract the useful matter from the hops. The liquor is then suffered to ferment in vats, the time allowed for fermentation depending upon the quality and kind of beer, and after it has become clear it is stored away or sent to market. \* \* \* Ale and beer were formerly synonymous terms, ale being the earlier in use; at present

beer is the common name for all malt liquors, and ale is used specifically for a carefully made beer of a certain strength and rather light than dark; thus small beer, ginger beer, and the like are not ale, nor are stout and porter. A distinction drawn by Andrew Boorde, in 1542, is that ale is made of malt and water, and should contain no other ingredients, while beer is made of malt, hops and water.” “*Black Beer* is a kind of beer manufactured at Dantzic. It is of a black color and a syrupy consistence.” “*Condensed beer* is a beer which has been reduced in a copper vacuum pan to one eighteenth of its bulk in solids, added to an equal quantity of alcohol.” “*Green beer* is a beer which is just made.” “*Lager beer*, or *stock beer* is a light German beer so called because it is stored for rivening before being used. It is extensively manufactured in the United States.”—Century Dictionary, “Beer.”

*Beeriness*: “The state of being beer or partially intoxicated; slight intoxication from beer.”—Century Dictionary.

*Ginger Beer*: “An effervescing

or new, so that the court will not take judicial notice whether it is intoxicating, then evidence is necessary to

beverage made by fermenting ginger, cream-of-tartar and sugar with yeast and water."—Century Dictionary.

*Small Beer*: "Weak beer."—Century Dictionary.

*Yeast Beer*: "New beer with which a small quantity of fermenting worth has been mixed in the cask in order to make it lively."—Century Dictionary.

*Schenk*: "Young, or winter beer, a German beer brewed for immediate use. It was formerly brewed only between October and April, but now is manufactured at all seasons."—Century Dictionary.

*Beer-gar*: "Sour beer, vinegar formed by the acetous fermentation of beer."—Century Dictionary.

*Beer preserver*: "A device for keeping the space above the beer in a cask or barrel filled with carbonic acid gas, which is supplied from a reservoir."—Century Dictionary.

*Beer engine*: "A hydraulic machine for raising beer and other liquors out of a cask in a cellar."—Century Dictionary.

*Beer pump*: "A pump for beer, especially for raising beer from the cellar to the bar in a saloon or public house."—Century Dictionary.

"Beer," as it is ordinarily understood, and as it is defined in the dictionary, is a 'fermented liquor.' It is made from malted grains, with hops, or from the extract of roots and other parts of various plants, as spruce, ginger,

sassafras, etc. It is known under various names, and designated as 'ale,' 'porter,' 'stout,' 'strong beer,' 'small beer,' 'lager,' 'spruce beer,' etc. The courts take notice that many of the beverages sold under the name of 'beer' are not intoxicating, while the stronger kinds, as ale, porter and strong beer, are of an intoxicating character. It would seem, therefore, that a term which includes both intoxicating and non-intoxicating liquors could not be said, in its ordinary meaning, necessarily to imply an intoxicating drink, unless such import has been given to it either by statute or by the decision of the courts." *Blatz v. Rohrback*, 116 N. Y. 450; 22 N. E. 1049; 6 L. R. A. 669.

"Webster defines beer to be 'A fermented liquor made from any malted grain, with hops and other bitter flavoring matters.' In other words, it is a malt liquor, which the same author declares to be 'a liquor prepared for drink by an infusion of malt, as beer, ale, porter, etc.' It may, therefore, be said that beer is a liquor infused with malt, and prepared by fermentation for use as a beverage." *Myers v. State*, 93 Ind. 251; *Douglass v. State*, 21 Ind. App. 302; 52 N. E. 302; *Welsh v. State*, 126 Ind. 71; 25 N. E. 883; 9 L. R. A. 664; *Nevin v. Ladue*, 3 Denio, 43; *Pieft v. State*, 58 Wis. 39; 16 N. W. 30; 46 Am. Rev. 621; *United States v. Ellis*, 51 Fed. 808; *Hollender v. Magone*, 38 Fed. 912; *Killip v. McKay*, 13 N.

show it is an intoxicant, and whether or not it comes within the prohibition of the statute depends upon whether it

Y. St. Rep. 5; *Murphy v. Montclair*, 10 Vroom, 673; *State v. Oliver*, 26 W. Va. 422; 53 Am. Rep. 79; *Williams v. State*, 72 Ark. 19; 77 S. W. 597. It generally contains 3.40 to 4.94 per cent. of alcohol. *State v. Schaefer*, 44 Kan. 90; 24 Pac. 92.

A statute prohibiting the manufacture or sale of intoxicating beverages applies to the manufacture or sale of beer. *People v. Hawley*, 3 Mich. 330.

But the mere use of the word "beer" does not conclusively show that it is intoxicating; for several kinds of beer are not intoxicating, and the word as thus used does not exclude the possibility that a non-intoxicating beer is meant. *Hausberg v. People*, 120 Ill. 21; 8 N. E. 857; 60 Am. Rep. 549; *Commonwealth v. Gourdi*, 14 Gray, 390; *Blatz v. Rohrbach*, 116 N. Y. 450; 22 N. E. 1049; 6 L. R. A. 669; *State v. Sioux Falls Brewing Co.*, 5 S. D. 39; 58 N. W. 1.

"Beer," however, is within the meaning of "spirituous and strong liquors." *Maier v. State*, 21 Tex. Civ. App. 296; 21 S. W. 974; *Tompkins County v. Taylor*, 21 N. Y. 173. See *Kerkow v. Bauer*, 15 Neb. 150; 18 N. W. 27; *State v. Cloughley*, 73 Iowa, 626; 35 N. W. 652; *State v. Spiers*, 103 Iowa, 711; 73 N. W. 343; *State v. Jenkins*, 32 Kan. 477; 4 Pac. 809. To say to the jury that beer is a malt liquor and is intoxicating is not error. *State v. Currie*, 8 N. D. 545; 80 N. W. 475.

When a statute defines beer as

an intoxicating or spirituous liquor, it must be so understood and construed. *State v. Dick*, 47 Minn. 375; 50 N. W. 362; *State v. Heinze*, 45 Mo. App. 403; *Murphy v. Montclair*, 10 Vroom, 673; *State v. York*, 74 N. H. 125; 65 Atl. 685. And when so declared, the use merely of the word "beer" in an indictment means an intoxicating liquor. *State v. Besheer*, 69 Mo. App. 72; *State v. Watts*, 101 Mo. App. 658; 74 S. W. 377.

"Strong beer" and "Dutch beer," without explanations, have been held to mean intoxicating liquors of a similar character, produced from similar materials, and in a like manner. *People v. Wheelock*, 3 Parker Co. Rep. 9.

Beer is not a spirituous liquor. *State v. Quinlan*, 40 Minn. 55; 41 N. W. 299; and a statute forbidding the sale of spirituous liquors on Sundays does not forbid the sale of beer. *Fritz v. State*, 1 Baxt. 15; nor to the sale to Indians. *Sarlls v. United States*, 152 U. S. 570; 38 L. Ed. 556; 14 Sup. Ct. Rep. 720; *In re McDonough*, 49 Fed. 360; *Guadinger v. Commonwealth*, 4 Ky. L. Rep. 514; *King v. Commonwealth*, 4 Ky. L. Rep. 514.

A statute authorizing a city to grant a license to sell ale, beer, wine and other fermented liquors cannot be construed to authorize the licensee to sell brandy, rum or other spirituous liquors. *Commonwealth v. Jordan*, 18 Pick. 228.

A statute declaring that all fermented drinks and wines of every



is intoxicating.<sup>17</sup> And where it is necessary to show that the liquor is intoxicating, proof that it contains a certain percentage of alcohol—as it is 15 per cent.—does not necessarily show that it is such a liquor as the statute forbids its sale. It must be shown to be intoxicating.<sup>18</sup> Belief that it is not intoxicating is no defense.<sup>19</sup>

kind should be taken as intoxicating includes beer; and for that reason by force of the statute it is intoxicating. *State v. Lempe*, 16 Mo. 389.

The term “fermented beer” includes spruce beer, spring beer, ginger beer and molasses beer. *State v. Biddle*, 54 N. H. 379; and the use of the word “beer” in an indictment means a fermented beer. *State v. Watts*, 101 Mo. App. 658; 74 N. W. 377.

A Japanese drink made from rice, having alcohol in it, by processes similar to those used in making beer, but resembling wine in the amount of its alcohol, can not be classed as beer under the Tariff Act of July 24, 1897, Chap. 11, § 1, Schedule H, par. 297 (30 U. S. Stat. at Large, 174). *Nishimiya v. United States*, 131 Fed. 650.

The sale of “table beer,” slightly intoxicating, is prohibited by a statute forbidding the sale of intoxicating liquors. *Queen v. McDonald*, 24 Nova Scotia, 45. And “botanic beer,” containing sugar, herbs and water, but no hops or malt, and having six per cent. of proof spirit, is also intoxicating liquor. *Haworth v. Minns*, 56 L. T. 316; 51 J. P. 7.

“Blue ribbon beer” has been held

to be intoxicating. *Regina v. Walton*, 34 C. L. J. 746.

“Near beer” is used to designate all malt liquors with so little alcohol as it will not produce intoxication, even though drank to excess. It includes all malt liquors within the purview of the general prohibition act of Georgia. *Campbell v. Thomasville (Ga.)*, 64 S. E. 815.

In some cities in Georgia its sale is strictly regulated by ordinance.

As to “Mascot beer,” see *State v. Wright*, 68 N. H. 351; 44 Atl. 519.

<sup>17</sup> *Connolly v. Atlanta*, 79 Ga. 664; 4 S. E. 263.

<sup>18</sup> *Commonwealth v. Bloss*, 116 Mass. 56. (Schenk beer in this case.)

<sup>19</sup> *Commonwealth v. O’Kean*, 152 Mass. 584; 26 N. E. 97; *Ware v. State (Ga.)*, 65 S. E. 333; *Deadwiller v. State (Tex. Civ. App.)*, 121 S. W. 864; *Berkemeier v. State (Ind.)*, 88 N. E. 634.

It has been held that a statute forbidding the sale of “ale, porter, strong beer or lager beer” does not prohibit the sale of “beer.” *Commonwealth v. Bloss*, 116 Mass. 56.

Beer is not a “spirituous liquor.” *King v. Commonwealth*, 4 Ky. L. Rep. (abstract) 623; *Guadinger v. Commonwealth*, 4 Ky. L. Rep. 514.



### Sec. 35. Lager beer, a malt liquor and an intoxicant.

Lager beer is and has been since its introduction into this country used as a beverage. Its constituents are enumerated not only in the books of science, but in the popular encyclopedias. It is a malt liquor of the lighter sort, and differs from ordinary beers or ales, not so much in its ingredients as in its process of fermentation. In a prosecution for a sale of it in violation of a statute against the sale of intoxicating liquors, it is not necessary to prove that it is an intoxicating liquor. Evidence that such is its character would be as useless as to prove that whisky is a distillation of grain, or wine of the fermented juice of the grape, or cider expressed juice of the apple. It is not necessary to prove the meaning of words in the vernacular language, nor the meaning of terms which, from continuous use, have acquired a definite signification, generally, if not universally known. Courts cannot profess ignorance of the meaning of words of popular use and about the significance of which no intelligent member of the community would hesitate, and they will take judicial notice of the fact that "lager beer," commonly used as a beverage throughout the country is a malt and intoxicating liquor.<sup>20</sup>

### Sec. 36. Schenk beer, intoxicating quality question of fact.

Under a statute which makes the sale of liquors capable of producing intoxication unlawful and criminal, and under which all known spirituous liquors, without specification, form a class, and specifies that "ale, porter, strong beer, lager beer, and all wines shall be considered as intox-

<sup>20</sup>State v. Goyette, 11 R. I. 592; State v. Rush, 13 R. I. 188; Watson v. State, 55 Ala. 158.

Diluted lager beer having 2.05 per cent of alcohol has been held to be an intoxicating liquor. Owen v. McLean, 3 Can. Cr. Cas. 323. See Queen v. McDonald, 24 Nova Scotia 45.

Lager beer is often called "stock beer." It is light German beer, and is so-called because it is stored for ripening before being used. People v. O'Reilly, (N. Y.), 88 N. E. 1128; affirming 129 N. Y. App. Div. 522; 114 N. Y. Supp. 258.

icating liquors as well as distilled spirits," a sale of beer not thus enumerated, for instance "Schenk beer," is not prohibited unless it is intoxicating, and whether it is intoxicating is a question of fact for the jury. The fact that alcohol was discovered in it upon a chemical analysis, although undoubtedly competent evidence, does not necessarily prove that the liquor was spirituous within the meaning of the statute. The apparent purpose of such a statute is to provide that distilled spirits and all liquors with which distilled spirits are mixed, and also all the liquors included by name in the specific enumeration quoted shall be conclusively deemed intoxicating, and the question whether they are intoxicating in fact cannot be raised. But with regard to all other liquors this question is one to be determined by the jury upon the evidence like any other question of fact.<sup>21</sup>

### Sec. 37. Strong and spirituous liquors—Beer.

Strong beer is within the meaning of the terms "strong and spirituous liquors" in a statute to suppress intemperance, and likewise is any other liquor, whether fermented or distilled, of which the human stomach can take enough to produce intoxication. The construction of such a statute is not to be founded upon the percentage of alcohol which different kinds of beverages contain, as ascertained by chemical analysis, but rather by the effect they produce. Such a liquor must be strong enough with the inebriating principle or element, whether obtained by distillation or fermentation, to produce intoxication. If that be its character an unlicensed vendor at retail, or one who sells in violation of the terms of such a statute, incurs the penalty of the statute.<sup>22</sup>

<sup>21</sup> Commonwealth v. Blos, 116 Mass. 56.

<sup>22</sup> Board v. Taylor, 21 N. Y. 173; Commonwealth v. Haywood, 105 Mass. 187.

"Spirituous and strong liquor" has been held to include lager beer, if it be proved to be intoxicating.

Dillmer v. People, 4 N. Y. Wkly. Dig. 251; and also ale. Cayuga County v. Freeoff, 17 How. Prac. 442; Nevin v. Ladue, 3 Denio, 43; Tompkins County v. Taylor, 19 How. Pr. 259; Schab v. People, 4 Hun, 520; State v. Beswick, 13 R. I. 211.

### Sec. 38. Ale.

Ale is a liquor very nearly related to beer, and few in America know the difference between the two liquors. In the Century Dictionary it is said that "ale and beer were formerly synonymous terms, ale being the earlier in use; at present beer is the common name for all malt liquors, and also is used especially for a carefully made beer of a certain strength and rather light than dark; thus small beer, ginger beer and the like are not ale, nor are stout and porter. A distinction shown by Andrew Boorde, in 1542, is that ale is made of malt and water, and should contain no other ingredients, while beer is made of malt, hops and water."<sup>23</sup>

<sup>23</sup> Century Dictionary, Beer. Nev-  
in v. Ladue, 3 Denio, 43, 437.

"Ale, a bright-colored beer, made from malt, which is dried at low heat. Pale ale is made from the palest or lightest-colored malt, the fermenting temperature being kept below 72 degrees to prevent the formation of acetic acid." Century Dictionary, ale.

*Bitter ale, bitter beer.* "A clear, strong, highly hopped ale, of a pleasant bitter taste." Century Dictionary.

*Medicated Ale.* "Ale which is prepared for medical purposes by an infusion of herbs during fermentation." Century Dictionary.

*Adam's Ale, Adam's Wine.* "Water, as being the only beverage in Adam's time; sometimes called Adam." Century Dictionary.

*Ginger Ale.* "An effervescing drink similar to ginger beer. The name was probably adopted by manufacturers to differentiate their productions from the ordinary ginger beer." Century Dictionary.

"*Hop Ale*" is a name frequently used to cover up the actual qualities of the liquor, and thus evade the liquor laws. See *Lincoln Center v. Linker*, 5 Kan. App. 242; 47 Pac. 174.

Ale is a liquor made from the infusion of malt by fermentation, differing from beer in having a smaller proportion of hops. *State v. Oliver*, 26 W. Va. 422; 53 Am. Rep. 79; *Nevin v. Ladue*, Denio 43; *Walker v. Prescott*, 44 N. H. 511; and the court will take judicial notice that it is a malt liquor. *Wiles v. State*, 33 Ind. 206. By statute it is sometimes declared to be an intoxicating liquor. *Commonwealth v. Curran*, 119 Mass. 206; and a statute forbidding the sale of "intoxicating liquor" without other definition, includes ale and beer. *People v. Hawley*, 3 Mich. 330; *Murphy v. Montclair Tp.* 10 Vroom, 673; *Johnston v. State*, 23 Ohio St. 556; *Rau v. State*, 63 N. Y. 277 (dicta); *Blatz v. Rohrbach*, 116 N. Y. 450; 22 N. E. 1049 (dicta);

### Sec. 39. Cider.

Cider is neither produced by distillation nor by fermentation, and although liable to fermentation and when subjected to distillation is capable of producing a spirituous liquor, yet the ultimate product is no more like cider than rum is like the juice of the sugar-cane from which it is manufactured; nor is it in any proper sense a mixture of any other liquor other than water, which is common to all spirituous liquors, wines, ale, porter, beer and all drinks of like nature. It is wholly unlike any fermented liquor made from malted grain or from the roots of plants or bark of trees, as spruce, ginger, sassafras, birch and sarsaparilla. Being the unadulterated juice of the apple, it is no mixture, and under ordinary circumstances is incapable of producing intoxication, and it cannot be classed as a spirituous liquor, nor can it with any degree of propriety be called wine.<sup>24</sup> And although the courts have said that jurors

State v. Barron, 37 Vt. 57; see State v. Biddle, 54 N. H. 379; Haines v. Hanrahan, 105 Mass. 480; and without any evidence on the point the jury may find that it is an intoxicating liquor. State v. Barron, 37 Vt. 57. A statute prohibiting the sale of any strong or spirituous liquor applies to a sale of ale. Nevin v. Ladue, 3 Denio 43; but a license to sell ale does not authorize a sale of brandy, rum or other spirituous liquors. Commonwealth v. Jordan, 18 Pick. 228; for ale is not a spirituous liquor. Walker v. Prescott, 44 N. H. 511; Fleming v. New Brunswick, 47 N. J. L. 231.

Formerly a liquid called "American Hop Ale" was sold in Kansas. It was an imitation of lager beer, made of malted grain, hops and water, slightly fermented, and contained a very slight percentage of alcohol. Lincoln Center v. Liniker, 7 Kan. App. 282; 53 Pac. 787.

It has been held that ale is not a "strong liquor," as used in a statute forbidding its sale without a license. People v. Crilley, 20 Barb. 246; and also that it is. Nevin v. Ladue, 3 Denio 43, 437; Commissioners v. Freeoff, 17 How. Pr. 442; Commissioners v. Taylor, 21 N. Y. 173; Rau v. People, 63 N. Y. 277; Blatz v. Rohrbach, 116 N. Y. 450; 22 N. E. 1049.

Of course, a statute may declare it an intoxicating liquor. State v. Wadsworth, 30 Conn. 55.

<sup>24</sup> State v. Biddle, 54 N. H. 379; State v. Oliver, 26 W. Va. 427; 53 Am. Rep. 79; Feldman v. Morrison, 1 Ill. App. 466. *Contra*, Commonwealth v. Reyburg, 122 Pa. St. 299; 16 Atl. 351.

"We do not mean to intimate that the mere unfermented juice of apples is in any circumstance to be regarded as either a vinous or spirituous liquor, but we do not know, and cannot say, as a matter of law,



might, from their own knowledge alone determine that whisky, brandy and other liquors, which are always intoxicating, were so, this cannot be so as to that which may or may not be an intoxicating fluid when sold. Accordingly, it has been held that in a prosecution for an alleged unlawful sale of cider, proof must be made that it was an intoxicating liquor where the statute under which the prosecution was had made it a criminal offense to sell "spirituous, vinous and malt liquors," cider not belonging to nor being included in either of the classes thus named.<sup>25</sup> But if a statute prohibits by name the sale of "cider," then neither hard, fermented nor sweet cider can be sold.<sup>26</sup> And

that its character may not be so changed by fermentation as to bring it within the meaning of the term. Of course, an admixture with spirits might render the compound 'spirituous.'"

<sup>25</sup> *Feldman v. City of Morrison*, 1 Ill. App. 460. Cider is not a spirituous liquor. *State v. Oliver*, 26 W. Va. 422; 53 Am. Rep. 79; *Allred v. State*, 89 Ala. 112; 8 So. 56; but otherwise if mixed with spirituous liquor. *Commonwealth v. Reyburg*, 122 Pa. St. 299; 16 Atl. 351; 2 L. R. A. 415; *Commonwealth v. Hallett*, 103 Mass. 452. Hard cider has been held a fermented liquor. *People v. Foster*, 64 Mich. 715; 31 N. W. 596; *People v. Adams*, 95 Mich. 511; 55 N. W. 461; *Eureka Vinegar Co. v. Gazette Printing Co.*, 35 Fed. 570; *Berger v. State (Ark.)*, 11 S. W. 765; *State v. Schaefer*, 44 Kan. 90; 24 Pac. 92; *State v. McLafferty*, 47 Kan. 140; 27 Pac. 843.

Where a statute forbade the sale of cider, and the liquor sold was in imitation of cider, containing two per cent alcohol, it was held that the seller had violated the

statute. *Ex parte Noel*, 6 Leg. News (Canada), 150.

Under the English statute of 1830, 1 Will. 4 c. 64, the word cider includes "cider and perry," and this is true under the act of 1869, 32 and 33 Vict. c. 27, § 1, and under 43 and 44 Vict. c. 20. By the act of 1872 and § 74, cider and perry are declared to be intoxicating liquor. A license is necessary to sell it either on or off the premises. 1 Will. 4 c. 64, s. 30; 4 and 5 Will. c. 85, s. 1; 3 and 4 Vict. c. 61, s. 1; and it is subject to excise duty, 43 and 44 Vict. c. 20, s. 41. The maximum penalty for selling cider without a license, not to be drank off the premises is £10; and to be drank on the premises, £20. 4 and 5 Will. 4, c. 85, s. 17.

<sup>26</sup> *State v. Spaulding*, 61 Vt. 505; 17 Atl. 844; *Commonwealth v. Smith*, 102 Mass. 144; *Commonwealth v. Dean*, 14 Gray, 99; *State v. McNamara*, 69 Me. 133; *State v. Roach*, 75 Me. 123. See *Guptill v. Richardson*, 62 Me. 257; *State v. Frederickson*, 101 Me. 37; 63 Atl. 535.



where a statute enumerated ale, beer, wine, alcohol "and all intoxicating liquors whatever," cider was held to be included in the phrase just quoted.<sup>27</sup> Where a statute uses the words "fermented liquor" the term will include "hard cider," but not "sweet cider." "If the witness for the State," said the Supreme Court of Kansas, "had testified that they drank cider—not hard cider—then, under the definition of Webster and some of the other lexicographers, we would not presume that the cider was fermented and intoxicating. Hard cider is excessively fermented, and therefore, presumptively, hard cider is not only fermented, but intoxicating. Under the statute all fermented liquor is presumed to be intoxicating, and if the defendant denies that the fermented liquor sold by him is intoxicating, it devolves upon him to remove the presumption of law by evidence."<sup>28</sup> Within the limitations thus laid down whether or not "cider" is intoxicating is a question for the jury<sup>29</sup> under the evidence introduced to show that it is.<sup>30</sup>

<sup>27</sup> *State v. Hutchison*, 72 Iowa 561; 34 N. W. 421.

Of cider it has been judicially said: "It is common knowledge that a fermented beverage which contains from five to ten per cent of alcohol, which is freely drank by the glassful, will produce intoxication. This is a fact of daily observation in communities where such beverages are sold." *Eureka Vinegar Co. v. Gazette Printing Co.*, 35 Fed. 570.

A statute may provide that "fermented cider" is intoxicating liquor. *State v. Waite*, 72 Vt. 108; 47 Atl. 397.

"If the statute might include among the 'vinous' fluids those which come from the juice of fruits which grow on vines and bushes, and are named wine, we do not think it could be construed so liberally as to apply the term 'vi-

nous' to the juice of fruits which grow on trees. And in common parlance cider and beer are never called vinous liquors or wine." *Feldman v. Morrison*, 1 Ill. App. 460.

A city may require a license to sell cider. *Pikeville v. Huffman*, 65 S. W. 794; 23 Ky. L. Rep. 1692.

<sup>28</sup> *State v. Schaefer*, 44 Kan. 90; 24 Pac. 92; *People v. Foster*, 64 Mich. 715; 31 N. W. 596; *State v. McLafferty*, 47 Kan. 140; 27 Pac. 843; *Eureka Vinegar Co. v. Gazette Printing Co.*, 35 Fed. 570; *Berger v. State (Ark.)*, 11 S. W. 765; *Commonwealth v. Chapel*, 116 Mass. 7.

<sup>29</sup> *Commonwealth v. Reyburg*, 122 Pa. St. 299; 16 Atl. 351.

<sup>30</sup> *State v. Schaefer*, 44 Kan. 90; 24 Pac. 92; *Feldman v. Morrison*, 1 Ill. App. 460.

And whether cider shown to contain six per cent. of alcohol is intoxicating is a question for the jury, and the court cannot say to it that it is.<sup>31</sup>

#### Sec. 40 Medicines—Compounds.

The sale of medicines may or may not be an offense, according to the circumstances. "One authorized to sell medicines ought not to be held guilty of violating the law against retailing, because the purchaser of a mixture containing alcohol misuses it and becomes intoxicated; but, on the other hand, these laws cannot be evaded by selling as a beverage intoxicating liquors containing drugs, barks or seeds which have medicinal qualities. If the other ingredients are medicinal and the alcohol is used as a necessary preservative or vehicle for them, if from all the facts it appears that the sale is of the other ingredients as a medicine and not of the liquor as a beverage, the seller is protected; but if the drugs or roots are mere pretenses of medicine, shadows and devices under which an illegal traffic is to be conducted, they will be but shadows when interposed for protection against criminal prosecution."<sup>32</sup> An instruction to the jury, therefore, wholly ignoring the defendant's motive in making a sale of essence of ginger, and whether when sold it was a medicine, known and recognized as such, and capable in its then state of being used as a beverage, was held erroneous; and one asked by the defendant that if they "believed from the evidence that the defendant sold tincture of Jamaica ginger as a medicine, in good faith, and believed from the evidence that the same was prepared by the directions of the United States Dispensatory, and

<sup>31</sup> *Topeka v. Zufall*, 40 Kan. 47; 19 Pac. 359. See also *State v. Biddle*, 54 N. H. 379.

<sup>32</sup> *King v. State*, 58 Miss. 737; 38 Am. Rep. 348; *Commonwealth v. Ramsdell*, 130 Mass. 68; *State v. Haymond*, 20 W. Va. 18; 43 Am. Rep. 787; *Bertrand v. State*, 73 Miss. 51; 18 So. 545. *In re*

*Intoxicating Liquor Cases*, 25 Kan. 751; 37 Am. Rep. 284. Toilet, culinary and medicinal preparations recognized by the United States Dispensatory as medicine are not to be classed as intoxicating beverages. *Roberts v. State*, 4 Ga. App. 207; 60 S. E. 1082.

that the same was recognized by the medical profession of the United States" as a medicine, was correct. It was also held error to exclude evidence that the essence was a standard medicine, prepared according to a standard formula laid down in the United States Dispensatory and used by physicians throughout the United States as a medicine in their practice.<sup>33</sup> In a Kansas case, perhaps the leading case on this subject, Justice Brewer, then on the Supreme Court of that State, said: "If the compounds or preparations be such that the distinctive character and effect of intoxicating liquors are gone, that its use as an intoxicating beverage is practically impossible by reason of the other ingredients, it is not within the statute. The mere presence of the alcohol does not bring the article within the prohibition. The influence of the alcohol may be counteracted by the other elements, and the compound be strictly and fairly only a medicine. On the other hand, if the intoxicating liquor remains as a distinctive force in the compound, and such compound is reasonably liable to be used as an intoxicating beverage, it is

<sup>33</sup> *Bertrand v. State*, 73 Miss. 51; 18 So. 545; *Arbuthnot v. State* (Tex. Civ. App.), 120 S. W. 478; *Carl v. State*, 87 Ala. 17; 6 So. 118; 4 L. R. A. 380; *State v. Laffer*, 38 Iowa 422; *Howell v. State*, 71 Ga. 224; 51 Am. Rep. 259; *People v. Van Alstyne* (Mich.), 122 N. W. 193; 16 Det. Leg. N. 392; *State v. Gray*, 61 Conn. 39; 22 Atl. 675; *Russell v. Sloan*, 33 Vt. 656; *State v. Lillard*, 78 Mo. 136; *Wadsworth v. Dunnman*, 98 Ala. 610; 13 So. 597; *Gostorf v. State*, 39 Ark. 450; *United States v. Stubblefield*, 40 Fed. 454; *Parrott v. Commonwealth*, 6 Ky. L. Rep. 221; *James v. State*, 21 Tex. Cr. App. 353; 17 S. W. 422.

Lemon ginger and Empire Tonic Bitters have been held to be a medicine. *United States v. Stubblefield*, 40 Fed. 454.

A combination of numerous drugs and chemicals preserved in a dilution of alcoholic spirits containing 33 per cent of alcohol has been held to be an intoxicating liquor. *Gostorf v. State*, 39 Ark. 450.

Where a statute prohibits a sale of less quantity than a quart at a time, without a license, of intoxicating liquors, except such as "shall be compounded and intended to be used as a medicine," the liquors excepted in this quotation are those to be used as medicine. *State v. Terry*, 72 N. J. L. 375; 61 Atl. 148; affirmed 73 N. J. L. 554; 64 Atl. 113.

*Peruna* has been held to come within the prohibition of a statute forbidding the sale of intoxicating liquor. *Stells v. State*, 77 Ark. 441; 92 S. W. 530.

within the statute, and this though it contain many other ingredients and ingredients of an independent and beneficial force in counteracting diseases or strengthening the system." 34

<sup>34</sup>*In re*, Intoxicating Liquor Cases, 25 Kan. 751; 37 Am. Rep. 284. See also *State v. Laffer*, 38 Iowa, 422; *Commonwealth v. Hallett*, 103 Mass. 452; *Wall v. State*, 78 Ala. 417; *State v. Coulter*, 40 Kan. 87; 19 Pac. 368; *State v. Muncey*, 28 W. Va. 494; *Davis v. State*, 50 Ark. 17; 6 S. W. 388; *Roberts v. State*, 4 Ga. App. 207; 60 S. E. 1082. Sweet spirits of nitre and varnish, although containing a high percentage of alcohol, are not "spirits." *Attorney-General v. Bailey*, 1 Exch. 281.

Since paregoric, bay rum, cologne, wood alcohol and the like cannot be used as beverages, they cannot be classed as intoxicating liquors; nor will the articles given in the United States Dispensatory which are classed as medicines be so classed. *Roberts v. State*, 4 Ga. App. 207; 60 S. E. 1082; *Fabor v. Green*, 72 Vt. 117; 47 Atl. 391.

In Australia it is held that "liquor" means a liquid which is commonly known and is adapted for use as a drink or beverage for human consumption, or which is reasonably capable of being used as a substitute for such beverage, or being converted into such beverage. Hence, in a prosecution for a sale of proprietary medicine, it is not necessarily sufficient for the prosecution to prove that it contains even a large percentage of alcohol, if the alcohol is essen-

tial for its use as a medicine or is necessary for extraction or as a preservative, or if the other ingredients are, as compared with the contained alcohol, of such potency or of such disagreeable character that the use of the liquid as a beverage would ordinarily result in danger to his health or in nausea or sickness. In considering whether a liquid is a liquor within the meaning of the statute, regard should be had to the use to which it is usually put, the purpose for which it is usually bought and its usual effect upon the system. *Gleason v. Hobson* [1907], *Vict. L. R.* 148.

In Maine in 1850 it was held that it was no defense that the liquor was old and used solely for medicinal purposes, if the accused had no license. *State v. Brown*, 31 Me. 522. See also *Commonwealth v. Kimball*, 24 Pick. 366; *Commonwealth v. Sloan*, 4 Cush. 52.

Statutes forbidding sale of liquors to be drank on premises. *People v. Van Alstyne* (Mich.), 122 N. W. 193; 16 *Detroit Leg. N.* 392.

Evidence to show members of accused's family had not been ill or witness had not heard of their illness, though living in the neighborhood. *Commonwealth v. Joslin*, 158 Mass. 482; 33 N. E. 653; 21 *L. R. A.* 449.

The object of our statutes regu-



**Sec. 41. Camphor gum not an intoxicant.**

In almost every home will be found the "camphor bottle," containing gum of camphor dissolved in distilled

water. The sale of intoxicating liquors is to prevent the use of such liquors as a beverage, and thus to check, and if possible, to extirpate the evils of intemperance. Hence the statutes are intended to apply to all intoxicating liquors which can be resorted to to gratify the appetite for intoxicating drink. But there is a large class of medicines, bitters and tinctures, used not as a beverage, but as medicinal remedies, to which such statutes are not intended to apply, although such articles are compounded in part of alcohol, and if used in sufficient quantities will produce intoxication. Such articles are usually kept by druggists and are manufactured in good faith as medicine. They are not intended for and are not used as a drink. Some of them are approved of and recommended by learned and skillful physicians. They vary greatly in their preparation in the amount of alcohol used in them and in their qualities. Many of them are believed to be useful in the cure of diseases; many of them are probably worthless or mischievous. Many mixtures of this sort pass under the title of patent or quack medicines. But the law makes no distinctions in regard to the manufacture, use and sale of medicines upon the ground that they are or are not the products of quackery. To prohibit the sale of these articles for their legitimate and real use as remedies for dis-

ease is not within the object of our legislation in regard to intoxicating liquors. When, therefore, medicines, bitters and tinctures are made and sold in good faith for their true and legitimate use, to prevent or cure disease, they cannot be regarded as within the class of intoxicating liquors, whose sale is prohibited or regulated by law. But when intoxicating drinks, intended to be sold and used as a beverage, are by some tincture or preparation slightly disguised so as to have to some extent the taste, flavor or appearance of medicines or bitters, when, in fact, they are really meant to be sold as intoxicating drinks, such mixtures, however disguised, are within the prohibition of the law. In all such cases it is a question not of law, but of fact, whether the pretended medicine is in reality and in good faith made, sold and used as a medicine, or is only a disguise for intoxicating liquor. Such questions must be determined by the evidence. The composition and character of the article, the amount of alcohol in it, and whether it does readily or with difficulty produce intoxication, whether it is agreeable or nauseous to the taste, whether it is useful or not as a medicine to cure diseases, whether it is generally kept and sold by druggists as medicine, whether it is frequently resorted to and used as a beverage, this and similar circumstances



spirits, and used exclusively as a medicine and kept ready for use when needed, but unpalatable as a beverage and not used as such. The design of our temperance statutes is to prevent the evil of tippling, and it cannot, as a rule of law or of fair statutory construction be maintained that a sale by a druggist of gum-camphor and alcohol mixed by him can in any way promote tippling; nor can his conviction for such a sale be maintained under a statute which provides that "no person without a State license therefor shall sell, offer or expose for sale spirituous liquors, wine, port, ale or beer, or any drink of a like character." In such case it cannot be said that it was the design of the Legislature to prohibit the sale of such a mixture by statute.<sup>35</sup> The mere presence of alcohol in an article sold to a customer by a country merchant or his clerk, in good faith and not as a shift or device to evade the law, is not to be deemed an intoxicating liquor within the meaning of the act to provide for the licensing of, and against the evils arising from, the sale of intoxicating liquors, simply because the customer to whom it was sold drinks it and becomes intoxicated.<sup>36</sup>

## **Sec. 42. Cinnamon and lemon essence—Cologne.**

A judgment against a defendant for selling spirituous liquors, wines, porter, ale, beer and drinks of a like nature, where the evidence showed that the defendant had sold a bottle of the "essence of cinnamon" to the State's witness; that before the sale the defendant said to the witness if he wanted to drink it he could not get it, but if he wanted it for cooking purposes he could have it, and the witness hav-

would be regarded as evidence tending to determine the question.

Russell v. Sloan, 33 Vt. 656; Commonwealth v. Ramsdell, 130 Mass. 68; State v. Bennett, 3 Harr. (Del.) 565; Intoxicating Liquor Cases, 25 Kan. 75; State v. Laffer, 38 Ia. 422; Foster v. State, 36 Ark. 258; Gostorf v. State, 39

Ark. 450; Davis v. State, 50 Ark. 17.

<sup>35</sup> State v. Haymond, 20 W. Va. 18; 43 Am. Rep. 787; Kizer v. Rundleman, 5 Jones (N. C.), 428.

<sup>36</sup> Walker v. Dailey, 101 Ill. App. 575. *In re* Intoxicating Liquors, 25 Kan. 751; 37 Am. Rep. 284.

ing answered he did not want to drink it, the defendant sold it to him, and that the witness did drink part of it and it affected him so he could not see after night, was affirmed on appeal by a divided court. In this case the theory of the judges voting for affirming the judgment was that it was immaterial what were the ingredients of a preparation or mixture, or by what name it was known, or whether it was patented or not, if it would produce intoxication, the sale of which was prohibited by the statute; and that in this case the jury was justified in finding that the particular "essence of cinnamon" sold by the defendant did produce intoxication and that the question whether it was an intoxicating drink was one of fact purely. Those judges voting for reversal of the judgment held that there was no fact proved from which the court or jury could infer that essence of cinnamon was composed in whole or in part of spirituous liquor, wine, porter, ale, beer, or any other drink of like nature, or that it was any mixture or preparation known as bitters or otherwise which could produce intoxication; and in the absence of proof on this subject the court could not take judicial notice of the ingredients entering into the composition of the "essence of cinnamon."<sup>37</sup> Extract of lemon, as it is usually known and used, is not classed as an intoxicating liquor, although it contains alcohol.<sup>38</sup> Nor does it include cologne, and the Legislature has not the power to prohibit its sale.<sup>39</sup>

#### **Sec. 43. Common cordial a spirituous liquor—Godfrey's Cordial.**

Under an act which prohibited the sale of "any wine, rum, brandy, gin, whisky or any spirituous liquor by any measure less than a quart or any punch or other mixed liquor by any measure whatever," an indictment for sell-

<sup>37</sup> *State v. Muncey*, 28 W. Va. 494; *Roberts v. State*, 4 Ga. App. 207; 60 S. E. 1082.

<sup>38</sup> *Holcomb v. People*, 49 Ill. 73; *In re Intoxicating Liquor Cases*, 25 Kan. 751; 37 Am. 284.

<sup>39</sup> *In re Intoxicating Liquor Cases*, *supra*. For essence of ginger, see *Bertand v. State*, 73 Miss. 51; 18 So. 545; *Roberts v. State*, 4 Ga. App. 207; 60 S. E. 1082.

ing spirituous liquor was sustained by proof of the sale of common cordial, the proof showing that it was made of whisky sweetened and scented with peppermint and other things, and that it would intoxicate. The contention was that the proof did not sustain a charge for selling spirituous liquor, but that of a sale of mixed liquor. The court held that the mixed liquor intended by the act, following as it did the specification of punch, was a mixture of spirituous liquors, before prohibited to be sold separately, and that where the basis of substance of the liquor sold was spirituous and not mixed by the vendor, it came within the prohibition of selling spirituous liquor. In answer to the contention that this construction would prohibit the sale of medicines, the basis of which was spirituous liquor, such as Godfrey's cordial, elixir of paregoric, etc., the court said, "Not so. The question will always be whether it is a sale of medicine or liquor. If an apothecary sell brandy, as such, it would be a violation of the law; if brandy made up into laudanum or other medicines, it is not a violation of a law prohibiting the sale of spirituous liquor. It will never be difficult to distinguish. Common store cordial is sweetened whiskey sold as spirituous liquor; Godfrey's cordial is a very different thing known for, and sold as medicine, and there can be no danger from the sale of it of promoting tippling, which is the evil designed to be provided for by our Act of Assembly." <sup>40</sup>

#### Sec. 44. Empire tonic bitters—Proprietary medicines.

A statute regulating the sale of intoxicating liquors provided that it should not apply to physicians putting up their own prescriptions nor the sale of "proprietary medicines." In construing it it was held that by the phrase, "proprietary medicines," as used in the statute, were meant

<sup>40</sup> State v. Bennett, 8 Harr. (Del.) 565. Under a Kansas statute it was held that whether "McLean's Strengthening Cordial and Blood Purifier," a mixture of whisky, syrup of tulu and syrup of wild

cherry, and "Sherman's Prickly Ash Bitters" was an intoxicating liquor, was a question of fact. *In re Intoxicating Liquor Cases*, 25 Kan. 751; 37 Am. Rep. 284.

such proprietary medicines as were not "alcoholic liquors or compounds," but medicines as distinguished from "alcoholic liquors and compounds," and that a registered druggist could not sell a preparation known as "Empire Tonic Bitters," which contained alcohol, without first having procured the license of dram-shop-keeper. In such a case it matters not that the defendant had paid an excise tax required by the Government of the United States.<sup>41</sup>

#### **Sec. 45. Home Bitters—Medicine—Instruction—Evidence.**

In a prosecution for unlawfully selling vinous and spirituous liquors a charge to the jury for the State which in effect said that if the compound sold, called "Home Bitters," was intoxicating, and was sold by the defendant as a beverage, and not as medicine, they ought to find the defendant guilty, and for the defendant, if from the evidence they believed he sold the compound in good faith as medicine and not as a beverage, they ought to acquit him, although the compound contained vinous or spirituous liquors sufficient to intoxicate, was held a fair statement of the law. The uses to which such a compound is ordinarily put, the purposes for which it is usually bought, and its effect upon the system are material facts from which may be inferred the intention of the seller. If other ingredients are medicinal and the alcohol is used as a necessary preserv-

<sup>41</sup> State v. Wright, 20 Mo. App. 412; McRoberts v. State, 45 Tex. Cr. App. 288; 92 S. W. 804; State v. Lillard, 78 Mo. 136. In United States v. Stubblefield, 40 Fed. 454, Empire Tonic Bitters was held to be a medicine.

Evidence that Hostetter's Bitters tasted like whisky and produced intoxication is proper. Parrott v. Commonwealth, 6 Ky. L. Rep. 221. A State may authorize a city to suppress the sale of medicated bitters. James v. State, 21 Tex. App. 353; 17 S. W. 422. Bitters com-

pounded in part of intoxicating liquor and sold for other than medicinal purposes may be prohibited. State v. Lillard, 78 Mo. 136.

The fact that Howe's Aromatic Invigorating Spirit contains 20 per cent of alcohol does not necessarily show it is not a medicine. Russell v. Sloan, 33 Vt. 653.

*Peruna* has been held to be an intoxicating liquor under proof of its intoxicating quality. Stelle v. State, 77 Ark. 441; 92 S. W. 530.



ative or vehicle for them; if from all the facts and circumstances it appears that the sale was made of the other ingredients as a medicine, and not of the liquor as a beverage, the seller is protected; but if the drugs or roots are mere pretense of medicines, shadows and devices under which an illegal traffic is to be conducted, they will be but shadows when interposed for protection against a criminal prosecution.<sup>42</sup> It matters not what name dealers or consumers apply to an illicit fluid so long as the arbitrary name can be translated into that of an intoxicating liquor—for instance, “rye whisky.” It is the liquor and not the name which gives its character to the sale and renders it lawful or unlawful.<sup>43</sup>

#### Sec. 46. Busby’s bitters—Judicial notice.

A court can not judicially know that “Busby’s Bitters,” though shown to be intoxicating, is or contains either distilled liquor or wine, or a liquor prepared for drink by the infusion of malt. Liquor of either class may be intoxicating, but neither class, nor all of them combined, includes all of the intoxicating liquors, beverages or bitters. A given liquor may, in other words, be in a high degree intoxicating, and yet be neither spirituous, vinous nor malt within the sense of a penal statute. In such case it is for a jury to say whether such bitters were vinous, spirituous or malt, or contain liquors of either or all of these classes in appreciable quantities.<sup>44</sup>

<sup>42</sup> King v. State, 58 Miss. 737; State v. Wilson, 80 Mo. 303; James v. State, 21 Tex. App. 352; Gostorf v. State, 39 Ark. 450.

<sup>43</sup> Kinnebrew v. State, 80 Ga. 232.

A tonic containing four per cent of alcohol, which could be drunk in sufficient quantities to produce intoxication was held to be an intoxicating liquor. Johnson v. State, 4 Tex. Cr. App. 419; 66 S. W. 554; State v. Stubblefield, 40 Fed. 454.

<sup>44</sup> Wall v. State, 78 Ala. 417; Allred v. State, 89 Ala. 112; 8 So. 56. For Sherman’s Prickly Ash Bitters, see *In re Intoxicating Liquor Cases*, 25 Kan. 751; 37 Am. Rep. 284.

“You have all heard of ‘blind tigers.’ One of the most common of these fraudulent devices is to put a few drugs, barks or extracts into a very common liquor and put it on the market for sale as a pretended medicine, under the name of ‘cordial,’ ‘tonic’ or ‘bitters.’



# **Sec. 47. Mead—Metheglin—Sweets.**

Mead is "a ferment liquor composed of one part of honey dissolved in three of boiling water, to which malt, yeast and spices are added."<sup>45</sup> Metheglin is "a fermented drink made of water and honey."<sup>46</sup>

# **Sec. 48. Wilson's Rocky Mountain Herb Bitters.**

Medicated bitters, called "Dr. Wilson's Rocky Mountain Herb Bitters," and containing alcohol, were held to be within an act which provided that "no dealer in drugs and medicines shall, directly or indirectly, sell or give away any intoxicating liquors and medicated bitters containing alcohol in any quantity less than one gallon, and in no quantity to be drunk upon the premises without first having obtained, in the manner provided by law, a license as a dram-shop keeper."<sup>47</sup>

'Hostetter's Bitters,' 'Fitzpatrick's Bitters,' 'Home Bitters,' 'Home Laxative Cordial,' 'Reed's Guilt Edged Tonic,' and other compounds of this character, and have all rightly been adjudged to be mere shams as medicines, because they were sold and used as intoxicating beverages, and for the liquor, and not for the drugs and barks they contained; and dealers in them have been dealt with precisely as if they had sold plain whisky without any disguise." *United States v. Stafford*, 20 Fed. 720, citing *Williams v. State*, 35 Ark. 430; *Foster v. State*, 36 Ark. 258; *Gosdorf v. State*, 39 Ark. 450; *United States v. Cota*, 17 Fed. 734. *Hostetter's Bitters*, *Parrott v. Commonwealth*, 6 Ky. L. Rep. 221.

<sup>45</sup> Standard Dictionary. A secondary definition is: "A drink,

usually made of syrup of sarsaparilla and water impregnated with carbon dioxide." *Ibid*.

"Odin's Mead," the mead that Odin carried away from the giant Septung, the inspiration of poetry.

<sup>46</sup> Standard Dictionary.

Under the English statute the word "sweets" or made wine mean any liquor made by fermentation from fruit and sugar, or from fruit or sugar mixed with any other material, and which has undergone a process of fermentation in its manufacture. 52 and 53 Vict. c. 42, § 28. And sweets include mead and metheglin, 33 and 34 Vict. c. 29, § 3; 43 and 44 Vict. c. 20, § 40.

In this country the courts do not take judicial notice that mead or metheglin is intoxicating. *Marks v. State* (Ala.), 48 So. 864.

<sup>47</sup> *State v. Wilson*, 80 Mo. 303.

### Sec. 49. Intoxication—Drunkenness—Drunkard.

There are different degrees of intoxication or drunkenness, and the word "intoxication" is nearly synonymous with "inebriety" or "inebriation." The word "intoxication" is that state or condition of the person which inevitably follows by taking into the body excessive quantities of intoxicating liquors.<sup>48</sup> It is evidenced by an undue or abnormal excitation of the feelings, or passions, or by rendering useless the capacity of the drinker to think and act correctly and effectually.<sup>49</sup> "Whenever a man is under the influence of liquor so as not to be entirely at himself, he is intoxicated; although he can walk straight, although he may attend to his business, and may not give any outward and visible signs to the casual observer that he is drunk, yet if he is under the influence of liquor so as not to be at himself, so as to be excited from it, and not to possess that clearness of intellect and that control of himself that he otherwise would have, he is intoxicated."<sup>50</sup> In

<sup>48</sup> Commonwealth v. Whitney, 11 Cush, 447; State v. Savage, 89 Ala. 1; 7 So. 183; 7 L. R. A. 426; Mix v. McCoy, 22 Mo. App. 431; State v. Kelley, 47 Vt. 294; State v. Robinson, 111 Ala. 482; 20 So. 30.

<sup>49</sup> Standard Life, etc. Ins. Co., 94 Ala. 434; 10 So. 530.

<sup>50</sup> Elkin v. Buschner (Pa.), 16 Atl. 102.

In this case it was also said: "One man will say a person was drunk at the time of a certain occurrence. Another will say he was not drunk; that he was sober. A great deal of testimony can be explained by the different ideas those persons have as to what is meant by drunkenness or intoxication. There are degrees of intoxication or drunkenness, as every one knows. A man is said to be dead

drunk when he is perfectly unconscious—powerless. He is said to be stupidly drunk when a kind of stupor comes over him. He is said to be staggering drunk when he staggers in walking. He is said to be foolishly drunk when he acts like the fool. All these are cases of different drunkenness—of different degrees of drunkenness. So it is a very common thing to say a man is badly intoxicated, and again that he is slightly intoxicated. There are degrees of drunkenness, and therefore many persons may say that a man was not intoxicated because he could walk straight; he could get in and out a wagon. What is meant \* \* \* by the words in the statute which makes it a penal offense, and also the party liable in a civil action for damages, for giving to a man

order that a person shall be drunk it is not necessary that he be excited to a frenzy.<sup>51</sup> In a Michigan case the term, "an intoxicated person," was thus defined: "When it is apparent that a person is under the influence of liquor, or when his manner is unusual or abnormal, and his inebriated condition is reflected in his walk or conversation, when his ordinary judgment and common sense are disturbed, or his usual will-power is temporarily suspended, when these symptoms result from the use of liquor, and are manifest, then, within the meaning of the statute, the person is intoxicated, and any one who makes a sale of liquor to such a person violates the law of the State. It is not necessary that the person should be called 'dead drunk' or hopelessly intoxicated; it is enough that his senses are obviously destroyed or distracted by the use of intoxicating liquor."<sup>52</sup> The reasonable and very moderate use of intoxicating liquors, however, does not produce a legal state of intoxication. It is the unreasonable, inordinate, immoderate, or excessive use of intoxicating liquors that produces cases which the State terms intoxication or drunkenness, forbidden by the statute; "and to say that no liquor is intoxicating, unless its moderate and reasonable use<sup>53</sup>

that is 'drunk or intoxicated' (because both words are used in the statute); and also, 'selling to a man of known intemperate habits'?" Then follows the definition quoted in the text above, in answer to this question.

<sup>51</sup> *Smith v. People*, 141 Ill. 447; 31 N. E. 425.

<sup>52</sup> *Laffer v. Fisher*, 121 Mich. 60; 79 N. W. 934; *State v. Pierce*, 65 Iowa, 85; 21 N. W. 195. The word "intoxicated" is synonymous with "drunk." *Sapp v. State*, 116 Ga. 182; 42 S. E. 410; *Standard Life etc. Ins. Co. v. Jones*, 94 Ala. 434; 10 So. 530; *Commissioners v. Trimble*, 150 Mass. 89; 22 N. E. 239.

<sup>53</sup> In determining what is a "moderate and reasonable use" of intoxicating liquor the capacity of the individual to withstand the intoxicating effect of liquor must be considered; for what would be a "moderate and reasonable use" of intoxicating liquor would produce far less effect upon a man who was used to it than upon a man who was not, and even individuals not used to it, its use produces very radical effects. So that it might under a statute forbidding a sale or gift to an intoxicated person not be an offense if sold or given to one person while it would be to another, though both shortly previous to

will produce inebriety, is to declare that no liquor whatever is intoxicating.”<sup>54</sup> But a statute forbidding a sale to an intoxicated person, means a sale to a person under such a state of inebriation as attracts observation and becomes known to others, or gives them reason to believe the person is intoxicated, and of this a bystander is generally a better judge than the person himself, whose opinion on the subject, for obvious reason, is worth but little.<sup>55</sup> The statute, however, when it refers to a person as “intoxicated” has no reference to a person intoxicated by the use of opium, haheesh, or the like, but to a person made drunk by the use of the common and usual intoxicating beverages.<sup>56</sup>

the sale or gift, and at the same time had drunk the same quantity of the same kind of liquor.

<sup>54</sup> *Wadsworth v. Dunman*, 98 Ala. 610; 13 So. 597.

<sup>55</sup> *Halstead v. Horton*, 38 W. Va. 727; 18 S. E. 953; *State v. Kelley*, 47 Vt. 294.

A non-expert witness may testify whether a particular person was “drunk.” *State v. Ryan* (La.), 48 So. 537; and so give his opinion. *State v. Stockman*, 82 S. C. 388; 64 S. E. 595; *Quinn v. O’Keffe*, 9 N. Y. App. Div. 68; 75 N. St. Rep. 753; 41 N. Y. Supp. 116.

Where a contributory negligence was a defense in a personal injury case, an instruction that the words, “intoxicated condition” meant that condition which the defendant was incapable of giving attention to what he was doing, as a prudent and reasonable intelligence would give, was held correct. *Kenney v. Rhineland*, 28 N. Y. App. Div. 246; 50 N. Y. Supp. 1088; *Nash v. Southern R. Co.* 136 Ala. 177; 33 So. 932; 96 Am. St. 19; *Johnson v. Louisville etc. R. Co.*, 104 Ala. 246; 16 So. 76; 53 Am. St. 39.

<sup>56</sup> *Ring v. Ring*, 112 Ga. 854; 38 S. E. 330 (allowing a divorce for habitual intoxication of either party). *Youngs v. Youngs*, 130 Ill. 230; 22 N. E. 806; 6 L. R. A. 548; 17 Am. St. 313. A statute may change the rule. *Burt v. Burt*, 168 Mass. 204; 46 N. E. 622; *Dawson v. Dawson*, 23 Mo. App. 169; *Ring v. Ring*, 112 Ga. 854; 38 So. 330. But while this is true, yet a complaint charging the defendant became and was found intoxicated, is sufficient, without alleging upon what he became intoxicated; for the presumption is that it was upon the usual intoxicating beverages. *State v. Kelley*, 47 Vt. 294.

A statute forbidding a sale to a person in the “habit of getting intoxicated” does not mean the habit of drinking intoxicating liquors immoderately. The word “intoxicated” was construed to mean to become inebriate or drunk. Intemperance does not necessarily imply drunkenness, it being defined to be the use of anything beyond moderation. *Mullinix v. People*, 76 Ill. 211.

A law authorizing a city to “prevent and restrain drunkenness”



**Sec. 50. Intemperate habits.**

"A man who is in the habit of getting drunk now and then, or getting under the influence of liquor every once in a while, is a man of intemperate habits."<sup>57</sup>

**Sec. 51. Habitual drunkenness.**

Habitual drunkenness is a distinct fact within itself; a condition of body and mind produced by the excessive use of intoxicating liquors, confirmed by habit. No more than in cases of insanity can it be described or defined by the causes that produced it in any one instance, because the indulgence in intoxicating liquors has different effects upon different persons.<sup>58</sup> A frequent and regular recurrence of excess of indulgence in intoxicating liquor constitutes the habit of habitual drunkenness.<sup>59</sup>

**Sec. 52. Habitual drunkard.**

An habitual drunkard is a person whose habits of drunkenness are confirmed and continual;<sup>60</sup> one who has formed

empowers it to prohibit the sale or giving of intoxicating liquors to an habitual drunkard. *Woods v. Pineville*, 19 Ore. 108; 23 Pac. 880.

A statute forbidding the issuance of letters of administration to a person incompetent to administer the affairs of the estate by reason of drunkenness does not include every species of drunkenness, but only when the drunkenness produces such a defect in the person applying for them as to amount to a lack of intelligence or habitual drunkenness. *In re Manly's Estate*, 12 N. Y. Misc. Rep. 472; 34 N. Y. Supp. 258.

Absolute drunkenness as a defense against contracts does not mean complete insensibility, nor dead drunk. *Cavinder v. Waddingham*, 5 Mo. App. 457.

A witness may testify directly concerning the habit of the person in question with respect to

his use of intoxicating liquors. *Sheppelman v. People*, 134 Ill. App. 556.

<sup>57</sup> *Elkin v. Buschner* (Pa.), 16 Atl. 102.

<sup>58</sup> *Trigg v. State*, 49 Tex. 645.

<sup>59</sup> *Golding v. Golding*, 6 Mo. App. 602; *McClanahan v. McClanahan*, 104 Tenn. 217; 56 S. W. 858; *State v. Robinson*, 111 Ala. 482; 20 So. 30; *Tatum v. State*, 63 Ala. 147; *Stanley v. State*, 26 Ala. 26; *Smith v. State*, 55 Ala. 1; *Ludwick v. Commonwealth*, 6 Harris, 172; *State v. Pratt*, 34 Vt. 323; *Northwestern Mut. Life Ins. Co. v. Muskegon Bank*, 122 U. S. 501; 7 Sup. Ct. Rep. 1221; 30 L. Ed. 1100; *Ring v. Ring*, 112 Ga. 854; 38 S. E. 330; *Gallagher v. People*, 120 Ill. 179; 11 N. E. 335; *DeLesdernier v. DeLesdernier*, 45 La. Ann. 1364; 14 So. 191.

<sup>60</sup> *Gourlay v. Gourlay*, 16 R. I. 705; 19 Atl. 142.



the habit and indulged in it, of drinking to excess and becoming intoxicated, whether daily or continuously or periodically, with sober intervals of a greater or less extent.<sup>61</sup> Usually he becomes drunk whenever the temptation is presented by being near where liquors are sold,<sup>62</sup> and who has lost his power of will, by frequent indulgence, to control his appetite for drink.<sup>63</sup> A person may be more frequently sober than drunk and still be an habitual drunkard.<sup>64</sup> Occasional acts of drunkenness do not make a person an habitual drunkard, nor is it necessary that he be continually in a state of intoxication. He may be an habitual drunkard and yet be sober for days and weeks together.<sup>65</sup> One who has so indulged his appetite for liquor as to become subject to *delirium tremens* may properly be regarded as an habitual drunkard.<sup>66</sup> An habitual drunkard, within the provisions of a statute allowing a divorce from such a person, is one given to inebriety or the use of intoxicating drink, and who has lost the power of will by frequent indulgence to control his appetite for it.<sup>67</sup>

<sup>61</sup> Miller v. Gleason, 18 Ohio Cir. Ct. Rep. 374; 10 Ohio C. D. 20; Commonwealth v. McNamee, 112 Miss. 286; Brown v. Brown, 38 Ark. 324; Ludwick v. Commonwealth, 18 Pa. St. 172.

<sup>62</sup> Magahay v. Magahay, 35 Mich. 210; Tatum v. State, 63 Ala. 147.

<sup>63</sup> Sutton v. Grand Lodge A. O. U. W., 84 Mo. App. 208.

<sup>64</sup> Brown v. Brown, 38 Ark. 324; State v. Pratt, 34 Vt. 323.

<sup>65</sup> Ludwick v. Commonwealth, 6 Harris (Pa.) 172; Commonwealth v. Whitney, 5 Gray, 85; McBee v. McBee, 22 Ore. 329; 29 Pac. 887; 29 Am. St. 613; Murphy v. People, 90 Ill. 59; Mack v. Harding, 39 La. Ann. 491; 2 So. 181.

"Neither does a single nor an occasional excess make a man an habitual drunkard, but of the habit

and rule of a man's life is to indulge periodically, and with increasing frequency and violence, in excessive fits of intemperance, such a use of liquor may properly cause the finding of habitual drunkenness." Northwestern Mut. Life Ins. Co., 122 U. S. 501; 30 L. Ed. 1100; 7 Sup. Ct. Rep. 1221; Appeal of Miskey, 107 Pa. St. 611; State v. Ryan, 70 Wis. 676; 36 N. W. 823; Ins. Co. v. Foley, 105 U. S. 350.

<sup>66</sup> Menkins v. Lightner, 18 Ill. 282.

<sup>67</sup> Richards v. Richards, 19 Bradw. (Ill.) 465; McBee v. McBee, 22 Ore. 329; 29 Pac. 887; 29 Am. St. 613; Bizer v. Bizer, 110 Iowa, 248; 81 N. W. 465; Walton v. Walton, 34 Kan. 195; 8 Pac. 110; Burns v. Burns, 13 Fla. 376; Mack v. Handy, 39 La. 491; 2 So. 181;

### Sec. 53. Habitual intemperance.

“The phrase, ‘habitual intemperance,’ means the custom or habit of getting drunk; the constant indulgence in

Youngs v. Youngs, 130 Ill. 230; 17 Am. St. 313; Meathe v. Meathe, 83 Mich. 150; 47 N. W. 109; Mahone v. Mahone, 19 Cal. 626; 81 Am. Dec. 91; Rude v. Nass, 79 Wis. 321; 48 N. W. 555; 24 Am. St. 717.

“It is not necessary that he should drink liquors to excess and become intoxicated every day, or even every week, but there must be such frequent repetition of excessive indulgence as to engender a fixed habit of drunkenness. Occasional acts of intoxication are not sufficient to make one a habitual drunkard; there must be the involuntary tendency to become intoxicated as often as the temptation is presented, which comes from a fixed habit, acquired from frequent excessive indulgence. The man is reduced to that pitiable condition in which he ‘either makes no vigorous effort to resist and overcome the habit, or his will has become so enfeebled by the indulgence that resistance is impossible.’ There is generated in him, by frequent and excessive indulgence, a fixed habit of drunkenness which he is liable to exhibit at any time when the opportunity is afforded. He is an habitual drunkard because he is commonly or frequently in the habit of getting drunk, although he may not always be so. When a man has reached such a state that his inebriety has become habitual, its effect upon his character and conduct is to disqualify

him from properly attending to his business, and if he be married to render his presence in the marriage relation disgusting and intolerable, especially if he be an ‘habitual gross drunkard,’ as declared by our statute.” McBee v. McBee, 22 Ore. 329; 29 Am. St. 613; 29 Pac. 887.

Proof that a person for any considerable part of his time was so intoxicated as to deprive him of his ordinary reasoning faculties, is *prima facie* evidence that he is incapacitated, as an habitual drunkard, to have control and management of his property, within the meaning of a statute giving the care of drunkards to the court. *In re Tracy*, 1 Paige 580.

Where a statute forbade a liquor dealer selling to “habitual drunkards,” it was held this term was used in its common acceptance, and did not mean an “habitual drunkard” as defined in a statute authorizing the appointment of a guardian for such a person, the capacity of a person to take care of himself or property being immaterial. *Campbell v. Jones*, 2 Tex. Civ. App. 263; 21 S. W. 723.

Whether or not a person is an “habitual drunkard” is a question for the jury. *Wilson v. White*, 29 Tex. Civ. App. 588; 69 S. W. 989; *Kammon v. People*, 24 Ill. App. 388; affirmed 124 Ill. 481; 16 N. E. 661; *Murphy v. People*, 90 Ill. 59; *Harrison v. Ely*, 120 Ill. 83; 11 N. E. 334. The court cannot

such stimulants as wine, brandy and whisky, whereby intoxication is produced; not the ordinary use, but the habitual use of them. The habit should be actual or confirmed. It may be intermittent. It need not be continuous or even of daily occurrence."<sup>68</sup> The habit need not be such as to render the person at all times incapable of attending to his business.<sup>69</sup> The term as used in the statutes does not include the excessive and habitual use of opiates or drugs.<sup>70</sup> A statute allowing a divorce for habitual drunkenness includes fixed habits of drinking to excess, so much so as to disqualify a person from attending to his business during the principal part of the time usually devoted to business,<sup>71</sup> and proof of occasional drunkenness is not suf-

say to the jury that "when a person gets intoxicated from three to five times in two years at some particular time, then he is in law a person who is in the habit of getting intoxicated." *Kammon v. People*, 124 Ill. 481; 16 N. E. 661; affirming 24 Ill. App. 388; *State v. Pratt*, 34 Vt. 323. That one is an habitual drunkard cannot be proven by opinions; it must be proven by facts. *Gallagher v. People*, 29 Ill. App. 397; affirmed 120 Ill. 179; 11 N. E. 335.

Drinking until *senile dementia* sets in because of the drink makes a man an habitual drunkard. *Robertson v. Lyon*, 24 S. C. 266.

"Gross and confirmed drunkenness" by the use of drugs, as a ground for a divorce, does not include an occasional condition of drunkenness, even though the confirmed and gross character of the use has ceased for a time; but the use must be excessive and must produce certain results. *Burt v. Burt*, 168 Mass. 204; 46 N. E. 622. See *Blaney v. Blaney*, 126 Mass. 205.

The word "incompetent," as applied to a drunkard, does not include a drunkard generally. In such a case incompetency is held to apply to a particular act, and then only where the evidence shows that his understanding was clouded or his reason dethroned by actual intoxication. *Wright v. Fisher*, 65 Mich. 275; 32 N. E. 605; 8 Am. St. 886.

<sup>68</sup> *Mack v. Handy*, 39 La. Ann. 491; 2 So. 183; *Williams v. Goss*, 43 La. Ann. 868; 9 So. 750; *Burns v. Burns*, 13 Fla. 369; *McGill v. McGill*, 19 Fla. 341; *Dennis v. Dennis*, 68 Conn. 186; 36 Atl. 34; 34 L. R. A. 449; 57 Am. St. 95; *Ring v. Ring*, 112 Ga. 854; 38 S. E. 330.

<sup>69</sup> *Mahone v. Mahone*, 19 Cal. 626; 81 Am. Dec. 91.

<sup>70</sup> *Barber v. Barber* (Conn.), 14 L. Rep. 375; *Burt v. Burt*, 168 Mass. 204; 46 N. E. 622; *Ring v. Ring*, *supra*.

<sup>71</sup> *Wheeler v. Wheeler*, 53 Iowa 511; 5 N. W. 689; 36 Am. Rep. 240; *Mahone v. Mahone*, 19 Cal. 626; 81 Am. Dec. 91.

ficient.<sup>72</sup> Such a statute does not cover the use of opiates to excess.<sup>73</sup> If a man is an habitual drunkard, however, sober periods will not change his status.<sup>74</sup>

#### **Sec. 54. Confirmed drunkenness.**

The term "gross and confirmed drunkenness," occasioned by the use of opium and drugs as a cause for divorce, includes occasional condition of drunkenness from the use of these substances, even though the gross and confirmed use of them has ceased for some length of time. Not only must the use be excessive, but it must also produce a certain result.<sup>75</sup> Confirmed habits of intoxication means intoxication whenever the opportunity offers.<sup>76</sup>

#### **Sec. 55. "Saloon" defined—Limited to one room.**

In Georgia it has been held that the question whether two rooms in a particular house in which it is proposed to sell spirituous liquors are in truth two distinct places, is a question of fact.<sup>77</sup> But in Illinois it is held that a license to sell intoxicating liquors in "a saloon" will not authorize the holder of the license to sell such liquors in two different rooms of a building, the court holding that a saloon is the place, within the meaning of the law, where liquor may be sold, and not necessarily the building in which the saloon is located. This is in harmony with Webster's definition that a saloon is "popularly a public room for specific uses, especially a barroom or grogshop." In other words, the popular idea associated with the word "saloon" is that it is a room rather than a building with several

<sup>72</sup> *Meathe v. Meathe*, 83 Mich. 150; 47 N. W. 109; *Powers v. Powers*, 20 Neb. 529; 31 N. W. 1.

<sup>73</sup> *Dawson v. Dawson*, 23 Mo. App. 169; *Burt v. Burt*, 168 Mass. 204; 46 N. E. 622; *Ring v. Ring*, 112 Ga. 854; 38 S. E. 330.

<sup>74</sup> *Brown v. Brown*, 38 Ark. 324; *Fuller v. Fuller*, 108 Ga. 256; 33

S. E. 865; *Berryman v. Berryman*, 59 Mich. 605; 26 N. W. 789.

<sup>75</sup> *Burt v. Burt*, 168 Mass. 204; 46 N. E. 622.

<sup>76</sup> *Blaney v. Blaney*, 126 Mass. 205.

<sup>77</sup> *Sanders v. Town Council*, 50 Ga. 178.



rooms.<sup>75</sup> And in Nebraska it is said that the word has acquired a restricted meaning, being usually applied only to places where liquors are sold by retail, and that a licensed saloon keeper means a person licensed to sell intoxicating liquors.<sup>79</sup> And in the American and English Law Encyclopedia it is said: "One license will not authorize the person or persons licensed to conduct the business in more than one place. A license is necessary for each place in which the business is conducted. A sale at any other place than that designated in a license is illegal."<sup>80</sup>

<sup>75</sup> Schwuchow v. City of Chicago, 68 Ill. 442; Malkan v. City of Chicago (Ill.), 75 N. E. 548.

<sup>79</sup> McDougal v. Giacomini, 13 Neb. 431; 14 N. W. 450; McMintay v. State, 38 Tex. Cr. Rep. 521; 43 S. W. 1010; Leesburg v. Putnam, 103 Ga. 110; 29 S. E. 602; 68 Am. St. 80; Clinton v. Gruesendorf, 79 Iowa 117; 45 N. W. 407.

<sup>80</sup> State v. Prettyman, 3 Harr. (Del.), 570; State v. Walker, 16 Me. 241; Commonwealth v. Eastbrook, 10 Pick. (Mass.) 293; Masson v. Severance, 2 N. H. 501; Matter of Lyman, 40 N. Y. App. Div. 46; Zinner v. Commonwealth (Pa. 1888), 14 Atl. 431.

The sale of ice cream and soda water does not make a place a "saloon," eating house or restaurant within the meaning of a statute requiring such places to have a license. *In re Henry*, 124 Iowa, 358; 100 N. W. 43.

Generally it may be said a saloon is a barroom or grogshop, which is devoted to the retailing of intoxicating liquors. *Leesburg v. Putnam*, 103 Ga. 110; 29 S. E. 602; 68 Am. St. 80; *Cardillo v. People*, 26 Colo. 355; 58 Pac. 678; *Goozen v. Phillips*, 49 Mich. 7; 12

N. W. 889; *Clinton v. Gruesendorf*, 80 Iowa 117; 45 N. W. 407.

Yet it has been held that it does not necessarily mean a place where intoxicating liquors are sold at retail, but may apply to a place where persons resort to obtain food or drink and which is not devoted to some other business. *Kitson v. Ann Arbor*, 26 Mich. 325; *State v. Mansker*, 36 Tex. 364; *Snow v. State*, 50 Ark. 557; 9 S. W. 306; *Springfield v. State* (Tex.), 13 S. W. 752; *Brewer ete. Co. v. Boddie*, 181 Ill. 622; 55 N. E. 49; *Wolf v. Lansing*, 53 Mich. 367; 19 N. W. 38.

A place where cider, birch beer, ginger ale and like refreshments have been sold and served in the usual manner of saloons or dram-shops, has been held to come within the provisions of a statute making it a misdemeanor to permit a miner to play pool in a dram-shop or saloon. *Snow v. State*, 50 Ark. 557; 9 S. W. 306.

And proof of playing in a saloon does not necessarily show the playing took place where intoxicating liquors were sold or for sale. *Springfield v. State* (Tex.), 13 S. W. 752; *Early v. State*, 23 Tex. App.



### Sec. 56. Saloon keeper—Merchant.

A saloon keeper is one who keeps a saloon, and he may be so described in a certificate describing his business;<sup>82</sup> but every man making a sale of intoxicating liquors is not a saloon keeper.<sup>83</sup> But the United States statutes<sup>84</sup> re-

364; 5 S. W. 122; and an indictment charging the burning of a saloon is not sufficient, for the word also means "either a spacious and elegant apartment for the reception of a company, or for works of art, as Webster defines the word, or that the building was used as a shop for the retail of intoxicating liquor." *State v. O'Connell*, 26 Ind. 266. So proof that a brewing company took a lease on a room for a "saloon" will not be sufficient to show that it was a place where intoxicating liquors were sold and not a place where soda water was sold, as to render the lease *ultra vires* on the part of the corporation. *Brewer etc. Co. v. Boddie*, 181 Ill. 622; 55 N. E. 49.

An act fixing the time for the opening and closing of "saloons" refers to places where intoxicating liquors are sold. *Ex parte Livingstone*, 20 Nev. 282; 21 Pac. 322; *Cardillo v. People*, 26 Colo. 355; 58 Pac. 678; *Dewar v. People*, 40 Mich. 401; 29 Am. Rep. 545.

And it has been held that an ordinance requiring all saloons to be closed at 11 p. m. includes a place where intoxicating liquors, beer, wine, pop, cigars, and ginger ale are sold. *Clinton v. Gruendorf*, 80 Iowa 117; 45 N. W. 407.

An inclosed park in which liquors are sold is not a saloon. *State v. Barr*, 39 Conn. 40.

A "barroom" and "saloon" are

the same and are what are represented by a "tippling house" or "grogshop," but authority to regulate them given a city does not authorize said city to regulate dispensaries. *Leesburg v. Putnam*, 103 Ga. 110; 29 S. E. 602; 68 Am. St. 80.

A statute authorizing the court to close any place where it is used unlawfully for the manufacture and sale of intoxicating liquors for saloon purposes, applies only to such places as are used for retailing, manufacturing and keeping intoxicating liquors. *Craig v. Werthmueller*, 78 Iowa 598; 43 N. W. 606.

The word "store" has been held to include a place for the sale of oysters and beer. *Commonwealth v. Whalen*, 131 Mass. 419.

*Beer saloon.* "A place where beer is sold and drank." *Century Dictionary*.

*Beer shop.* "A beer saloon; an ale house." *Century Dictionary*.

*Beer house.* "A house where malt liquors are sold; an ale house." *Century Dictionary*.

*Beer garden.* "A garden attached to a brewery, tavern or saloon, in which beer is served." *Century Dictionary*.

<sup>82</sup> *Cahill v. Campbell*, 105 Mass. 40.

<sup>83</sup> *Sparta v. Boorum*, 129 Mich. 555; 89 N. W. 435.

<sup>84</sup> Revised Statutes. § 5110, sub-div. 7.

quiring "merchants and tradesmen" to keep proper books of account as a condition to a discharge in bankruptcy includes a saloon keeper selling for cash and on credit.<sup>85</sup> A statute authorizing "merchants" to sell intoxicating liquors in quantities not less than a quart means "one who is really engaged in the business of a merchant. If an individual, merely for the purpose of selling liquor, should have on hand a few goods for sale as a cover for his real object, and was not actually and in good faith engaged in merchandising, he could not bring himself within" its provisions.<sup>86</sup>

### Sec. 57. Tippling house.

A tippling house does not differ in meaning from a saloon. It is a place where men resort to purchase intoxicating liquor by the drink or dram and where the liquor purchased is consumed.<sup>87</sup> "To keep open" a tippling house it is necessary that liquor be sold or drunk there,<sup>88</sup> and the liquor sold must be intoxicating.<sup>89</sup> It is not necessarily a disorderly house, or synonymous or identical therewith.<sup>90</sup>

### Sec. 58. Liquor shop.

Where "liquor shop" was used in a statute it was held that it would apply to a dwelling house if that was the business of the occupant.<sup>9</sup>

### Sec. 59. Tavern keeper.

"A tavern keeper," said the Supreme Court of Ohio, "has for many years past been understood to import a per-

<sup>85</sup> *In re Sherwood*, 21 Fed. Cas. 1285.

<sup>86</sup> *Commonwealth v. McGregor*, 9 B. Mon. 3.

<sup>87</sup> *Emporia v. Volmer*, 12 Kan. 622; *Patten v. Centralia*, 47 Ill. 370; *Koop v. People*, 47 Ill. 327; *Woods v. Commonwealth*, 1 B. Mon. 74; *Moore v. State*, 9 Yerg. 353.

In the first case cited it is defined as "a place of public resort where spirituous, fermented or other intoxicating liquors are sold and

drank in small quantities, without having a license therefor;" but it is quite manifest that a house may be a tippling house regardless of the question of a license.

<sup>88</sup> *Fant v. People*, 45 Ill. 259.

<sup>89</sup> *Koop v. People*, 47 Ill. 327.

<sup>90</sup> *Emporia v. Volmer*, 12 Kan. 622.

<sup>91</sup> *Wooster v. State*, 6 Baxt. 533.

son licensed to retail liquor at a house kept by him for public entertainment. A license to keep a tavern, therefore, in its ordinary signification, was understood to be a license to retail liquor and keep a house of entertainment."<sup>92</sup> Such was the definition given the term in Ohio when taken in connection with the right to retail intoxicating liquor under a license given the keeper of a tavern; and such was the signification given the term in Kentucky under like circumstances. But that meaning does not obtain in other States. Thus the terms, "an inn" and "innholder" are synonymous with "tavern" and tavern keeper;"<sup>93</sup> but it could not be seriously claimed that an "innkeeper" would be entitled to a license merely because he was such.<sup>94</sup>

#### **Sec. 60. Sample room.**

Under a statute making it an offense of burglary to break into "a shop, store, warehouse or other building, structure or inclosure in which any goods, merchandise or other valuable thing was kept for use, sale or deposit," an indictment charging a breaking into "a sample room in the Arlington Hotel, a building in" a certain city, was held insufficient; for it did not show that the room was a shop, nor a store, nor a warehouse, nor "other structure" in which goods, merchandise or other valuable thing were kept for use, sale or deposit. The indictment should have charged a breaking into the hotel.<sup>95</sup>

#### **Sec. 61. Dramshop—Dramshop keeper.**

A dramshop is a place—as a saloon or bar—where intoxicating liquors are sold at retail, usually by the drink

<sup>92</sup> *Hirn v. State*, 1 Ohio St. 15 (overruling *Curtis v. State*, 5 Ohio 324); *State v. Chamblyss*, 1 Cheves, 220; 34 Am. Dec. 593; *Braswell v. Commonwealth*, 5 Bush 544; *Commonwealth v. Kemp*, 14 B. Mon. 385.

<sup>93</sup> *Overseers v. Woerner*, 3 Hill, 150; *Bonner v. Wellborn*, 7 Ga. 296.

<sup>94</sup> *Norcross v. Norcross*, 53 Me. 163; *Kelly v. Commissioners*, 54 How. Pr. 327; *State v. Cloud*, 6 Ala. 628; *Page v. State*, 11 Ala. 849; *Benson v. Moore*, 15 Wend. 260; *St. Louis v. Siegrist*, 46 Mo. 593; *Savner v. Chipman*, 15 Wend. 260.

<sup>95</sup> *Thomas v. State*, 97 Ala. 3; 12 So. 409.

or dram.<sup>96</sup> But under a statute where a dramshop is defined to be a place where vinous, malt and spirituous liquors are retailed in less quantities than a gallon, the term covers a drug store and other places where liquors are sold at retail.<sup>97</sup> Under a lease prohibiting a subletting for a dramshop a lease to one to keep a "sample room" or "family resort," where intoxicating liquors are sold at retail, is a breach of its provisions.<sup>98</sup> A dramshop keeper is a person keeping a dramshop, usually by statute under a license to sell at retail.<sup>99</sup>

### Sec. 62. Barroom.

A barroom is a room where intoxicating liquors are publicly sold, to be there drunk.<sup>1</sup>

### Sec. 63. Bar defined.

The word "bar" has a definite signification in liquor statutes, especially in England. Thus a statute provided that "if a child is found in the bar of any licensed premises, except during the hours of closing, the holder of the license shall be deemed to have committed an offense \* \* \*"; and in subsection of the same statute it is declared that "the bar" shall be deemed to mean "any open drinking bar or any part of the premises exclusively or mainly used for the sale and consumption of intoxicating liquor." Before the stipendiary magistrate at Leeds the question arose whether a terrace adjoining the back of the tavern, to-

<sup>96</sup> Brockway v. State, 36 Ark. 629; Snow v. State, 50 Ark. 557; 9 S. W. 306; Hewitt v. People, 186 Ill. 336; 57 N. E. 1077; Commonwealth v. Marzynski, 149 Mass. 849; 21 N. E. 228; Feldman v. Morrison, 1 Bradw. (Ill.) 430; State v. Minnesota Club (Minn.), 119 N. W. 494; Rank v. People, 80 Ill. App. 40; Strauss v. Gaulsburg, 203 Ill. 234; 67 N. E. 836.

<sup>97</sup> Wright v. People, 101 Ill. 126.

See People v. Harrison, 191 Ill. 257; 61 N. E. 99.

<sup>98</sup> Bryden v. Northrup, 58 Ill. App. 233.

<sup>99</sup> State v. Slate, 24 Mo. 530; State v. Owen, 15 Mo. 506.

It is not error to refuse to instruct the jury as to the meaning of the word dramshop. Cross v. People, 66 Ill. App. 170.

<sup>1</sup> *Exparte* Schneider, 11 Ore. 288; 8 Pac. 289; Bieser v. State, 79 Ga. 326; 4 S. E. 257.



gether with a grassy slope leading towards a bowling-green, constituted "the bar" within the meaning of this statute. "The terrace was used as a pleasure ground on which various kinds of refreshments were supplied, and it was proved that at or about the time of the alleged offense something more than forty per cent. of the gross takings in this area resulted from the sale of food and non-intoxicants, leaving less than sixty per cent attributable to the sale of beer and other intoxicating liquors. It was contended, however, that it was mainly used for such sale and consumption, and therefore formed 'the bar.' The magistrate in dismissing the summons, said that even if the place were a mere refreshment counter, he would hesitate to find that it was mainly used for the sale and consumption of intoxicating liquor, simply because the aggregate value of intoxicants sold exceeded that of the residue of the articles consumed. And where, as in the present case, there was a stretch of pleasure ground frequented by persons who resorted there to partake of light refreshments in the open air while enjoying such other amenities as the spot afforded, the license holder was not brought within the penal provisions of the act because many of the people preferred ale to tea. The place was certainly not a 'bar' in any sense or signification which attaches or has ever attached to that word in common parlance or English literature, and this was important in construing a subsection which was intended, as he supposed, to prevent such evasions of the act as would follow a strict and inflexible interpretation of the word. The word in the subsection was 'means,' not 'shall include,' so that there was no reason to suppose that 'bar' was to have meanings in addition to its popular significance.<sup>2</sup> The case was not brought within the letter, and did not fall within the spirit of the act. At the same time he thought that if a place were on a particular day or at a particular hour used exclusively for the sale and consumption of intoxicants, the license holder would not escape the penal provisions of the statute by proving that at other

<sup>2</sup> See *Portsmouth v. Smith*, L. R. 13 Q. B. Div. p. 198.



times or on other occasions it was used wholly or mainly for other purposes. If the course of business were such that separate and distinct considerations were so plainly applicable to a particular day or to a definite period of time as to enable the court to sever them separately, he thought it would plainly be open to a court to do so."<sup>3</sup>

#### Sec. 64. Barroom—Fixtures.

A barroom is a room containing a bar at which liquors are sold, and it is not a dispensary;<sup>4</sup> and a statute allowing the sale of domestic wines if not sold "in barrooms by retail" means a room where intoxicating liquors are sold.<sup>5</sup> Barroom fixtures mean, as used in an insurance policy, fixtures in a barroom as attached to the realty.<sup>6</sup>

#### Sec. 65. Barkeeper.

A barkeeper is not a menial; he is not on the same footing with a coachman, waiter or gardener. He serves guests exclusively and keeps his employer's books, and is therefore more properly considered a clerk. Like the cook or the hostler he has an appropriate department, but like them he is under the immediate direction of his master. "The duties of the barkeeper [of a tavern] are as various in their nature as any other person employed about a tavern. We know that his services are not confined to keeping the books or attending to the bar of the house. It is usually expected that he will have an eye to the general conduct of the other servants, to the marketing, and in short to the whole business of the house. He is usually the *locum tenens* of the landlord in his absence, and his business is of domestic as well as public concern."<sup>7</sup>

<sup>3</sup> Memorandum in 69 Central Law Journal, p. 381.

<sup>4</sup> Leesburg v. Putnam, 103 Ga. 110; 29 S. E. 602; 68 Am. St. 80.

<sup>5</sup> Beiser v. State, 79 Ga. 326; 4 S. E. 257; *In re Schneider*, 11 Ore. 288; 8 Pac. 289. Statutory definition 27 U. S. Stat. at Large, 563;

Army and Navy Club v. District of Columbia, 8 App. Cas. (D. C.) 544.

<sup>6</sup> Hegard v. California Ins. Co., (Cal.) 11 Pac. 594.

<sup>7</sup> Boniface v. Scott, 3 S. & R. 351; *Ex parte Meason*, 5 Binn, 67.

**Sec. 66. Dram.**

The common understanding of the meaning of the word "dram" is something that can intoxicate, and proof of a sale of a dram, without proof of the sale of the ingredients constituting the liquor sold is sufficient proof of a sale of intoxicating liquor.<sup>8</sup>

**Sec. 67. Dealer.**

"A dealer is not one who buys to keep or makes to sell, but one who buys to sell again." Therefore neither brewers of beer and ale or distillers of alcohol and whisky are "dealers," but are manufacturers.<sup>9</sup> A person becomes a "dealer" from the moment when he buy goods with an intention to sell them again,<sup>10</sup> and the word "deal" under the English Excise Act of 1825<sup>11</sup> extends to buying as well as selling.<sup>12</sup>

**Sec. 68. Wholesaler and Retailer.**

Strictly speaking the words "wholesaler and retailer" of liquors means a person selling liquor at wholesale and retail, respectively. Just where the line is to be drawn between them cannot be well defined. A person who sells by the drink is clearly a "retailer," and one selling by the cask, barrel or hogshead is a "wholesaler." Statutes often fix the amounts constituting either a retailer or wholesaler, as in Georgia, where it was held any one selling by the quart was a wholesaler.<sup>13</sup> And under the United

<sup>8</sup> Lacy v. State, 32 Tex. 227.

<sup>9</sup> Commonwealth v. Rhodes, 1 Pittsb. 499; Taylor v. Vincent, 12 Lea 282; 47 Am. Rep. 338.

As to the United States Internal Revenue Laws, see United States v. Rennecke, 28 Fed. 847; United States v. Smith, 45 Fed. 115; United States v. Stevens, 37 Fed. 665; United States v. Allen, 38 Fed. 736.

<sup>10</sup> Regina v. Excise Commissioners, 2 T. R. 381.

<sup>11</sup> 6 Geo. 4, c. 81.

<sup>12</sup> Lord Coleridge, C. J. in Mackenzie v. Day [1893], 1 Q. B., at p. 291.

A dealer is one who makes successive sales as a business. Overall v. Bezeau, 37 Mich. 506.

<sup>13</sup> Bieser v. State, 79 Ga. 326; 4 S. E. 257.

States revenue laws it has been in times past fixed at five gallons.<sup>14</sup> Any one who sells liquor in packages or quantities to be resold to the trade is a wholesaler, and one who sells it to consumers for the purpose of consumption is a retailer.<sup>15</sup> But it has been held that a town cannot fix the limit at twenty gallons.<sup>16</sup>

### Sec. 69. Common seller.

Under a Maine (and usually under any) statute dealing with the subject a common seller is one who sells liquor in small quantities to be drunk upon the premises.<sup>17</sup> But it is not really necessary to constitute one a common seller that he should sell the liquor to be drunk upon the premises, for he may be such whether or not the liquor is to be drunk where sold. It is a selling to such as apply to him for liquor by the dram or small quantity that makes him a common seller.

### Sec. 70. Rectifier.

The word "rectifier" in the United States statutes has been thus defined: "Any person who rectifies, purifies or refines distilled spirits or wines by any process other than as provided for on distillery premises, and every wholesale or retail liquor dealer who has in his possession any still or wash tub, or who keeps any other apparatus for the purpose of refining in any manner distilled spirits, and every person who, without rectifying, purifying or refining distilled spirits, shall, by mixing such spirits, wine or other liquor with any materials, manufacture any spurious, imitation or compound liquors for sale under the name of whisky, brandy, gin, rum, wine, spirits, cordials, wine bit-

<sup>14</sup> United States v. Clare, 2 Fed. 55.

<sup>15</sup> Webb v. Baird, 11 Lea 667.

<sup>16</sup> Harris v. Livingston, 28 Ala. 577.

In the chapter on Licenses this subject is further discussed.

Purchasing liquor in a barrel and dividing it up and putting it into smaller vessels and the selling it does not necessarily make the latter sale one of retail; Bunch v. State (Ark.); 114 S. W. 239.

<sup>17</sup> State v. Burr, 10 Me. 438.

ters, or any other name, is to be regarded as a rectifier and as being engaged in the business of rectifying.”<sup>18</sup> “Every person who rectifies, purifies, or refines distilled spirits or wines is a rectifier, except distillers who purify or refine distilled spirits in their distilleries in the course of original or continuous distillation from sour mash, wort or wash, and every person who, by mixing distilled spirits, wines, or other liquors with any material, manufactures any spurious, imitation or compound liquor for sale is also regarded as a rectifier.”<sup>19</sup>

### Sec. 71. Distiller.

Under the United States statutes a distiller is a person who produces distilled spirits, or who brews or makes mash, wort or wash fit for distillation or for the production of spirits, or who, by any process of evaporation separates alcoholic spirits from any fermented substance, or who, making or keeping mash, wort or wash, has also in his possession or use a still.<sup>20</sup>

---

## ARTICLE II.—JUDICIAL NOTICE.

### SECTION.

72 Judicial knowledge — General Rule.

73 Spirituous, distilled or alcoholic liquors.

74 Vinous liquors.

### SECTION.

75 Ale.

76 Beer—Primary and secondary meaning.

77 Mead or metheglin.

78 Proof of quality of liquor.

### Sec. 72. Judicial knowledge—General rule.

In a criminal prosecution for the violation of the provisions of a statute against the sale of intoxicating liquors

<sup>18</sup> Regulations and Instructions Concerning the Tax on Distilled Spirits, September 16, 1908, p. 93. See U. S. Revised Statutes, § 3244. See *Woolner & Co. v. Rennick*, 170 Fed. 662.

<sup>19</sup> See Pamphlet, p. 196.

<sup>20</sup> U. S. Rev. Stat., § 3247. Regulations and Instructions Concerning the Tax on Distilled Spirits, September 16, 1908, p. 4.

the rule is that whatever is generally and popularly known as intoxicating liquor, such as whisky, brandy, gin, etc., may be so declared as a matter of law by the courts. Whatever, on the other hand, is generally and popularly known as medicine, an article for the toilet or for culinary purposes, recognized, and the *formula* for its preparation prescribed in the United States Dispensary, or like standard authority, and not among the liquors ordinarily used as intoxicating beverages, such as tincture of gentian, paregoric, bay rum, cologne, essence of lemon, etc., may not be so declared as matter of law by the courts, and this notwithstanding such articles contain alcohol, and in fact may produce intoxication. As to articles intermediate these two classes, articles not known to the United States Dispensary or other similar standard authority, compounds of intoxicating liquors with other ingredients, whether put up upon a single prescription for a single case or compounded upon a given formula and sold under a specific name, as bitters, cordials, etc., whether they are within or without such a statute, is a question of fact for a jury and not a question of law for a court. The rule or test is this: If the compound or preparation be such that the destructive character and effect of intoxicating liquor is gone, that its use as an intoxicating beverage is practically impossible by reason of the other ingredients, then it is outside of the statute. But if, on the other hand, the intoxicating liquor remain as a distinctive force in the compound and such compound is reasonably liable to be used as an intoxicating beverage, then it is within the statute.<sup>21</sup>

### Sec. 73. Spirituous, distilled and alcoholic liquors.

Courts take judicial notice that spirituous, distilled and vinous liquors are intoxicating without any proof concerning their qualities.<sup>22</sup> This is particularly true of whisky,<sup>23</sup>

<sup>21</sup> Intoxicating Liquor Cases, 25 Kan. 751; 37 Am. Rep. 284; Russell v. Sloan, 33 Vt. 656; State v. Laffer, 38 Iowa 422; Commonwealth v. Ramsdell, 130 Mass. 68.

<sup>22</sup> Commonwealth v. Peekham, 2 Gray 514; State v. York, 74 N. H. 125; 65 Atl. 685.

<sup>23</sup> Frese v. State, 23 Fla. 267; 2 So. 1; Carmon v. State, 18 Ind.



brandy,<sup>24</sup> apple brandy<sup>25</sup> and whisky cocktails,<sup>26</sup> and hence it is not error to charge the jury that such liquors are intoxicating.<sup>27</sup> The Supreme Court of Indiana, speaking of blackberry brandy, said: "Brandy is ranked as an intoxicating liquor by writers upon the general subject, and that it is a liquor of that character is generally and commonly known. The fact is therefore one of which the courts will take judicial knowledge. The addition to the term 'brandy' of the word 'blackberry' does no more than designate it as a particular kind of brandy; it does not indicate that the liquor was not brandy of some kind. The natural and reasonable presumption is that the basis of the liquor was brandy and therefore intoxicating. If it was not the ap-

450; *Eagan v. State*, 53 Ind. 162; *Schlicht v. State*, 56 Ind. 173; *Hodge v. State*, 116 Ga. 852; 43 S. E. 255; *Freiberg v. State*, 94 Ala. 91; 10 So. 703; *Wilcoxson v. State* (Tex. Cr. App.), 91 S. W. 581; *Fears v. State*, 125 Ga. 740; 54 S. E. 661; *Nussdaumer v. State*, 54 Fla. 87; 44 So. 712; *Tompkins v. State*, 2 Ga. App. 639; 58 S. E. 1111; *Brown v. State*, 4 Ga. App. 73; 60 S. E. 805; *Aston v. State* (Tex. Civ. App.), 49 S. W. 385; *Loveless v. State*, 40 Tex. Civ. App. 221; 49 S. W. 892; *Petersen v. State*, 63 Neb. 251; 88 N. W. 549; *People v. Webster*, 2 Doug. (Mich.) 92; *State v. Jones*, 3 Ind. App. 121; 28 N. E. 717; *Callahan v. State*, 2 Ind. App. 417; 28 N. E. 717; *Wasson v. First Nat. Bank*, 107 Ind. 206, 219; 8 N. E. 97; *Beatty v. State*, 53 Tex. Civ. App. 432; 110 S. W. 449.

<sup>24</sup> *Fenton v. State*, 100 Ind. 598; *State v. Munger*, 15 Vt. 290; *State v. Wadsworth*, 30 Conn. 598; *Dallas Brewing Co. v. Holmes Bros.* (Tex. Civ. App.), 112 S. W. 122.

<sup>25</sup> *Thomas v. Commonwealth*, 17 S. E. 788.

<sup>26</sup> *United States v. Ash* (D. C.), 75 Fed. 651; *Galloway v. State*, 23 Tex. Civ. App. 398; 5 S. W. 246; *State v. Pig*, 78 Kan. 618; 97 Pac. 859.

"As the courts are presumed to be acquainted with the meaning of English words, we must take notice that whisky is a spirit distilled from grain, and one species of the prohibited commodity. We are not required to shut our eyes to what we do know, and bring reproach upon the administration of the law by giving way to objections so utterly destitute of merit." *State v. Williamson*, 21 Mo. 496.

<sup>27</sup> "As every person of common intelligence knows that whisky is an intoxicating liquor, and there was no question, and could be none, as to that fact, the instruction that it was so was unobjectionable." *Edgar v. State*, 37 Ark. 219; *Fears v. State*, 125 Ga. 740; 54 S. E. 661.

pellant should have shown it.”<sup>28</sup> Likewise the court judicially knows gin is an intoxicating and spirituous liquor,<sup>29</sup> and so does it know the effect of drinking rum.<sup>30</sup> So the court judicially knows that alcohol is an intoxicating liquor, and that fact need not be proven.<sup>31</sup> An indictment charging a sale of whisky is a sufficient charge of a sale of “distilled liquor”<sup>32</sup> or intoxicating liquor, and is supported by proof of a sale of “whisky cocktail”<sup>33</sup> or by proof of a sale of a “common cordial” where it is shown to be whisky sweetened with sugar, to which is added a flavor of peppermint.<sup>34</sup> An indictment alleging a sale of “brandy” or “blackberry brandy” is sufficient to show a sale of spirituous or intoxicating liquor,<sup>35</sup> and the same is true of a charge of a sale of gin or rum.<sup>36</sup>

<sup>28</sup> Fenton v. State, 100 Ind. 598.

<sup>29</sup> Commonwealth v. Peckham, 2 Gray, 514; State v. Munger, 15 Vt. 290; State v. Wadsworth, 30 Conn. 55; Commonwealth v. Timothy, 8 Gray 480.

“Everybody who knows what gin is, knows not only that it is a liquor, but also that it is intoxicating. And it might as well have been objected that the jury could not find that gin was a liquor, without evidence that it was not a solid substance, as they could not find that it was intoxicating, without testimony to show it to be so. No juror can be supposed to be so ignorant as not to know what gin is. Proof, therefore, that the defendant sold gin is proof that he sold intoxicating liquor. If what he sold was not intoxicating liquor, it was not gin.” Commonwealth v. Peckham, 2 Gray, 514.

<sup>30</sup> State v. Munger, 15 Vt. 290; State v. Mooty, 3 Hill (S. C.), 187; State v. Wadsworth, 30 Conn. 55; United States v. Angell, 11 Fed. 34.

<sup>31</sup> Snider v. State, 81 Ga. 753; 7 S. E. 631. See Bennett v. People, 30 Ill. 389.

It has been held that alcohol is neither an ardent nor a vinous liquor. State v. Martin,, 34 Ark. 346; and it has also been held in the same State that the court does not judicially know it is an intoxicating liquor. State v. Witt, 39 Ark. 216; Winn v. State, 43 Ark. 151. These three Arkansas cases are of doubtful soundness; and so is the Illinois case cited.

<sup>32</sup> State v. Dengolensky, 82 Mo. 44.

<sup>33</sup> Galloway v. State, 23 Tex. App. 398; 5 S. W. 246.

<sup>34</sup> State v. Bennett, 3 Harr. (Del.) 565.

<sup>35</sup> State v. Munger, 15 Vt. 290; State v. Wadsworth, 30 Conn. 55; Fenton v. State, 100 Ind. 598.

<sup>36</sup> State v. Munger, 15 Vt. 290; State v. Wadsworth, 30 Conn. 55; Commonwealth v. Peckham, 2 Gray, 514; State v. Mooty, 3 Hill (S. C.), 187.

## Sec. 74. Vinous liquors.

Courts take judicial notice that wine is intoxicating, for that is common knowledge.<sup>37</sup> This is especially true of "port wine."<sup>38</sup> In Indiana the courts do not judicially know wine is not intoxicating.<sup>39</sup> When a statute prohibits the sale of "vinous liquors," proof of a sale of domestic wine is sufficient proof of an offense committed by the sale of such wine without showing that it is intoxicating;<sup>40</sup> but it would seem that the statute does not require such liquor to be "intoxicating" to come within the prohibition of its provisions. It has been held that courts will not take judicial notice that "blackberry wine" is intoxicating,<sup>41</sup> and a similar ruling has been made with regard to wine generally.<sup>42</sup>

## Sec. 75. Ale.

The court judicially knows ale is a malt liquor,<sup>43</sup> and the better considered cases hold that the courts will take judicial notice that it is an intoxicating liquor;<sup>44</sup> but there are cases which hold such notice will not be taken, the question being one of fact, to be submitted to the jury,<sup>45</sup> but no evidence is necessary for the jury to so find.<sup>46</sup> The

<sup>37</sup> *Caldwell v. State*, 43 Fla. 545; 30 So. 814.

<sup>38</sup> *State v. Packer*, 80 N. C. 439.

<sup>39</sup> *Jackson v. State*, 19 Ind. 312; *State v. Moore*, 5 Blackf. 118.

<sup>40</sup> *Hatfield v. Commonwealth*, 120 Pa. St. 395; 14 Atl. 151.

<sup>41</sup> *Laid v. State*, 104 Ga. 726; 30 S. E. 949; *State v. Lowry*, 74 N. C. 121.

<sup>42</sup> *Commonwealth v. Peckham*, 2 Gray, 514.

<sup>43</sup> *Wiles v. State*, 33 Ind. 206.

<sup>44</sup> *Shaw v. State*, 56 Ind. 108; *Killip v. McKay*, 13 N. Y. St. Rep. 5; *Commissioners v. Taylor*, 21 N. Y. 173; *Rau v. People*, 63 N. Y. 277; *Blatz v. Rohrback*, 116 N. Y.

450; 22 N. E. 1049; *Johnston v. State*, 23 Ohio St. 556. But see *Navin v. Ladue*, 3 Denio 43; *Wasson v. First Nat. Bank*, 107 Ind. 206, 219; 8 N. E. 97; *Commissioners v. Freeoff*, 17 How. Pr. 442; *Douglass v. State*, 21 Ind. App. 302; 52 N. E. 238; *People v. Crilley*, 20 Barb. 246.

<sup>45</sup> *State v. Biddle*, 54 N. H. 379; *State v. Barron*, 37 Vt. 57; *Haines v. Hanrahan*, 105 Mass. 480.

<sup>46</sup> *State v. Barron*, 37 Vt. 57.

A statutory definition may settle the question, as so often happens. *State v. Wadsworth*, 30 Conn. 55.

court does not judicially know "hop ale" or "hopjack" is a malt liquor.<sup>47</sup>

### Sec. 76. Beer—Primary and secondary meaning.

Whether or not courts will take judicial notice that beer is an intoxicating or malt liquor has been one of much contrariety of opinion, and this arises from the fact that there are many kinds of beer well known to be neither malt nor fermented nor intoxicating liquors. Therefore, upon a proof of a sale of "beer," and nothing more, many cases hold that it is not shown that there was a sale of either malt or intoxicating liquor.<sup>48</sup> But by the better line of cases on proof of a sale of "beer," even without additional words, the courts will construe it as a sale of fermented, malted or intoxicating liquors, and the burden is upon the persons claiming it is not a malted, fermented or intoxicating liquor to show that fact.<sup>49</sup> These decisions are based on the pri-

<sup>47</sup> *Daniel v. State*, 149 Ala. 44; 42 So. 22.

<sup>48</sup> *Weis v. State*, 33 Ind. 204; *Klare v. State*, 43 Ind. 483; *Schlosser v. State*, 55 Ind. 82; *Plunkett v. State*, 69 Ind. 68; *Kurz v. State*, 79 Ind. 488; *Netso v. State*, 24 Fla. 363; 5 So. 857; *Hausberg v. People*, 120 Ill. 21; 8 N. E. 857; *Pekin v. Smelzel*, 21 Ill. 464; *Commonwealth v. Hardiman*, 9 Gray, 136; *Blatz v. Rohrbach*, 116 N. Y. 450; 22 N. E. 1049; *State v. Beswick*, 12 R. I. 211; 43 Am. Rep. 26; *State v. Sioux Falls Brewing Co.*, 5 S. D. 39; 58 N. W. 1; 26 L. R. A. 138; *People v. Hart*, 24 How. Pr. 289; *White v. Manning*, 46 Tex. Civ. App. 298; 102 S. W. 1160 (suit on a liquor dealer's bond for selling intoxicating liquor to a minor). *Eaves v. State*, 113 Ga. 749; 39 S. E. 318; *Dallas Brewing Co. v. Holmes Bros.* (Tex. Civ. App.), 112 S. W. 122.

<sup>49</sup> *State v. Church*, 6 S. D. 89; 60 N. W. 143; *Meier v. State*, 2 Tex. Civ. App. 296; 21 S. W. 974; *Briffitt v. State*, 58 Wis. 39; 16 N. W. 39; 46 Am. St. 621; *United States v. Descournau*, 54 Fed. 138; *Adler v. State*, 55 Ala. 16; *Watson v. State*, 55 Ala. 158; *State v. Goyette*, 11 R. I. 592; *People v. O'Reilly*, 129 N. Y. App. Div. 522; 114 N. Y. Supp. 258; affirmed (N. Y.) 88 N. E. 1128; *Pedigo v. Commonwealth (Ky.)*, 24 Ky. L. Rep. 1029; 70 S. W. 659; affirming 68 S. W. 1113; *Sothman v. State*, 66 Neb. 302; 92 N. W. 303; *Coe v. State (Okla.)*, 104 Pac. 1074; *Peterson v. State*, 80 N. W. 549; *Markison v. State (Okla.)*, 101 Pac. 353; *Kerkow v. Bauer*, 15 Neb. 155; 18 N. W. 27; *State v. Mitchell*, 134 Mo. App. 540; 114 S. W. 1113; *Lambie v. State*, 151 Ala. 86; 44 So. 51; *State v. Carmody*, 50 Ore. 1; 91 Pac. 446, 1081; *Hoagland*



mary meaning of the word "beer." "Webster," said the Supreme Court of Indiana, "defines beer to be 'a fermented liquor made from any malted grain, with hops and other bitter flavoring matter.' In other words, it is a malt liquor, which the same author declares to be 'a liquor prepared for drink by an infusion of malt, as beer, ale, porter, etc.' It may, therefore, be said that beer is a liquor infused with malt and prepared by fermentation for use as a beverage. As a consequence when 'beer' is called for at a place at which intoxicating drinks are sold, the bartender, having in view the primary meaning as well as the common use of the word, is justified in inferring and must reasonably infer that malted and fermented beer is wanted. If any other kind of beer is desired it is expected that qualifying words will be used, such as spruce beer, root beer, small beer, ginger beer, and the like, thus attaching a remote and secondary meaning to the word 'beer' as descriptive of particular beverages. When, therefore, a witness testifies to the sale or giving away of beer under circumstances which make the sale or giving away of any intoxicating liquor unlawful, the *prima facie* inference is that the beer was of that malted and fermented quality declared by the statute to be an intoxicating liquor, and the court trying the case ought to take judicial notice of the inference which there arises from the use of the word 'beer' in its primary and general sense."<sup>50</sup> So where the term "lager beer" is used in testimony the inference is that an intoxicating beer was meant.<sup>51</sup> In days gone by, when the term "strong

v. Canfield, 160 Fed. 146; Locke v. Commonwealth (Ky.), 25 Ky. L. Rep. 76; 74 S. W. 654; Commonwealth v. Hurst (Ky.), 23 Ky. L. Rep. 365; 62 S. W. 1024; Peterson v. State, 63 Neb. 251; 88 N. W. 549; Killip v. McKay, 13 N. Y. St. Rep. 5; People v. Wheelock, 3 Park (N. Y.), 9; Murphy v. Montclair, 39 N. J. L. 673; State v. Lemp, 16 Mo. 389; State v. Houts, 36 Mo. 265; State v. Teissedre, 30 Kan. 476; 2 Pac.

650; Douglass v. State, 21 Ind. App. 302; 52 N. E. 238; State v. Jenkins, 32 Kan. 477; 4 Pac. 809.

<sup>50</sup> Myers v. State, 93 Ind. 251. (This case overrules the prior Indiana cases on this point, which are cited above.) Stout v. State, 96 Ind. 407; Welsh v. State, 126 Ind. 71; 25 N. E. 883.

<sup>51</sup> Dant v. State, 106 Ind. 79; 5 N. E. 870; Welsh v. State, 126 Ind. 71; 25 N. E. 883; Briffitt v. State, 58 Wis. 39; 16 N. W. 39;



beer'' was in use to distinguish it from small beer, courts took judicial notice that it was intoxicating.<sup>52</sup> Where a statute declares that lager beer is an intoxicating liquor it cannot be shown that it in fact is not, for the Legislature has fixed its status by a statute the courts cannot question.<sup>53</sup> The courts cannot, however, take notice that rice beer is an intoxicant; that is a question for the jury.<sup>54</sup>

### Sec. 77. Mead—Metheglin.

The courts cannot take judicial notice that either mead or metheglin is intoxicating, or that it is an alcoholic, spirituous, vinous or malt liquor.<sup>55</sup>

### Sec. 78. Proof of quality of liquor.

If the liquor be not judicially known as a prohibited liquor, then it must be alleged that it is an intoxicating, spirituous, distilled, malt, fermented, alcoholic or vinous liquor if the terms used in describing it are not judicially noticed as being descriptive of such liquor, and these allegations established by proof.<sup>56</sup> If a witness testifies that the liquor in

State v. Goyette, 11 R. I. 592; State v. Rush, 12 R. I. 198; Walker v. State, 38 Ark. 656. *Contra*, People v. Zeiger, 6 Park (N. Y.), 355; People v. Schewe, 29 Hun, 122; Commonwealth v. Bloss, 116 Mass. 56.

It has been held that the courts cannot take judicial notice that "lager beer" is a beer within the provisions of a statute forbidding the sale of beer, a decision indefensible. People v. Hart, 24 How. Pr. 289.

<sup>52</sup> Rau v. People, 63 Ind. 277. But in a number of cases evidence showed it was intoxicating. Nevin v. Ladue, 3 Denio, 43, 437; Commissioners v. Taylor, 21 N. Y. 173; People v. Hawley, 3 Mich. 330; Markle v. Akron, 14 Ohio, 586;

People v. Crilley, 20 Barb. 246; People v. Henschel, 12 N. Y. Supp. 46.

<sup>53</sup> Commonwealth v. Anthes, 12 Gray, 29; Commonwealth v. Bussler, 14 Gray, 83; Commonwealth v. Snow, 133 Mass. 575.

<sup>54</sup> Bell v. State, 91 Ga. 227; 18 S. E. 288.

<sup>55</sup> Marks v. State (Ala.), 48 So. 864.

<sup>56</sup> Nussbaumer v. State, 54 Fla. 87; 4 So. 712; Carson v. State, 69 Ala. 235; Queen v. McDonald, 24 Nova Scotia, 45; Haworth v. Minns, 56 L. T. 316; 51 J. P. 7; People v. Schewe, 29 Hun, 122; Nazum v. State, 88 Ind. 599; Swalm v. State, 49 Tex. Civ. App. 241; 91 S. W. 575; State v. Page, 66 Me. 418; Godfreidson v. People,

question made him intoxicated that will not exclude testimony that others drank liquor drawn at the same, or nearly the same time, from the same keg, and it did not make those drinking it drunk or intoxicated.<sup>57</sup> When a defendant claimed he sold only beer in his shop and that it was not intoxicating, it was held that the State could show that for several days before the date of sale persons were seen to go into the shop and come out drunk.<sup>58</sup> It is also proper to show the "bit'ers" in question were bought in the community and drank as a "beverage."<sup>59</sup> A witness who has frequently drunk fermented liquor is qualified to testify that a particular liquor, which he has tasted, is or is not fermented liquor, if he is able to distinguish them by their taste, although having no knowledge of the science of chemistry.<sup>60</sup> So a witness may be asked if he thought the liquor given him by the defendant was lager beer.<sup>61</sup> A physician may be asked his opinion as to whether the human stomach can contain enough beer to intoxicate;<sup>62</sup> and any witness who has had an opportunity for personal observation or experience sufficient to enable him to form a correct opinion may testify to the intoxicating properties of the bitters that are in question.<sup>63</sup> But where a witness had drunk a great deal of beer, yet had no particular knowledge of the effect of beer on another, it was held that he was not competent to testify that a certain quantity would either produce or not produce intoxication.<sup>64</sup>

88 Ill. 284; *State v. Haymond*, 20 W. Va. 18; 43 Am. Rep. 787; *Wall v. State*, 78 Ala. 417; *Gosdorf v. State*, 39 Ark. 450; *In re Intoxicating Liquor Cases*, 25 Kan. 751; 37 Am. Rep. 284; *Allred v. State*, 89 Ala. 112; 8 So. 56; *Butler v. State*, 25 Fla. 347; 6 So. 67; *Prather v. State*, 12 Tex. App. 401; *Kinnebrew v. State*, 80 Ga. 232; 5 S. E. 56; *Musick v. State*, 51 Ark. 165; 10 S. W. 225.

<sup>57</sup> *Knowles v. State*, 80 Ala. 9.

<sup>58</sup> *Commonwealth v. O'Donnell*, 143 Mass. 178; 9 S. E. 509.

<sup>59</sup> *Carl v. State*, 87 Ala. 17; 6 So. 118.

<sup>60</sup> *Merkle v. State*, 37 Ala. 139.

<sup>61</sup> *Commonwealth v. Monahan*, 140 Mass. 463; 5 N. E. 259.

<sup>62</sup> *People v. Schewe*, 29 Hun. 122; 1 N. Y. Cr. Rep. 360.

<sup>63</sup> *Carson v. State*, 69 Ala. 235.

<sup>64</sup> *Clark v. State*, 53 Tex. Civ. App. 529; 111 S. W. 659; *Young v. Beveridge*, 81 Neb. 180; 115 N. W. 766.

The properties of liquor may be shown by a chemical analysis,<sup>66</sup> and it has been held that any person is competent to testify that certain liquor was gin, if he knew, and it was not necessary that he be an expert.<sup>66</sup> And a non-expert witness may testify that the wine in question was intoxicating<sup>67</sup> if he has had any personal experience in the use of the liquor in question, and he need not be an expert.<sup>68</sup> A witness may testify as to its quality from having merely smelled it<sup>69</sup> and the effect upon one who drank it.<sup>70</sup>

On a charge of a sale of "hop ale" the defendant may show by the manufacturer that it is not a malt liquor. *Daniel v. State*, 149 Ala. 44; 43 So. 22.

A witness may not testify that the liquor he bought from the defendant did not taste like the liquor given him by the prosecuting witness which was a part of the liquid claimed to be intoxicating. *Swalm v. State*, 49 Tex. Civ. App. 241; 91 S. W. 575.

Where the witness said of the liquor in question, "I guess it was intoxicating," it is not proven that it was an intoxicating liquor. *Schwulst v. State*, 52 Tex. Civ. App. 426; 108 S. W. 698. (But was not it a question for the jury to determine in what sense he used the word "guess"? It is a well-known fact that many persons use this word for a word of positive assertion.)

If the evidence be conflicting as to the character of the liquor, the verdict of the jury finding it to be intoxicating will not be disturbed. *Cunningham v. State*, 52 Tex. Civ. App. 522; 108 S. W. 678.

If a witness testify of his own knowledge that he believed the liquor sold was whisky, it is error to refuse to allow him to be cross-examined concerning his

knowledge of such whisky. *Beaty v. State*, 53 Tex. Cr. App. 432; 110 S. W. 449.

Of course, the constituents constituting the liquor may always be shown. *Regina v. Bennett*, 1 Ont. 445.

<sup>65</sup> *Nussbaumer v. State*, 54 Fla. 87; 44 So. 712; *Regina v. Bennett*, 1 Ont. 445; *Commonwealth v. Magee*, 141 Mass. 111; 4 N. E. 819; *Commonwealth v. Bently*, 97 Mass. 551; *Haworth v. Minns*, 56 L. T. 316; 51 J. P. 7.

<sup>66</sup> *Commonwealth v. Timothy*, 8 Gray 480.

<sup>67</sup> *Nussbaumer v. State*, 54 Fla. 87; 44 So. 712; *Queen v. McDonald*, 24 Nova Scotia, 45; *Merkle v. State*, 37 Ala. 139; *Curtis v. State*, 5 Tex. Civ. App. 607; 108 S. W. 380.

<sup>68</sup> *Carl v. State*, 87 Ala. 17; 6 So. 118; *Savage v. Commonwealth*, 84 Va. 582; 5 S. E. 563; *Commonwealth v. Peto*, 136 Mass. 155; *Commonwealth v. White*, 15 Gray, 407.

<sup>69</sup> *Haines v. Hanrahan*, 105 Mass. 480.

<sup>70</sup> *Commonwealth v. Reyburg*, 122 Pa. St. 299; 16 Atl. 351; *Brenley v. State*, 91 Ala. 47; 8 So. 816; *Fairly v. State*, 63 Miss. 333; *McRoberts v. State* (Tex. Cr. App.), 92 S. W. 804.

## CHAPTER II.

### CONSTITUTIONALITY OF STATUTES.

#### SECTION.

79. Control of liquor traffic falls under police power.
80. Definition and extent of police power.
81. Police power, continued—Legislative power.
82. Police power not the power of eminent domain.
83. State cannot surrender police power.
84. Police power impairing the obligation of a contract.
85. Police power limited by Federal Constitution.
86. Blackstone's enumeration of police powers.
87. Sumptuary argument insufficient to defeat liquor legislation.
- 88 No natural right to sell intoxicating liquors.
89. Right to sell liquors at common law—Nuisance.
90. Natural right not a judicial question.
91. Motive for passage of law or ordinances.
92. Prohibitory law, basis of constitutionality.
93. Prohibiting manufacture of intoxicating liquors.
94. Constitution prohibiting the granting of a license—Ohio Constitution.
95. Effect of adopting constitutional prohibitory measure on prior statute.

#### SECTION.

96. Contracts prohibiting.
97. Past contracts for sale of intoxicating liquors.
98. Effect of prohibition upon liquors on hand at time of its adoption.
99. Keeping liquors.
100. Corporate charters, change—Police power.
101. Prohibition in particular places and localities.
102. Confining liquor sales to certain districts.
103. Agricultural fairs.
104. Educational institutions.
105. Religious assemblies.
106. License, State may refuse.
107. State may permit sales under a license—Biblical prohibition.
108. Fourteenth Amendment, effect of or power to regulate sale of intoxicating liquors.
109. Fourteenth Amendment — Keeping saloon.
110. Privileges and immunities of other States.
111. "Import" defined—Statute in violation of Constitution.
112. Discrimination against liquors of other States.
113. Manufacture for shipment out of State.
114. Non-intoxicating liquors—Declaring liquors to be intoxicating.

## SECTION.

115. Regulation of sales and saloons.
116. Permitting persons to go into saloon at prohibited times.
117. Delegation of power to license and regulate sales of liquors.
118. Compelling towns to engage in liquor traffic.
119. Monopoly of sale.
120. Territorial power to enact liquor laws.
121. State engaging in liquor traffic—Dispensary laws.
122. Carolina dispensary and Wilson laws construed—Discrimination.
123. *Ex post facto*—Municipal legislation.
124. No property right in license—Annulling a license.
125. Revocation of license.
126. Amount of license fees.
127. Increasing amount of fee before license has expired.
128. License for and sale by druggists.
129. Limiting license to certain class of persons.
130. Discrimination in granting license.
131. Discretionary power to grant a license.
132. Appeal to courts from granting, refusing or revoking license.
133. Taxes and fees.
134. Fees must be uniform.
135. Bell-Punch law—Uniformity—Discrimination.
136. Consent of voters to license—Validity of statutes requiring.

## SECTION.

137. Assent of neighbors may be required.
138. Indian statute—Remonstrance.
139. Sales to minors, drunkards, insane persons and Indians.
140. Limiting sales to certain purposes.
141. Screens—Validity and enforcement of law requiring.
142. Sunday laws—Municipal ordinance.
143. Women as employes and visitors in saloons.
144. Record of sales.
145. Restitution of internal revenue—Licenses and receipts—Exposure of license.
146. Minimum quantity that may be sold at one time.
147. Owner of premises—Liability under statute.
148. Civil damages.
149. Requiring licensee to give bond.
150. Inspection of liquors—Ingredients.
151. "Blind Pig" or "Blind Tiger" law.
152. *Ex post facto* law—Change of remedy.
153. Local option—Its two phases.
154. Local option not special legislation.
155. Local option laws—Delegated power.
156. Local option laws—Constitutionality.
157. Local option law, why not unconstitutional.



SECTION.	SECTION.
158. Local option laws, why not unconstitutional — <i>Continued</i> .	173. <i>Ex post facto</i> law defined—Heavier subsequent punishment.
159. Local option, not in violation of Fourteenth Amendment.	174. British North American Act.
160. Local option — Alabama Constitution — Notice of enactment of law.	175. Closing saloons.
161. Local option law in Territories.	176. Evidence, statute regulating.
162. Local option not destructive of property.	177. Jury trial, when it can be secured by appeal.
163. Special legislation for village.	178. Double punishment — State and municipalities.
164. Local option constitutional provisions.	179. Double punishment—Conflict of jurisdiction.
165. Local prohibitory laws, when constitutional.	180. Imprisonment for debt.
166. Special legislation.	181. Support of penitentiary—Imitation liquor.
167. Proceedings <i>in rem</i> .	182. Removal of officers for drunkenness.
168. Search and seizure of liquors illegally kept.	183. Drunkenness.
169. Destruction of intoxicating liquors.	184. Inebriate asylums.
170. Nuisance—Abatement.	185. Miscellaneous decisions.
171. Enjoining the maintenance of liquor establishments.	186. When courts will not consider constitutional question.
172. Amount of penalty—Unusual punishment.	187. Title of statutes — Valid statutes.
	188. Title of statute — Invalid statute.
	189. Statute or ordinance only in part valid.
	190. Construction of statute.

### Sec. 79. Control of liquor traffic falls under police power.

The control of the liquor traffic and all rules and regulations concerning the use and sale of intoxicating liquors, even the prohibition of their sale, falls within the police power. "It is the peculiar province of the State, either by legislative enactment or through authority delegated by municipalities to exert its police powers for the protection of lives, health and property of the citizens, as well as to maintain good order and preserve public morals. It is everywhere conceded that the traffic in intoxicating liquors af-

fects all these subjects, and that it is hence a proper subject for police regulation.”<sup>1</sup> “If it be once granted,” said the Supreme Court of Vermont, “that the use of intoxicating liquors as a drink is worse than useless and intemperance a legitimate consequence of such use, and that intemperance is an evil, injurious to health and sound morals and productive of pauperism and crime, it seems to us that a law designed to prevent such consequences must clearly fall within the class of laws denominated police regulations.”<sup>2</sup> This is a power not possessed by the United States.<sup>3</sup> It therefore becomes expedient to examine into the character of this power and in a limited way into its extent.<sup>4</sup>

<sup>1</sup> Moore v. Indianapolis, 120 Ind. 483; 22 N. E. 424; Cassiday v. Macon (Ga.), 64 S. E. 941; McKinney v. Salem, 77 Ind. 213; Burnside v. Lincoln County Court, 86 Ky. 423; 7 S. E. 276; State v. Intoxicating Liquors, 58 Vt. 594; 4 Atl. 229.

<sup>2</sup> Lincoln v. Smith, 27 Vt. 328; Metropolitan Board v. Barrie, 34 N. Y. 657; State v. Gurney, 37 Me. 156; 58 Am. Dec. 156; Beer Co. v. Massachusetts, 97 U. S. 25; Schwuchow v. Chicago, 68 Ill. 444; Bode v. State, 7 Gill 326; Bancroft v. Dumas, 21 Vt. 456; Thomasson v. State, 15 Ind. 449; Reed v. Collins, 5 Cal. App. 494; 90 Pac. 973; License Cases, 5 How. 504; Goddard v. Jacksonville, 15 Ill. 588; Board v. Scott (Ky.), 101 S. W. 944; 30 Ky. L. Rep. 894; Ketting v. Jacksonville, 50 Ill. 39; State v. Allmond, 2 Houst. (Del.) 612; Commonwealth v. Intoxicating Liquors, 115 Mass. 159; Hedderick v. State, 101 Ind. 564; 1 N. E. 47; 51 Am. Rep. 768; Jordan v. Evansville, 163 Ind. 512; 72 N.

E. 544; Danville v. Hatcher, 101 Va. 523; 44 S. E. 727; Schmidt v. Indianapolis, 168 Ind. 631; 80 N. E. 632; Crowley v. Christensen, 137 U. S. 86; 34 L. Ed. 620; 11 Sup. Ct. Rep. 13; Giozza v. Tiernan, 148 U. S. 657; 37 L. Ed. 599; 13 Sup. Ct. 721; Farmville v. Walker, 101 Va. 323; 43 S. E. 558; Mugler v. Kansas, 123 U. S. 623; 31 L. Ed. 205; 8 Sup. Ct. 273; Bertmeyer v. Iowa, 18 Wall 129; 21 L. Ed. 929; Pose v. State, 4 Ga. App. 588; 62 S. E. 117; Cooper v. Hot Springs, 87 Ark. 12; 111 S. W. 997.

<sup>3</sup> United States v. DeWitt, 9 Wall 41.

<sup>4</sup> Restrictions which may be lawfully imposed upon the liquor traffic might be illegal when applied to other pursuits. State v. Calloway, 11 Idaho 719; 84 Pac. 27.

A court of equity will not enjoin the enforcement of a liquor statute, although it be void. J. W. Kelly & Co. v. Conner (Tenn.), 123 S. W. 622.

### Sec. 80. Definition and extent of police power.

The definitions of the police power, given by eminent judges, are perhaps the best and most reliable definitions; at least they are those most relied upon by the courts. Chief Justice Shaw at an early date gave what is considered a comprehensive definition or description of this power. "We think," says he, "it is a settled principle, growing out of the nature of well-ordered civil society, that every holder of property, however absolute and unqualified may be his title, holds it under the implied liability that his use of it shall not be injurious to the equal enjoyment of others having an equal right to the enjoyment of their property, nor injurious to the rights of the community. All property in this Commonwealth is \* \* \* held subject to these general regulations which are necessary to the common good and general welfare. Rights of property, like all other social and conventional rights, are subject to such reasonable limitations in their enjoyment as shall prevent them from being injurious, and to such reasonable rules and regulations established by law as the Legislature, under the governing and controlling power vested in them by the Constitution, may think necessary and expedient. This is very different from the right of eminent domain—the right of a government to take and appropriate private property whenever the public exigency requires it, which can be done only on condition of providing a reasonable compensation therefor. The power we allude to is the police power; the power vested in the Legislature by the Constitution to make, ordain and establish all manner of wholesome and reasonable laws, statutes and ordinances, either with penalties or without, not repugnant to the Constitution, as they shall judge to be for the good and welfare of the Commonwealth, and of the subjects of the same." And he adds very justly: "It is much easier to perceive and realize the existence and source of this power than to mark its boundaries or prescribe limits to its exercise,"<sup>5</sup> a remark made by many of the eminent jurists.<sup>6</sup> "It is

<sup>5</sup> Commonwealth v. Alger, 7 Cush. 53.

<sup>6</sup> "It is always easier to determine whether a particular case

true," said the Supreme Court of the United States, "that the legislation which secures to all protection in their rights, and the equal use and enjoyment of their property, embraces an almost infinite variety of subjects. Whatever affects the peace, good order, morals and health of the community, comes within the scope; and everyone must use and enjoy his property subject to the restrictions which such legislation imposes. What is termed the 'police power' of the State, which, from the language often used respecting it, one would suppose to be an undefined and irresponsible element in government, can only interfere with the conduct of individuals in their intercourse with each other, and in the use of their property, so far as may be required to secure these objects."<sup>7</sup> Justice McLean in the famous License Cases<sup>8</sup> said of it that, "It is a power essential to self-preservation, and exists, necessarily, in every organized community. It is, indeed, the law of nature, and is possessed by man in his individual capacity."<sup>9</sup> "The police power of a State," said Chief Justice Redfield, in discussing its scope, "extends to the protection of the lives, limbs, health, comfort and quiet of all persons, and the protection of all property within the State, according to the maxim, *Sic utere tuo est alienum non laedas*, which being of uni-

comes within the general scope of the power than to give an abstract definition of the power itself, which will be in all respects accurate." *Stone v. Mississippi*, 101 U. S. 814.

<sup>7</sup> *Munn v. Illinois*, 94 U. S. 145.

<sup>8</sup> 5 How. 588.

<sup>9</sup> It is "the due regulation and domestic order of the kingdom, whereby the inhabitants of a State, like members of a well-governed family, are bound to conform their general behavior to the rules of propriety, good neighborhood and good manners, and to be decent, industrious, and inoffen-

sive in their respective stations."

4 Blackstone Com. 163.

"Police is a general system of precaution, either for the prevention of crimes and calamities. Its business may be distributed into eight heads: 1. Police for the prevention of offenses; 2. Police for the prevention of calamities; 3. Police for the prevention of epidemic disease; 4. Police of charity; 5. Police of interior communications; 6. Police of public amusements; 7. Police for recent intelligence; 8. Police for registration." Jeremy Bentham's *General View of Public Offenses*, Edinburg ed. of Works, Part IX, p. 157.



versal application, it must, of course, be within the range of legislative action to define the mode and manner in which everyone may so use his own as not to injure others." Again: [By this] "general police power of the State persons and property are subjected to all kinds of restraints and burdens, in order to secure the general comfort, health and prosperity of the State; of the perfect right in the Legislature to do which, no question ever was, or, upon acknowledged general principles, ever can be made, so far as natural persons are concerned."<sup>10</sup> And in a celebrated case in the Supreme Court of the United States it was said: "Whatever differences of opinion may exist as to the extent and boundaries of the police power, and however difficult it may be to render a satisfactory definition of it, there seems to be no doubt that it does extend to the protection of the lives, health and property of citizens, and to the preservation of good order and the public morals. \* \* \* They belong emphatically to that class of objects which demand the application of the maxim *salus populi suprema lex*; and they are to be attained and provided for by such appropriate means as the legislative discretion may devise."<sup>11</sup>

### Sec. 81. Police power continued—Legislative power.

As to the right to use property, the lawgiver may prescribe the mode and manner of it so far as may be necessary to prevent the abuse of the right, to the injury or annoyance of others, or of the public. The government may, by general regulations, interdict such uses of it as would create nuisances and become dangerous to the lives or comfort of the citizens. Unwholesome trades, slaughter houses, operations offensive to the senses, the deposit of powder, the application of steam power to propel cars, the building with combustible materials, and the burial of the

<sup>10</sup> Thorpe v. Rutland etc. Co., 27 Vt. 140.

<sup>11</sup> Beer Co. v. Massachusetts, 97 U. S. 25; Boyd v. Alabama, 94 U. S. 645; Boomershine v. Uline,

159 Ind. 503; 65 N. E. 513; State v. Gerhardt, 145 Ind. 462; 44 N. E. 469; 33 L. R. A. 313; Sherlock v. Stuart, 96 Mich. 193; 55 N. W. 845; 21 L. R. A. 580.



dead, may all be interdicted by law, in the midst of dense masses of population, on the general and rational principle that every person ought to so use his property as not to injure his neighbors and that private interests must be made subservient to the general interests of the community.<sup>12</sup> And this is true in reference to the traffic in intoxicating liquors. This is called the police power, and from its very nature is incapable of any very exact definition or limitation. It is founded on the law of self-defense—of the right of society to protect itself—and is older than the Federal Constitution or even than Magna Charta itself. It extends to the protection of the lives, limbs, health, comfort and quiet of all persons, and the protection of all property within the State; and persons and property are subjected to all kinds of restraints and burdens in order to secure the general comfort, health and property of the citizens of the State.<sup>13</sup> Of the perfect right of the Legislature to enact laws to accomplish this purpose no question ever was, or, upon general principles, can be made, so far as natural persons are concerned. Indeed, it has been held that a Legislature cannot, by any contract, divest itself of the power to provide for these objects. They belong emphatically to that class of objects which demand the application of the maxim *salus populi suprema lex*; and they are to be attained and provided for by such appropriate means as the legislative discretion may devise. That discretion can no more be bargained away than the power itself.<sup>14</sup> The legislative power to enact such laws is only limited by the Constitution of the United States and the laws and treaties made under it and the Constitution of the various States.<sup>15</sup>

<sup>12</sup> Kent's Commentaries, 340.

<sup>13</sup> Slaughter House Cases, 16 Wall (U. S.) 36.

<sup>14</sup> Boyd v. Alabama, 94 U. S. 645; Beer Co. v. Massachusetts, 97 U. S. 25; Patterson v. Kentucky, 97 U. S. 501; Stone v. Mississippi, 101 U. S. 814; McKinney v. Town of Salem, 77 Ind. 213; State v.

Fell, 42 Md. 71; Commonwealth v. Brennan, 103 Mass. 70; Freleigh v. State, 8 Mo. 606; Metropolitan Board etc. v. Barrie, 34 N. Y. 657; Thorpe v. Rutland, 27 Vt. 149.

<sup>15</sup> Beauchamp v. State, 6 Blackf. (Ind.) 299; Doe v. Douglas, 8 Blackf. (Ind.) 10; McComas v.

**Sec. 82. Police power not the power of eminent domain.**

The police power must not be confused with the power of eminent domain; they are separate and distinct attributes of a State. "There is a broad distinction," said Justice Mitchell of the Supreme Court of Indiana, "between the taking of property under the power of eminent domain for a public use, and the incidental injury or inconvenience which results to property or business on account of the exertion of the police power of the State, when its purpose is the promotion of the public welfare. In the former case, compensation must be made: in the latter, no such obligation arises."<sup>16</sup> "Nor does the prohibition of such noxious use of property," said the Supreme Court of Massachusetts, "a prohibition imposed because such a use would be injurious to the public, although it may diminish the profits of the owner, make it an appropriation to a public use, so far as to entitle the owner to compensation. If the owner of a vacant lot in the midst of a city erect thereon a great wooden building and cover it with shingles, he might obtain a larger profit of his land than if obliged to build of stone or brick with a slated roof. If the owner of a warehouse in a cluster of buildings could store quantities of gun powder in it for himself and others, he might be saved the great expense of transportation. If a landlord could let his buildings for a smallpox hospital, or a slaughter house, he might obtain an increased rent. But he is restrained; not because the public have occasion to make the like use, or to make any use, of the property, or to take any benefit or profit to themselves from it, but because it would be a noxious use, contrary to the maxim *sic utere tuo est alienum non laedas*. It is not an appropriation of the property to a public use, but the restraint of an injurious use by the owner, and is, therefore, not within the principle of property taken under

Krug, 81 Ind. 327; Mont v. State, 16 Moore v. Indianapolis, 120  
 90 Ind. 29; Hedderich v. State, Ind. 483; 22 N. E. 424; Jordan  
 101 Ind. 566; Traegesser v. Gray, v. Evansville, 163 Ind. 512; 72 N.  
 73 Md. 250; Harrison v. Mayer, E. 544; 67 L. R. A. 613.  
 etc., 1 Gill (Md.) 264.

the right of eminent domain. The distinction, we think, is manifest in principle, although the facts and circumstances of different cases are so various that it is often difficult to decide whether a particular exercise of legislation is attributable to the one or the other of these two acknowledged powers."<sup>17</sup> The distinction is sharply drawn in those instances where property is taken by a municipality in order to furnish its inhabitants with water, or purer water. In such instances the municipality must proceed in accordance with the provisions of some statute providing a method of procedure, and compensation must be paid for the land taken, notwithstanding the object of taking the property is to provide water, or purer water, for the maintenance of the health of the inhabitants of such municipality. The health of the inhabitants is involved; and yet the power to provide for such health in the future falls under the power of eminent domain and not under the police power.<sup>18</sup> A familiar illustration also is where lands are assessed for drainage purposes; and although the cost of the drainage may be declared to be a lien upon the land benefited, and the land sold to satisfy the lien, yet the power thus exercised is the police power and not the power of eminent domain.<sup>19</sup>

### Sec. 83. State cannot surrender police power.

It is an axiom of constitutional construction that a State cannot give or bargain away its police power—"can no more be bargained away than the power itself;"<sup>20</sup> and all attempts of the Legislature to give or bargain (even for a

<sup>17</sup> Commonwealth v. Alger, 7 Cush. 53.

<sup>18</sup> New Orleans W. W. Co. v. St. Tammany W. W. Co., 120 U. S. 69; 6 Sup. Ct. 405; affirming 14 Fed. 194; Bancroft v. Cambridge, 122 Mass. 438.

<sup>19</sup> State v. Charleston, 12 Rich. L. 702; Wurts v. Hoagland, 114 U. S. 606; 5 Sup. Ct. 1086; Wins-

low v. Winslow, 95 N. C. 24; Bryant v. Robbins, 70 Wis. 258; Donnelly v. Decker, 58 Wis. 461; Nickerson v. Boston, 131 Mass. 306.

<sup>20</sup> Beer Co. v. Massachusetts, 97 U. S. 25; Boyd v. Alabama, 94 U. S. 645; Kresser v. Lyman, 74 Fed. 765.

valuable consideration) it away are void.<sup>21</sup> And as a municipality is only a subordinate part of a State for governmental purposes, neither can it surrender or bargain away its police power.<sup>22</sup>

**Sec. 84. Police power impairing the obligation of a contract.**

The claim that a Legislature cannot impair the obligation of a contract by the exercise of its police power has again and again been advanced to overturn a statute adopted by it; but always unsuccessfully when the true scope of the power has been borne in mind. Where he was discussing the power of the Legislature to change the provisions of the charter of a private corporation (and this is where the greatest number of questions of this kind have arisen) Justice Cooley said: "The limit to the exercise of the police power in this case must be this: the regulations must have reference to the comfort, safety or welfare of society; they must not be in conflict with any of the provisions of the charter, and they must not, under pretense of regulation, take from the corporation any of the essential rights and privileges which the charter confers. In short, they must be police regulations and not amendments of the charter in curtailment of the corporate franchise."<sup>23</sup> But wherever it is necessary for the protection and preservation of the health, morals and property of citizens of a State—distinguishing between what are *publici juris* and *privati juris*<sup>24</sup>

<sup>21</sup> *Stone v. Mississippi*, 101 U. S. 814; *Butchers' Union v. Crescent City Co.*, 111 U. S. 746; 5 Sup. Ct. 652; *State v. Paul*, 5 R. I. 185; *Metropolitan Board v. Barrie*, 34 N. Y. 657; *Santo v. State*, 2 Iowa 165; *Reynolds v. Geary*, 26 Conn. 179; *People v. Hawley*, 3 Mich. 330; *Jordan v. Evansville*, 163 Ind. 512; 72 N. E. 544; *Lutz v. Crawfordsville*, 109 Ind. 466; 10 N. E. 411; *Moore v. Indianapolis*, 120 Ind. 483; 22 N. E. 424; *Cleveland etc. R. Co. v. Harring-*

*ton*, 131 Ind. 426; 30 N. E. 37; *Shea v. Muncie*, 148 Ind. 14; 46 N. E. 138; *Patterson v. Kentucky*, 97 U. S. 501; *Haggert v. Stethlin*, 137 Ind. 43; 35 N. E. 997; 22 L. R. A. 577.

<sup>22</sup> *Moore v. Indianapolis*, 120 Ind. 483; 22 N. E. 424; *Shea v. Muncie*, 148 Ind. 14; 46 N. E. 138.

<sup>23</sup> Cooley Const. Lim. (6 ed.), 710.

<sup>24</sup> *Benson v. Mayor*, 10 Barb. 223; *People v. Mayor*, 33 Barb. 102; *Commonwealth v. Pennsyl-*



—the provisions of the Federal Constitution forbidding a State to pass a law impairing the obligation of a contract cannot be invoked to uphold a law or right which is detrimental to the health, to the morality, to the safety, to the comfort, or to the well being of such citizens. The most striking illustration of this rule is where chartered breweries have insisted upon their chartered rights to manufacture and sell beer—either with or without restraint—in the State granting the charter, claiming that the charter was a contract that could not be changed; but in every instance the decisions have been adverse to this claim, upon the ground that the Legislature—which is the final arbiter in case of doubt<sup>25</sup>—has decided that such manufacture and sale are detrimental to the morality of the inhabitants of the State.<sup>26</sup>

### Sec. 85. Police power limited by Federal Constitution.

It must not be forgotten that the police power cannot be so exercised so as to encroach upon the powers of the Federal government given it by the Constitution. The Federal Constitution and laws enacted in pursuance of its provisions are supreme, and all State laws and even the provisions of State Constitutions<sup>27</sup> must bow and acknowledge their authority. Thus, in one case it was said of the police powers of a State: "The subjects upon which the State may act are almost infinite; yet in its regulations with respect to all of them there is this necessary limitation, that the State does not thereby encroach upon the free exercise of the power vested in Congress by the Constitution."<sup>28</sup> But, as the

vania Coal Co., 66 Pa. St. 41; Hegeman v. Western R. Co., 13 N. Y. 9.

<sup>25</sup> Thorpe v. Rutland etc. R. Co., 27 Vt. 140.

<sup>26</sup> Beer Co. v. Massachusetts, 97 U. S. 25; 21 L. Ed. 929; Jordan v. Evansville, 163 Ind. 512; 72 N. E. 544; Sherlock v. Stuart, 96 Mich. 193; 55 N. W. 462; 21 L. R. A. 530; Mugler v. Kansas, 123

U. S. 623; 8 Sup. Ct. 273; 31 L. Ed. 205; Giozza v. Tiernan, 148 U. S. 657; 13 Sup. Ct. 721; 37 L. Ed. 599; Crowley v. Christensen, 137 U. S. 86; 11 Sup. Ct. 13; 34 L. Ed. 620; Danville v. Hatcher, 101 Va. 523; 44 S. E. 723.

<sup>27</sup> Edwards v. Jagers, 19 Ind. 407.

<sup>28</sup> Western U. T. Co. v. Pendleton, 122 U. S. 347; 7 Sup. Ct.



Supreme Court of the United States has said, "All those powers which relate to merely municipal legislation, or what may, perhaps, more properly be called internal police, are not \* \* \* surrendered or restrained, and consequently, in relation to these, the authority of a State is complete, unqualified and exclusive."<sup>29</sup> An eminent author has thus drawn the line of the police power of a State in its relation to the powers of the United States: "If the police power extends only to a just regulation of rights with a view to the due protection and enjoyment of all, and does not deprive anyone of that which is justly and properly his own, it is obvious that its possession by the state and its exercise for the regulation of the property and actions of its citizens cannot well constitute an exercise of the national jurisdiction, or afford a basis for an appeal to the protection of the national authorities."<sup>30</sup>

### Sec. 86. Blackstone's enumeration of police powers.

Each State possesses the power to regulate its own internal traffic in intoxicating liquors, according to its own judgment and upon its own view of the interest and well being of its citizens, if there is no State constitutional restriction. The power of the States to regulate, or even prohibit the retail of such liquors within their limits, is not in contravention of the Constitution of the United States or any law thereof. On the contrary, such a power has been expressly recognized by the Supreme Court of the United States.<sup>31</sup> By virtue of its police power every State has the power to enact such laws as may be necessary for the restraint and punishment of crime, the preservation of the

1126; reversing 95 Ind. 12; 48 Am. Rep. 692. See *New Orleans Gas Light Co. v. Louisiana Light Co.*, 115 U. S. 650; 6 Sup. Ct. 252.

<sup>29</sup> *New York v. Milm*, 11 Pet. 102.

<sup>30</sup> *Cooley Const. Lim.* (6 ed.), 707. See *License Cases*, 5 How.

504; *Passenger Cases*, 7 How. 283; *Slaughter House Case*, 16 Wall 36; *People v. Compagnie Gen*, 107 U. S. 59; 2 Sup. Ct. 87; *Head Money Cases*, 112 U. S. 580; 5 Sup. Ct. 247.

<sup>31</sup> *License Cases*, 5 How. U. S. 504.

public health, peace and morals of its citizens.<sup>32</sup> This power is a very old and comprehensive one. Blackstone enumerated within the police regulations of the English government, the plague, the sale of poisons, idle soldiers and marines wandering about the realm, gypsies, all kinds of nuisances created by offensive trades and manufacturers, the keeping of hogs in a city or market town, all disorderly inns or ale houses, bawdy houses, gaming houses, stage plays, unlicensed booths, rope dancers, mountebanks and the like, all lotteries, the making and selling of fireworks and squibs and throwing them about on the streets, the making, keeping and carrying of too large a quantity of gunpowder at one time, at one place or in a vehicle, eavesdroppers, common scolds, idlers, disorderly persons, rogues, vagabonds and gamblers.<sup>33</sup> The decisions of the highest courts of this country have sustained legislation as wide in its scope as that covered by the enumeration of Blackstone, and this has been especially true of the legislation in reference to the regulation of the traffic in intoxicating liquors, and in so doing have held that the legislative discretion in regulating the traffic is not limited by the Constitution of the United States nor by the constitutions of the various States. In this country the whole action of the legislative power has been uniformly to limit,<sup>34</sup> restrict, or absolutely prohibit the traffic.

### Sec. 87. Sumptuary argument insufficient to defeat liquor legislation.

A law to regulate the manufacture and sale of intoxicating liquors cannot be defeated upon the ground that such liquors are used as a beverage, and the injury following them, if taken in excess, is voluntarily afflicted and is confined to the person offending, and that their sale should be

<sup>32</sup> *State v. Allmond*, 5 *Houst. (Del.)*, 610; *Jones v. People*, 14 *Ill.* 196.

<sup>33</sup> 4 *Blackstone*, 161-171.

<sup>34</sup> *Goddard v. Town of Jacksonville*, 15 *Ill.* 588; *Harrison v.*

*Lockhart*, 25 *Ind.* 112; *Welsh v. State*, 126 *Ind.* 71; 25 *N. E.* 883; *State v. Gerhardt*, 145 *Ind.* 439; 44 *N. E.* 469; *Cohen v. Jarrett*, 42 *Md.* 571; *Metropolitan Board etc. v. Barrie*, 34 *N. Y.* 657.

without restrictions, upon the theory that what a man shall drink, equally with what he shall eat, is not matter proper for legislation. This is not so if for no other reason than that it is not true, that when liquors are taken in excess the injuries are confined to the offending party. The injury, it is true, first falls upon him in his health, which the habit undermines; in his morals, which it weakens; and with self-abasement, which it creates. But, as it leads to neglect of business, waste of property and general demoralization, it affects those who are immediately connected with and dependent upon him. The statistics of every State show a greater amount of crime and misery attributable to the use of ardent spirits obtained at the retail liquor saloons than to any other source. The sale of such liquors in this way has therefore been, at all times, by the courts of every State, considered as a proper subject of legislative regulation. Not only may a license be exacted from the keeper of a saloon before a glass of his liquors be disposed of, but restrictions may be imposed as to the class of persons to whom they may be sold, and the hours of the day and the days of the week on which the saloon may be opened. Their sale in that form may be absolutely prohibited. It is a question of public expediency and public morality, and not of State or Federal law. The police power of the State is fully competent to regulate the business—to mitigate its evils or to suppress it entirely.<sup>35</sup>

### **Sec. 88. No natural right to sell intoxicating liquors.**

There is no inherent right in a citizen to sell intoxicating liquors by retail; it is not the privilege of a citizen of a State or of the United States. It is a business attended with danger to the community and may be entirely prohibited, or be permitted under such conditions as will limit to the utmost its evils without violating the Constitution or laws of the United States. The manner and extent of regulation rests in the discretion of the governing authority.

<sup>35</sup> *Crawley v. Christensen*, 137 U. S. 86; 11 Sup. Ct. 13; *In re Hoover*, 30 Fed. 51

That authority may vest in such officers as it may deem proper the power of passing upon applications for permission to carry it on and to issue licenses for that purpose. It is a matter of legislative will only. As in many other cases, the officers thus designated may not always exercise the power conferred upon them with wisdom or justice to the parties affected. But that is a matter which does not affect the authority of the State and is one which cannot be brought under the cognizance of the United States.<sup>36</sup> Some of the cases, in the language used in the opinions, limit the power of the State to say a citizen shall not sell intoxicating liquors, to a sale as a beverage;<sup>37</sup> but these expressions are used simply because the cases involve instances of sales of such liquor as beverages. In principle, the cases are broader. The sale of intoxicating liquors is regarded as peculiarly injurious (and experience in this country proves the assertion) to those indulging in them; and, for that reason, restrictions may be imposed upon the sale of or trade in intoxicating liquors not allowable in other pursuits.<sup>38</sup>

### Sec. 89. Right to sell liquors at common law—Nuisance.

At common law any person has the right, without a license, to maintain ale houses and tippling houses. The business of maintaining such houses and selling intoxicating

<sup>36</sup> *Crawley v. Christensen*, 137 U. S. 86; 11 Sup. Ct. 13; *State v. Board* (Wyo.), 105 Pac. 295; *In re Hering* (N. Y.), 117 N. Y. Supp. 747; *Reed v. Collins*, 5 Cal. App. 494; 90 Pac. 973; *F. W. Cook Brewing Co. v. Garber*, 168 Fed. 942; *Cassidy v. Macon* (Ga.), 64 S. E. 941; *Gibbs v. State* (Vt.), 74 Atl. 228.

<sup>37</sup> *State v. Ludington*, 33 Wis. 107; *Moore v. Indianapolis*, 120 Ind. 483; 22 N. E. 424; *In re Clement*, 54 N. Y. Misc. Rep. 362; 165 N. Y. Supp. 1054; *In re Brady*, 106 N. Y. Supp. 961; *State*

*v. Corron*, 73 N. H. 434; 62 Atl. 1044.

<sup>38</sup> *Schwuchow v. Chicago*, 68 Ill. 444; *State v. Hanson*, 16 N. D. 347; 113 N. W. 371; *DeGrozier v. Stephens* (Tex.), 105 S. W. 992; *Guy v. Commissioners* (N. C.), 29 S. E. 771; *Jacobs Pharmacy Co. v. Atlanta*, 89 Fed. 244; *New Orleans v. Smythe*, 116 La. 685; 41 So. 33; *State v. Collo-way*, 11 Idaho 719; 84 Pac. 27; *People v. Gallagher*, 4 Mich. 244; *McLean v. Board*, 73 N. J. L. 382; 64 Atl. 689.



liquors was not regarded as a public offense, but was considered to be a means of livelihood which anyone was free to follow. "It is, at common law, lawful to keep a properly regulated inn, ale house or tippling house, which severally are indictable only when disorderly. Hence, *a fortiori*, the simple selling of intoxicating drinks is not a common law crime, but from an early period in English legislation, during early colonial times and thence downward to the present day with us, statutes, in various forms of provisions, have been enacted as aids to the suppression of enormous evils which the use or abuse of inebriating liquors has wrought. Indeed, the old English enactments of this sort are numerous and they have largely been the models for legislation in our States."<sup>39</sup> It cannot be claimed that the keeping of a tippling house or saloon, if properly conducted, is a nuisance. "Merchants have always dealt in wines and other liquors in large quantities without being subject to prosecution at common law \* \* \*. In the argument of the Commonwealth, such places as the defendant is charged with keeping are classed with brothels and gaming houses, and it is argued that they are all equally nuisances. But it was not so at common law. Brothels and gaming houses

<sup>39</sup> Bish. Stat. Crimes (3d ed.), §§ 984, 985. That it was lawful to sell intoxicating liquors under the common law, see Stephens v. Watson [1702]: 1 Salk \*45; King v. Randall [1695], Salk, \*27; Anonymous [1695], 3 Salk \*25; King v. Merriot [1693], 4 Mod \*144, and notes; Faulkner's Case [1670], 1 Saund. \*249; King v. Iyves [1687], 2 Showers (K. B.) \*438; Commonwealth v. McDonough, 13 Allen 581; Welsh v. State, 126 Ind. 71; 25 N. E. 883; 9 L. R. A. 664; State v. Beartheol, 6 Blackf. 474; 39 Am. Dec. 442; State v. Mullikin, 8 Blackf. 260; 1 Hawkins P. C. (8 ed.) 714; 4

Cooley's Blackstone (Andrews' ed.) \*168; 1 Bish. Crim. Law (8th ed.) § 505; Sopher v. State, 169 Ind. 177; 81 N. E. 912; 14 L. R. A. (N. S.) 172; Crown Point v. Warner, 3 Hill 150; Rex. v. Fenkner, 2 Keb. 506, pl. 79; Appeal of Allyar, 81 Conn. 534; 71 Atl. 794; Campbell v. Jackman Bros. (Iowa), 118 N. W. 755.

Leading early English States regulating the sale of intoxicating liquors, are 12 Edw. 2 c. 6; 11 Hen. 7, c. 2; 5 and 6 Edw. 6, c. 25; 1 Jac. 1, c. 9; 4 Jac. 1, c. 4; 4 Jac. 1, c. 5; 7 Jac. 1, c. 10; 21 Jac. 1, c. 7; 1 Car. 1, c. 4, and 3 Car. 1, c. 3.



were held to be nuisances under all circumstances; but ale houses were not, unless they became disorderly; and in such cases they were held to be nuisances on account of the disorderly conduct.”<sup>40</sup>

### **Sec. 90. Natural right not a judicial question.**

Whether a statute regulating the traffic in intoxicating liquors is or is not a reasonable one, is a legislative and not a judicial question. Whether such a statute does, or does not, unjustly deprive a citizen of natural rights, is a question for the Legislature and not for the courts. There is no certain standard for determining what are, and what are not, the natural rights of a citizen. The Legislature is just as capable of determining the question as the courts. Men's opinions as to what constitute natural rights greatly differ, and if the courts should assume the function of revising the acts of the Legislature on the ground that they invade the natural rights of men, a conflict would arise which could never end, for there is no standard by which the question could be finally determined.<sup>41</sup> Judge Cooley says: “Nor can a court declare a statute unconstitutional and void solely on the ground of unjust and oppressive provisions, or because it is supposed to violate the natural, social, or political rights of the citizen, unless it can be shown that such injustice is prohibited or such rights guaranteed or protected by the Constitution.”<sup>42</sup> If a subject is within the legislative power, the question whether that power is wisely or unwisely exercised is not a judicial one. If the power exists, then the Legislature must determine the mode of its exercise, unless the mode is prescribed by the organic law. If, to descend from a wide generalization to a narrow one, a subject is within the police power of the state, the question

<sup>40</sup> *Commonwealth v. McDonough*, 13 Allen, 581; *Sopher v. State*, 169 Ind. 177; 81 N. E. 812; 14 L. R. A. (N. S.) 172; *Appeal of Allyn*, 81 Conn. 534; 71 Atl. 794; 68 Cent. L. Jr. 449.

<sup>41</sup> *License Cases*, 5 How 504;

*Heddrich v. State*, 101 Ind. 564; *Sharpless v. Mayer etc.*, 21 Pa. St. 147; *State v. Board (Wyo.)*, 105 Pac. 295.

<sup>42</sup> Cooley's *Const. Lim.* 4th ed. p. 200.

as to what regulations are proper and needful is one for legislative consideration and decision. It is a cardinal principle of law that legislative discretion cannot be controlled by judicial decisions and is not subject to judicial surveillance.<sup>43</sup> It is not for a court to say that a constitutional law shall not have effect because it is in the judgment of the court unreasonable.<sup>44</sup>

### Sec. 91. Motive for passage of law or ordinance.

The power of the three departments of a State government are not merely equal—they are exclusive in respect to the duties assigned to each other. They are absolutely independent of each other, and one of them cannot inquire into the motives controlling the action of another. Hence, a court cannot inquire even at the instance of the State, into the motives which controlled the members of the Legislature in the enactment of a law, or allow them to be shown, for the purpose of defeating its operation, or that it was passed by fraud, corruption and bribery of the members.<sup>45</sup> To institute such an inquiry would be a direct attack upon the independence of the Legislature and an usurpation of power subversive of the Constitution.<sup>46</sup> And the same rule is applicable also to ordinances and other legislative acts of municipal corporations, with perhaps the qualification that

<sup>43</sup> *Jamieson v. Indiana etc. Co.*, 128 Ind. 555; 28 N. E. 76.

<sup>44</sup> *Legal Tender Cases*, 12 Wall. (U. S.) 561; *State v. Haworth*, 122 Ind. 462; 23 N. E. 946; *Sopher v. State*, 169 Ind. 177; 81 N. E. 812; 14 L. R. A. (N. S.) 172.

<sup>45</sup> *Ex parte McCardle*, 7 Wall. (U. S.) 514; *Doyle v. Continental Ins. Co.*, 94 U. S. 535; *Ex parte Newman*, 9 Cal. 502; *Lyon v. Norris*, 15 Ga. 480; *McCulloch v. State*, 11 Ind. 424; *Lilly v. City of Indianapolis*, 149 Ind. 648; 49 N. E. 887; *Coverdale v. Edwards*,

155 Ind. 374; 58 N. E. 495; *Johnson v. Higgins*, 3 Met. (Ky.) 566; *State v. Fagan*, 22 La. Ann. 545; *Baltimore v. State*, 15 Md. 376; *Flint etc. v. Woodhull*, 25 Mich. 103; *State v. Hays*, 49 Mo. 607; *Bradshaw v. Omaha*, 1 Neb. 16; *Humboldt County v. Churchill County, etc.*, 6 Nev. 30; *People v. Draper*, 15 N. Y. 545; *Sunbury etc. R. Co. v. Cooper*, 33 Pa. St. 278; *State v. Cardozo*, 5 S. C. 297; *Slack v. Jacob*, 8 W. Va. 612.

<sup>46</sup> *Wright v. Defrees*, 8 Ind. 298; *McCulloch v. State*, 11 Ind. 424.

municipal ordinances may be impeached for fraud at the instance of persons injured thereby;<sup>47</sup> and it has been applied to an ordinance relating to the sale of intoxicating liquors within the corporate limits of a municipal corporation.<sup>47\*</sup>

## **Sec. 92. Prohibitory laws—Basis of constitutionality.**

Unless restrained by their constitutions, it is within the power of the State Legislatures to enact laws to prohibit the manufacture and sale of intoxicating liquors as a beverage; and such laws do not necessarily infringe any right, privilege, or immunity secured by the Constitution of the United States and the amendments to it. The leading case of the Supreme Court of the United States upon this point was decided at the January term, 1847, of that court.<sup>48</sup> In that case the question was whether certain statutes of Massachusetts, Rhode Island and New Hampshire, relating to the sale of intoxicating liquors were repugnant to the Constitution of the United States. In determining that question it became necessary to inquire whether there was any conflict between the exercise by Congress of its power to regulate commerce with foreign countries or among the several States and the exercise by a State of what are called its police powers. Although the members of the court did not fully agree as to the grounds upon which the decision should be placed, they were unanimous in holding that the statutes under consideration were not inconsistent with the Constitution of the United States, or with any act of Congress. In so deciding, Chief Justice Taney, who wrote the principal opinion, said: "If any State deems the retail and internal traffic in ardent spirits injurious to its citizens and calculated to produce illness, vice or debauchery, I see nothing in the Constitution of the United States to prevent it from regulating and restraining the traffic or from prohibiting it altogether if it thinks proper." Mr. Justice McLean, among

<sup>47</sup> 1 Dillon on Munic. Corp. § 311; Meyer v. Village of Ten-topolis, 121 Ill. 552; 23 N. E. 651; Huell v. Ball, 20 Iowa, 282; Freeport v. Mark, 59 Pa. St. 253.

<sup>47\*</sup> People v. Creiger, 138 Ill. 401; 28 N. E. 812.

<sup>48</sup> License Cases, 5 How. 504; 12 L. Ed. 256.

other things, said: "A State regulates its domestic commerce, contracts, the transmission of estates, real and personal, and acts upon all internal matters which relate to its material and political welfare. Over these subjects the Federal government has no power. \* \* \* The acknowledged police power of a State extends even to the destruction of property. A nuisance may be abated. Everything prejudicial to the health or morals of a State may be removed." Mr. Justice Woodberry observed: "How can they [the States] be sovereign in their respective spheres, without power to regulate all their internal commerce, as well as police, and direct how, when and where it shall be conducted in articles intimately connected either with public morals, or public safety, or the public prosperity?" Mr. Justice Greer, in still more emphatic language, said: "The true question presented by these cases, and one which I am not disposed to avoid, is whether the States have a right to prohibit the sale and consumption of an article of commerce which they believe to be pernicious in its effects, and the cause of disease, pauperism and crime. \* \* \* Without attempting to define what are the peculiar subjects or limits of this power, it may be safely affirmed that every law for the restraint and effacement of crime, for the preservation of the public peace, health and morals, must come within the category. \* \* \* It is not necessary, for the sake of justifying the State legislation now under consideration, to relate the appalling statistics of misery, pauperism and crime, which have their origin in the use or abuse of ardent spirits. The police power, which is exclusively in the States, is alone competent to the correction of these great evils, and all measures of restraint or prohibition necessary to effect the purpose are within the scope of that authority." Up to the time of the adoption of the Fourteenth Amendment to the Constitution of the United States, the right of the several States to regulate and even prohibit the traffic in intoxicating liquors was considered as falling within the police regulations of the States, and left to their judgment, subject to no other limitations than such as were



imposed by the State Constitutions, or by the general principles supposed to limit all legislative power. It had never been seriously contended that such laws raised any question growing out of the Constitution of the United States. This was so decided by the Supreme Court of the United States at the October term, 1873,<sup>49</sup> and reaffirmed at the October term, 1877.<sup>50</sup> In the case first cited it was held that the right to sell intoxicating liquors is not one of the privileges and immunities of the citizens of the United States which by the Fourteenth Amendment to the Constitution of the United States were forbidden to be abridged. In accord with the foregoing decisions there are many others of the courts of the United States and of many of the States which have held that the constitutional power of a State by a constitutional provision or legislative enactment to prohibit the manufacture and sale of intoxicating liquors is no longer an open question. These cases rest upon the acknowledged right of the States of the Union to control their purely internal affairs, and, in so doing, to protect the health, morals and safety of their people, provided they do not interfere with the execution of the powers of the general government, or violate rights secured by the Constitution of the United States.<sup>50\*</sup>

<sup>49</sup> *Bartemeyer v. Iowa*, 18 Wall. (U. S.) 129; 21 L. Ed. 929.

<sup>50</sup> *Beer Co. v. Massachusetts*, 97 U. S. 25.

<sup>50\*</sup> *Foster v. Kansas*, 112 U. S. 201; 5 S. C. 8; 28 L. Ed. 629; *Barbier v. Connelly*, 113 U. S. 27; 5 S. C. 357; *Mugler v. Kansas*, 123 U. S. 623; 8 S. Ct. 273; 31 L. Ed. 235 affirming 29 Kan. 252; 44 Am. Rep. 634; *Kidd v. Pearson*, 128 U. S. 1; 9 S. Ct. 8; 32 L. Ed. 346; *In re Brosnahan*, 18 Fed. Rep. 62; *Kansas v. Bradley*, 26 Fed. Rep. 289; *Kohn v. Melcher*, 29 Fed. Rep. 423; *United States v. Nelson*, 29 Fed. Rep. 202; *Lodamo v.*

*State*, 25 Ala. 64; *Jones v. Hilliard*, 69 Ala. 300; *Woods v. State*, 36 Ark. 38; *Ex parte McClain*, 61 Cal. 436; *Ex parte Campbell*, 74 Cal. 20; 15 Pac. 318; 5 Am. St. 518; *State v. Wheeler*, 25 Conn. 290; *Reynolds v. Geam*, 26 Conn. 179; *Oviatt v. Pond*, 29 Conn. 479; *Perdue v. Ellis*, 18 Ga. 586; *Bell v. State*, 91 Ga. 231; 18 S. E. 289; *Jones v. People*, 14 Ill. 196; *Kettering v. Jacksonville*, 50 Ill. 39; *Our House No. 2 v. State*, 4 Greene (Iowa) 172; *Zumhoff v. State*, 4 Greene (Iowa) 526; *Santo v. State*, 2 Iowa 165; 63 Am. Dec. 487; *State v. Donehey*, 8 Iowa,



### Sec. 93. Prohibiting manufacture of intoxicating liquors.

The right of a State to prohibit the manufacture of intoxicating liquor within her boundaries can be no longer

- 396; State v. Stucker, 58 Iowa 496; 12 N. W. 483; State v. Carney, 20 Iowa 82; State v. Benghmen, 20 Iowa 497; Martin v. Blattner, 68 Iowa 286; 25 N. W. 131; McLane v. Leicht, 69 Iowa 401; 29 N. W. 327; Jordon v. District Court, 74 Iowa 762; 38 N. W. 430; Prohibitory Amendment Cases, 24 Kan. 700; State v. Mugler, 29 Kan. 252; Anderson v. Commonwealth, 13 Bush (Ky.) 485; Sarrls v. Commonwealth, 7 Ky. L. Rep. 299; Preston v. Drew, 33 Me. 558; Commonwealth v. Kendall, 12 Cush. (Mass.) 414; Commonwealth v. Clapp, 5 Gray (Mass.) 97; Commonwealth v. Howe, 13 Gray (Mass.) 26; People v. Hawley, 3 Mich. 330; People v. Gallagher, 4 Mich. 244; Austin v. State, 10 Mo. 591; State v. Pond 93 Mo. 606; 6 S. W. 469; Metropolitan Board etc. v. Barrie, 34 N. Y. 657; People v. Wuant, 2 Park (N. Y.) 410; State v. Cate, 58 N. H. 241; State v. Ah. Chew, 16 Nev. 55; State v. Joyner, 81 N. C. 534; State v. Frame, 39 O. St. 399; Gordon v. State, 460 St. 607; 23 N. E. 63; Markle v. Akron, 14 Ohio 586; State v. Guinness, 16 R. I. 401; 16 Atl. 910; State v. Gravelin, 16 R. I. 407; 16 Atl. 914; State v. Backer, 3 S. Dak. 29; 51 N. W. 1018; State v. Rancher, 1 Lea (Tenn.) 96; *Ex parte* Bell, 24 Tex. App. 428; 6 S. W. 197; State v. Prescott, 27 Vt. 194; State v. Conlin, 27 Vt. 318; *In re* Daughter 27 Vt. 325; Lincoln v. Smith, 27 Vt. 328; State v. Lovell, 47 Vt. 493; Gill v. Parker, 31 Vt. 610; State v. Lowell, 47 Vt. 493; Ruston v. Fountaine, 118 La. 53; 42 So. 644; Robison v. Haug, 71 Mich. 38; 38 N. W. 668; Dupree v. State (Tex.), 119 S. W. 301; 107 S. W. 926; State v. Walker (Mo.), 120 S. W. 1198, affirming 129 Mo. App. 371; 108 S. W. 615; State v. Hooker (Okla.), 98 Pac. 964; F. W. Cook Brewing Co. v. Garber, 168 Fed. 942; Jones v. Yokum, (S. D.), 123 N. W. 272; Rooney v. Augusta, 117 Ga. 709; 45 S. E. 72; State v. Stoffels, 89 Minn. 205; 94 N. W. 675; August Busch & Co. v. Webb, 122 Fed. 655; Rippey v. State, 44 Tex. Civ. App. 72; 73 S. W. 15; Commonwealth v. Certain Intoxicating Liquors, 115 Mass. 153; State v. Allmond, 2 Houst. (Del.) 612; *In re* Intoxicating Liquor Cases, 25 Kan. 751; 37 Am. Rep. 284; Cantini v. Tillman, 54 Fed. 969; *In re* Hoover, 30 Fed. 51; Crowley v. Christensen, 137 U. S. 86; 11 Sup. Ct. 13; 34 L. Ed. 620; Meehan v. Board, 73 N. J. L. 382; 64 Atl. 689; Hunzinger v. State, 39 Neb. 653; 58 N. W. 194; Shannon v. State, 39 Neb. 658; 58 N. W. 196; Equitable Life etc. Co. v. Edwardsville, 143 Ala. 162; 38 So. 1016; Soehl v. State, 39 Neb. 695; 58 N. W. 196; Rowles v. State, 39 Neb. 659; 58 N. W. 197; State v. Skeags, 154 Ala. 249; 46 So. 268; Dorman v. State, 34 Ala. 216; People

questioned under the many decisions of the courts, even of liquor designed for transportation to and sale in another

v. Huntington, 4 N. Y. Leg. Obs. 187; Wybhamer v. People, 20 Barb. 567; State v. Peckham, 3 R. I. 289; State v. Fitzpatrick, 16 R. I. 54; 11 Atl. 767; Charleston v. Ahrens, 4 Strob. L. (S. C.) 241; State v. Durein, 70 Kan. 13; 80 Pac. 987; 78 Pac. 152; State v. Aiken, 42 S. C. 222; 20 S. E. 221; 26 L. R. A. 345 (overruling McCullough v. Brown, 41 S. C. 220; 19 S. E. 458; 23 L. R. A. 410); State v. Creden, 78 Iowa 556; 43 N. W. 673; 7 L. R. A. 295; People v. Quant, 12 How. Pr. 83; 2 Parker Cr. Rep. 410; Smith v. People, 1 Parker Cr. Rep. 583; State v. Intoxicating liquors, 58 Vt. 594; 4 Atl. 229; State v. Fitzpatrick, 16 P. I. 54; 11 Atl. 767; Pearson v. International Distillery, 72 Iowa 348; 34 N. W. 1; affirmed 128 U. S. 1; 9 Sup. Ct. 6; 32 L. Ed. 346; Lemp v. Fullerton, 83 Iowa 192; 48 N. W. 1034; 13 L. R. A. 408; Commonwealth v. Gagne, 153 Mass. 205; 26 N. E. 449; 10 L. R. A. 442; Commonwealth v. Gay, 153 Mass. 211; 26 N. E. 571; Commonwealth v. Gay, 153 Mass. 211; 26 N. E. 852; Tredway v. Riley, 32 Neb. 495; 49 N. W. 268; 29 Am. St. 447; State v. Walruff, 26 Fed. 178; *Ex parte* Cain, 20 Okla. 125; 93 Pac. 974; Tanner v. Alliance, 29 Fed. 196; Schwuchow v. Chicago, 68 Ill. 444; Streeter v. People, 69 Ill. 595; State v. Jordan, 72 Iowa 377; 34 N. W. 285; State v. Teissedre, 30 Kan. 476; 2 Pac. 650; *Ex parte* Burnside, 86 Ky. 423; 6 S. W. 276; Wynehamer v. People, 13

N. Y. 378; 2 Parker Cr. Rep. 421; affirming 2 Parker Cr. Rep. 377; State v. Porterfield, 47 S. C. 75; 25 S. E. 39; *Ex parte* Lynn, 19 Tex. App. 293; Steele v. State, 19 Tex. App. 425; Schwulst v. State, 52 Tex. Civ. App. 426; 108 S. W. 698; Feibelman v. State, 130 Ala. 122; 30 So. 384; McLain v. State, 43 Tex. Civ. App. 213; 64 S. W. 865; State v. Fountain (Del.), 69 Atl. 926; State v. Harp, 210 Mo. 254; 109 S. W. 578; State v. Williams (N. C.), 61 S. E. 61; McAllister v. State (Ala.), 47 So. 161; Plumb v. Christie, 103 Ga. 686; 30 S. E. 759; 42 L. R. A. 181; State v. Serrey, 20 Mo. 489; Powers v. Commonwealth, 99 Ky. 167; 13 S. W. 450; *In re* Luent 6 Greenl. 412; Commonwealth v. Blackington, 24 Pick. 352; Edgar v. McDonald (Tex. Civ. App.), 106 S. W. 1135; Hart v. State, 87 Miss. 171; 39 So. 523; Parker v. State, 99 Md. 189; 57 Atl. 677; *In re* Phillips, 82 Neb. 45; 116 N. W. 950.

The principle involved in a local option prohibitory law is the same as that involved in a general prohibition law. State v. Fountain (Del.), 69 Atl. 926.

A statute is valid which prohibits the sale of liquor, but makes the guilt of the seller to depend upon where the liquor is drunk. Raubold v. Commonwealth (Ky.), 21 Ky. L. Rep. 1125; 54 S. W. 17.

In Kentucky the Legislature cannot prohibit the sale of liquor for medicinal purposes. Com-

State where the traffic in liquor is entirely legitimate. Such a law is valid as to those engaged in the business at the time of its passage, although the effect is to destroy their business and to greatly, if not totally, impair the value of the property used in the manufacture. The most striking cases of this character arose in Kansas on the adoption in that State of the present constitutional provision forbidding the manufacture and sale of intoxicating liquors except for medical and mechanical purposes. There the complainant owned a brewery, with all necessary appliances, which could not be devoted to any other purpose, worth, before the adoption of prohibition, fifty thousand dollars, but which was diminished in value, by reason of the adoption of the prohibitory provision to five thousand dollars. As to this property a lower court held the prohibitory provision unconstitutional;<sup>51</sup> but the Supreme Court of the United States held it valid. After holding that the right to manufacture and sell intoxicating liquors was not one of the privileges and immunities guaranteed by the Fourteenth Amendment, the court said: "It is, however, contended that although the State may prohibit the manufacture of intoxicating liquors for sale or barter within her limits, for general use as a beverage, 'no convention or Legislature has the right, under our form of government, to prohibit any citizen from manufacturing for his own use, or for export or storage, any article of food or drink not endangering or affecting the rights of others.' The argument made in support of the first branch of this proposition, briefly stated, is, that in the implied compact between the State and the citizen, certain rights are reserved by the latter which are guaranteed by the constitutional provision protecting persons against being deprived of life, liberty or property without due process of law, and with

monwealth v. Fowler, 96 Ky. 166;  
28 S. W. 786; 33 L. R. A. 839.

The State may prohibit the sale  
of whisky by druggists. Commonwealth v. Reynolds, 89 Ky. 147;  
12 S. W. 132; 20 S. W. 167; 11  
Ky. L. Rep. 445.

<sup>51</sup> State v. Walruff, 26 Fed.  
178; Wynehamer v. People, 13  
N. Y. 378; 2 Park. Cr. Rep. 421;  
*In re Beine*, 42 Fed. 545; Commonwealth v. Murphy, 10 Gray, 1.

which the State cannot interfere; that among those rights is that of manufacturing for one's use food or drink; and that while, according to the doctrines of the commune, the State may control the taste, habits, dress, food and drink of the people, our system of government, based upon the individuality and taste of the citizen, does not claim to control him except as to his conduct to others, leaving him the sole judge as to all that only affects himself. It will be observed that the proposition, and the argument made in support of it, equally concede that the right to manufacture drink for one's personal use is subject to the condition that such manufacture does not undergo or affect the rights of others. If such manufacture does prejudicially affect the rights and interests of the community, it follows from the very premises stated, that society has the power to protect itself by legislation against the injurious consequences of that business. As was said in *Munn v. Illinois*,<sup>52</sup> while power does not exist in the whole people to control rights that are purely and exclusively private, government may require 'each citizen to so conduct himself, and so use his own property, as not unnecessarily to injure another.' But by whom, or by what authority, is it to be determined whether the manufacture of particular articles of drink, either for general use or for the personal use of the maker, will injuriously affect the public? Power to determine such questions, so as to bind all, must exist somewhere; else society will be at the mercy of the few, who, regarding only their own appetites or passions, may be willing to imperil the peace and security of the many, provided only they are permitted to do as they please. Under our system this power is lodged with the legislative branch of the government. It belongs to that department to exert what are known as the police power of the State, and to determine, primarily, what measures are appropriate or needful for the protection of the public morals, the public health, or the public safety. It does not follow that every statute enacted ostensibly for the promotion of those ends is to be accepted as a legitimate ex-

<sup>52</sup>94 U. S. 113, 124.



ertion of the police powers of the State. There are, of necessity, limits beyond which legislation cannot rightfully go. While every possible presumption is to be indulged in favor of the validity of a statute,<sup>53</sup> the courts must obey the Constitution rather than the lawmaking department of the government, and must, upon their own responsibility, determine whether, in any particular case, these limits have been passed. 'To what purpose,' it was said in *Marbury v. Madison*,<sup>54</sup> 'are powers limited, and to what purpose is that limitation committed to writing, if these limits may at any time be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed are of equal obligation.' The courts are not bound by mere forms, nor are they to be misled by mere pretense. They are at liberty—indeed they are under a solemn duty—to look at the substance of things, whenever they enter upon the inquiry whether the Legislature has transcended the limits of its authority. If, therefore, a statute purporting to have been enacted to protect the public health, the public morals or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of rights, secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution. Keeping in view these principles, as governing the relations of the judicial and legislative departments of government with each other, it is difficult to perceive any ground for the judiciary to declare that the prohibition by Kansas of the manufacture or sale, within her limits, of intoxicating liquors for general use there as a beverage, is not fairly adapted to the end of protecting the community against the evils which confessedly result from the excessive use of ardent spirits. There is no justification for holding that the State, under the guise merely of police regulations, is here aiming to deprive the citizen of his constitutional rights;

<sup>53</sup> Citing *Sinking Fund Cases*,  
99 U. S. 700.

<sup>54</sup> 1 Cranch 137, 176.



for one cannot shut out of view the fact, within the knowledge of all, that the public health, the public morals, and the public safety may be endangered by the use of intoxicating liquors; nor the fact, established by statistics accessible to every one, that the idleness, disorder, pauperism and crime existing in the country are, in some degree at least, traceable to this evil. If, therefore, a State deems the absolute prohibition of the manufacture and sale within her limits of intoxicating liquors for other than medical, scientific and manufacturing purposes, to be necessary to the peace and security of society, the courts cannot, without usurping legislative functions, override the will of the people as thus expressed by their chosen representatives. They have nothing to do with the mere policy of legislation. Indeed, it is a fundamental principle in our institutions, indispensable to the preservation of public liberty, that one of the separate departments of the government shall not usurp powers committed by the Constitution to another department. And so, if in the judgment of the Legislature, the manufacture of intoxicating liquors for the maker's own use, as a beverage, would tend to cripple, if it did not defeat, the effort to guard the community against the evils attending the excessive use of such liquors, it is not for the courts, upon their views as to what is best and safest for the community, to disregard the legislative determination of that question. So far from such a regulation having any new relation to the general end sought to be accomplished, the entire scheme of prohibition as embodied in the Constitution and laws of Kansas might fail, if the right of each citizen to manufacture intoxicating liquors for his own use as a beverage was recognized. Such a right does not inhere in citizenship. Nor can it be said that government interferes with or impairs any one's constitutional rights of liberty or property, when it determines that the manufacture and sale of intoxicating liquors for general or individual use as a beverage, are, or may become, hurtful to society, and constitute therefor a business in which no one may lawfully engage. Those rights are best secured, in our

government, by the observance, upon the part of all, of such regulations as are established by competent authority to promote the common good. No one may rightfully do that which the lawmaking power, upon reasonable grounds, declares to be prejudicial to the general welfare. The conclusion is unavoidable, unless the Fourteenth Amendment of the Constitution takes away from the States of the Union those powers of police that were received at the time the original Constitution was adopted. But as this court has declared, upon full consideration,<sup>55</sup> the Fourteenth Amendment had no such effect. After observing, among other things, that that amendment forbade the arbitrary deprivation of life and liberty, and the arbitrary spoliation of property and secured equal protection to all under the like circumstances, in respect as well to their personal and civil rights as to their acquisition and enjoyment of property, the court said: 'But neither the amendment—broad and comprehensive as it is—nor any other amendment, was designed to interfere with the powers of the State, sometimes termed its police power, to proscribe regulations to promote the health, peace, morals, education, and good order of the people, and to legislate so as to increase the industries of the State, develop its resources, and add to the wealth and prosperity.' Undoubtedly the State, when providing by legislation for the protection of the public health, the public morals, or the public safety, is subject to the paramount authority of the Constitution of the United States, and may not violate rights secured or guaranteed by that instrument, or interfere with the execution of the powers confided to the general government.<sup>56</sup> Upon this ground—if we do not misapprehend the position of defendants—it is contended that, as the primary and principal use of beer

<sup>55</sup> In *Barbier v. Connolly*, 113 U. S. 27; 5 Sup. Ct. 357.

<sup>56</sup> Citing *Henderson v. Mayor*, 92 U. S. 259; *Railroad Co. v. Husen*, 95 U. S. 465; *New Orleans Gas Co. v. Louisiana etc. Co.* 115 U. S. 650; 6 Sup. Ct. 252; *Wall-*

*ing v. Michigan*, 116 U. S. 446; 6 Sup. Ct. 454; *Yick Wo v. Hopkins*, 118 U. S. 256; 6 Sup. Ct. 1064; *Morgan's Steamship Co. v. Louisiana Board*, 118 U. S. 455; 6 Sup. Ct. 1114.

is a beverage; as their respective breweries were erected when it was lawful to engage in the manufacture of beer for every purpose; as such establishments will become of no value as property, or at least will be materially diminished in value, if not employed in the manufacture of beer, for every purpose; the prohibition upon their being so employed is, in effect, a taking of property for public use without compensation, and depriving the citizen of his property without due process of law. In other words, although the State, in the exercise of her police powers, may lawfully prohibit the manufacture and sale, within her limits, of intoxicating liquors to be used as a beverage, legislation having that object in view cannot be enforced against those who at the time happen to own property the chief value of which consists in its fitness for such manufacturing purposes, unless compensation is first made for the diminution in the value of their property resulting from such prohibitory enactments. This interpretation of the Fourteenth Amendment is inadmissible. It cannot be supposed that the States intended, by adopting that amendment, to impose restraints upon the exercise of their powers for the protection of the safety, health, or morals of the community. \* \* \* The principle that no person shall be deprived of life, liberty, or property without due process of law was embodied, in substance, in the Constitutions of nearly all, if not all, of the States at the time of the adoption of the Fourteenth Amendment, and it has never been regarded as incompatible with the principle, equally vital, because essential to the peace and safety of society, that all property in this country is held under the implied obligation that the owner's use of it shall not be injurious to the community."<sup>57</sup> "A prohibition simply upon the use of property for purposes that are declared, by valid legislation, to be injurious to the health, morals, or safety of the community, cannot in any just sense be deemed a taking or appropriation of property for the public benefit

<sup>57</sup> Here the court examines *Patterson v. Kentucky*, 97 U. S. 501; *Fertilizing Co. v. Hyde Park*, 97

U. S. 659, and *Pumpelly v. Green Bay Co.*, 13 Wall. 166.

Such legislation does not disturb the owner in the control or use of his property for lawful purposes, nor restrict his right to dispose of it, but is only a declaration by the State that its use by any one, for certain forbidden purposes, is prejudicial to the public interests. Nor can legislation of that character come within the Fourteenth Amendment in any case, unless it is apparent that its real object is not to protect the community or to promote the general well-being, but, under the guise of police regulation, to deprive the owner of his liberty or property without due process of law. The power which the States have of prohibiting such use by individuals of their property as will be prejudicial to the health, morals, or the safety of the public is not—and consistently with the existence and safety of organized society cannot be—burdened with the condition that the State must compensate such individual owners for pecuniary losses they may sustain, by reason of their not being permitted, by a noxious use of their property, to inflict injury upon the community. The exercise of the police power by the destruction of property which is itself a public nuisance, or the prohibition of its use in a particular way, whereby its value becomes depreciated, is very different from taking property for public use, or from depriving a person of his property without due process of law. In the one case a nuisance only is abated; in the other, an offending property is taken away from an innocent owner. It is true that when the defendants in these cases purchased or erected their breweries the laws of the State did not forbid the manufacture of intoxicating liquors. But the State did not thereby give any assurance, or come under an obligation that its legislation on that subject would remain unchanged. Indeed, as was said in *Stone v. Mississippi*,<sup>58</sup> the supervision of the public health and the public morals is a governmental power, continuing in its nature, and ‘to be dealt with as the special exigencies of the moment may require,’ and that ‘for this purpose the largest legislative discretion is allowed, and the discretion cannot be parted with any more

<sup>58</sup> 101 U. S. 814.



than the power itself.”<sup>59</sup> So in *Beer Co. v. Massachusetts*: “If the public safety or the public morals require the discontinuance of any manufacture or traffic, the hand of the Legislature cannot be stayed from providing for its discontinuance by any incidental inconvenience which individuals or corporations may suffer.”<sup>60</sup>

<sup>59</sup> 97 U. S. 32.

<sup>60</sup> 97 U. S. 25; *Mugler v. Kansas*, 123 U. S. 623; 8 Sup. Ct. 273; 31 L. Ed. 205; affirming 29 Kan. 252; 44 Am. Rep. 634.

In *Bartmeyer v. Iowa*, 18 Wall. 129; 13 Am. L. Reg. 220, the court refused to consider the question above discussed, saying it was too grave a question to be discussed unless squarely presented by the record.

See also *Kaufman v. Dostal*, 73 Iowa, 691; *Whitney v. Township Board*, 71 Mich. 234; 39 N. W. 196; *Menken v. Atlanta*, 78 Ga. 658; *Tredway v. Riley*, 32 Neb. 495; 49 N. W. 268; 29 Am. St. 447; *Pearson v. International Distillery*, 72 Iowa 348; 34 N. W. 1; affirmed 128 U. S. 1; 9 Sup. Ct. 6; 32 L. Ed. 346; *Heck v. State*, 44 Ohio St. 536; 9 N. E. 305; *Stickrod v. Commonwealth*, 86 Ky. 285; 5 S. W. 580; 9 Ky. L. Rep. 563; *State v. Fitzpatrick*, 16 R. I. 54; 11 Atl. 767.

Upon this question Justice Cooley has well observed: “Perhaps there is no instance in which the power of the Legislature to make such regulations as may destroy the value of property, without compensation to the owners, appears in a more striking light than in the case of these statutes. The trade in alcoholic drinks being lawful, and the capital em-

ployed in it being fully protected by law, the Legislature then steps in, and by an enactment based on general reasons of public utility, annihilates the traffic, destroys altogether the employment, and reduces to a nominal value the property on hand. Even the keeping of that, for the purpose of sale, becomes a criminal offense; and, without any change whatever in his own conduct or employment, the merchant of yesterday becomes the criminal of to-day, and the very building in which he lives and conducts the business which to that moment was lawful becomes the subject of legal proceedings, if the statute shall so declare to be proceeded against for a forfeiture. A statute which can do this must be justified upon the highest reasons of public benefit; but, whether satisfactory or not, the reasons address themselves exclusively to the legislative wisdom.” Cooley Const. Lim. (6 ed.), 719.

Several decisions hold that the fact that the liquor is manufactured for export does not prevent the State from declaring the manufacture illegal or prohibiting its manufacture. *Kid v. Pearson*, 128 U. S. 1; 9 Sup. Ct. 6; 32 L. Ed. 346; *State v. Jordan*, 72 Iowa, 377; 34 N. W. 285; *People v. Hawley*, 3 Mich. 330; *Tanner v.*



### Sec. 94. Constitution prohibiting the granting of license—Ohio Constitution.

The Constitution of Ohio provides that "no license to traffic in intoxicating liquors shall hereafter be granted in this State, but the General Assembly may by law provide against evils resulting therefrom," and it was held that a statute providing for a license to sell liquor was unconstitutional.<sup>61</sup> And a statute providing that "whoever shall engage or continue in the business aforesaid of selling intoxicating liquors in or upon land or premises not owned by him, and without the written consent of the owner thereof, shall be held guilty of a misdemeanor," and also providing that the assessments made, by the act on the business should be a lien on the premises, occupied by the tenant was in effect a license law, and was void.<sup>62</sup> But the provision does not prevent the Legislature levying a tax upon the business of selling liquor, the constitutional provision merely being a declaration that the Legislature shall not countenance the

Alliance, 29 Fed. 196; *State v. Fitzpatrick*, 16 R. I. 54; *August Busch & Co. v. Webb*, 122 Fed. Thornton—Intoxicants—JFH 32 655; *Ex parte Rippey*, 44 Tex. Cr. App. 72; 73 S. W. 15; *Commonwealth v. Certain Intoxicating Liquors*, 115 Mass. 153; *Edgar v. McDonald* (Tex. Civ. App.), 106 S. W. 1135; *Clark v. Tower*, 65 Atl. 3; 104 Md. 175; *Beer Co. v. Massachusetts*; 97 U. S. 525; *Ex parte Lynn*, 19 Tex. App. 293; *Steele v. State*, 19 Tex. App. 425; *Metropolitan Board v. Barrie*, 34 N. Y. 657.

A statute declaring liquors to be a nuisance is valid as to liquors on hand before its enactment. *Kid v. Pearson*, 128 U. S. 1; 9 Sup. Ct. 6; 32 L. Ed. 346.

A statute prohibiting the dis-

tilling of liquors from grain, except under the direction, and with his consent, of the governor of the State has been held to be constitutional, not being a delegation of legislative power. *Ingram v. State*, 39 Ala. 247; 84 Am. Dec. 792. But it has been held that a statute prohibiting the sale of all liquors except those manufactured under the authority of the selectmen of the town for sacrament, medicinal, chemical or mechanical uses, was valid. *State v. Brennen*, 25 Conn. 278; *State v. Wheeler*, 25 Conn. 290.

<sup>61</sup> *State v. Hipp*, 38 Ohio St. 199.

<sup>62</sup> *King v. Cappellar*, 42 Ohio St. 218; *Butzman v. Whitbeck*, 42 Ohio St. 223. *Contra*, *State v. Freme*, 39 Ohio St. 399.

sale by legal sanction.<sup>63</sup> The Legislature may also provide that this tax shall constitute a lien on the business.<sup>64</sup> This provision applies both to wholesale and retail sales,<sup>65</sup> and it does not by implication prevent the enactment of prohibitory legislation.<sup>66</sup>

**Sec. 95. Effect of adopting constitutional prohibitory measure on prior statutes.**

Where a State adopts a constitutional provision prohibiting the sale and manufacture of intoxicating liquors as a beverage, all statutes then in force are annulled<sup>67</sup> unless the constitutional provision provides that it shall not affect existing statutes or laws.<sup>68</sup> But a provision of the Constitution prohibiting the sale and manufacture of intoxicating liquors except for medical and mechanical purposes does not prevent the State licensing and regulating the sale of such liquors for medicinal and mechanical purposes, the same as if such a provision had never been adopted.<sup>69</sup> In Kentucky the Constitution provides for a local option election, and provides that "nothing herein shall \* \* \* repeal any law in force," and this was held not to prevent the repealing of a law prohibiting the sale of liquors before an election was held.<sup>70</sup> The adoption of a constitutional prohibitory law or provi-

<sup>63</sup> *Adler v. Whitbeck*, 44 Ohio St. 539; 9 N. E. 672; *Anderson v. Brewster*, 44 Ohio St. 576; 9 N. E. 683.

<sup>64</sup> *Adler v. Whitbeck*, *supra*.

<sup>65</sup> *Senior v. Ratterman*, 44 Ohio St. 661; 11 N. E. 321; affirming 17 Wkly. L. Bull. 115.

<sup>66</sup> *Gordon v. State*, 46 Ohio St. 607; 23 N. E. 63; 6 L. R. A. 749; *State v. Amery*, 12 R. I. 64.

<sup>67</sup> *State v. Touks*, 15 R. I. 385; 5 Atl. 636; *Draper v. State* (Ga.), 64 S. E. 117; *King v. Cappellar*, 42 Ohio St. 218; *State v. Cochran* (Ore.), 104 Pac. 419; *Butzman v. Whitbeck*, 42 Ohio St. 223; *Ex*

*parte Cain*, 20 Okla. 125; 93 Pac. 974; *Arie v. State*, 1 Okla. Cr. 666; 100 Pac. 233; *Ex parte McNaught*, 1 Okla. Cr. 260; 100 Pac. 271.

<sup>68</sup> *State v. Dorr*, 82 Me. 212; 19 Atl. 171; *State v. Walker* (Mo.), 120 S. W. 1198; affirming 129 Mo. App. 371; 108 S. W. 615.

<sup>69</sup> *State v. Kennedy*, 16 R. I. 409; 17 Atl. 5; *State v. Kane*, 15 R. I. 395; 6 Atl. 783; *State v. Clark*, 15 R. I. 383; 5 Atl. 635; *People v. Collins*, 3 Mich. 343.

<sup>70</sup> *Brown v. Commonwealth*, 98 Ky. 652; 34 S. W. 12.

sion does not prevent the Legislature enacting laws in aid thereof or in addition thereto.<sup>71</sup>

### Sec. 96. Contracts prohibiting.

A State may prohibit the making of contracts in the future for the sale or purchase of intoxicating liquors; and may prohibit a recovery of the price of liquors sold.<sup>72</sup> It may also forbid an action to recover the possession of liquor sold.<sup>73</sup> A State may forbid, it has been held, the maintenance of an action to recover the price of liquor bought outside the State with intent to sell it within the State in contravention of the laws there forbidding the sale of intoxicating liquors.<sup>74</sup> But it has also been held that a State cannot forbid the enforcement of a contract entered into before the passage of the Wilson law (1890) by an agent soliciting purchases of liquor to be delivered in another State; and upon such contracts, notwithstanding the provisions of a statute declaring them void, a recovery can be had.<sup>75</sup> And a law compelling the plaintiff to prove, in an action on a contract of sale of liquor, that it was lawfully sold or lawfully kept and owned by him, is invalid.<sup>76</sup> A statute forbidding a recovery of the possession of intoxicating liquors will be construed to mean liquor liable to seizure and forfeiture for

<sup>71</sup> State v. Hooker (Okla.), 98 Pac. 964. See also Dupree v. State (Tex.), 119 S. W. 301, answering (Tex. Civ. App.), 107 S. W. 926.

A person who has not complied with the laws concerning the sale of liquors in force on the adoption of a prohibitory constitutional provision cannot question the validity of such provision. F. W. Cook Brewing Co. v. Garber, 168 Fed. 942.

The Oklahoma constitutional provisions relating to prohibition are self-executing. *Ex parte Cain*, 20 Okla. 125; 93 Pac. 974.

<sup>72</sup> Corbin v. Houlehan, 100 Me.

246; 61 Atl. 131; Barrett v. Delano (Me.), 14 Atl. 288; Meserve v. Gray, 55 Me. 540; Thurston v. Adams, 41 Me. 419.

<sup>73</sup> Thurston v. Adams, 41 Me. 419.

<sup>74</sup> Barrett v. Delano (Me.), 14 Atl. 288; Meserve v. Gray, 55 Me. 540; Corbin v. Houlehan, 100 Me. 246; 61 Atl. 131.

<sup>75</sup> Durkee v. Moses, 67 N. H. 115; 23 Atl. 793; (overruling Dunbar v. Locke, 62 N. H. 442, and Jones v. Surprise, 64 N. H. 243; 9 Atl. 384). *In re* opinion of Superior Court, 5 Fost. 537.

<sup>76</sup> People v. Toynbee, 2 Park. (N. Y.) 329.

a violation of the liquor law; for otherwise it would be void, violating the provisions of the Constitution providing that any person for an injury done him in his person or property shall have a remedy by due course of law.<sup>77</sup>

### Sec. 97. Past contracts for sale of intoxicating liquors.

Contracts for the sale or purchase of intoxicating liquors that were valid at the time and place where completed, cannot be rendered invalid by any subsequent legislation concerning intoxicating liquors.<sup>78</sup> This is particularly true of a recovery upon a breach of the condition of a bond given pursuant to the provisions of a license law, even if prohibition is brought about by the adoption of a prohibitory constitutional provision.<sup>79</sup> Even the repeal of the law giving the right of action can not take away the cause of action arising previous to its repeal.<sup>80</sup>

<sup>77</sup> *Preston v. Drew*, 33 Me. 558; 54 Am. Dec. 639.

Where a statute forbade the sale, except for certain purposes, of intoxicating liquors, and exempted certain property, not intoxicating liquor, from sale on legal process for the payment of debts, the question whether such liquors can be sold on execution involves no constitutional question. *Standard Oil Co. v. Angervine*, 60 Kan. 167; 55 Pac. 879.

Although a contract for the sale of liquor may be void, because unlawful, yet the vendor may recover the proceeds of such sale where they have been collected by his agent, even the agent who sold the liquors. *Hertzler v. Geigley*, 196 Pa. St. 419; 46 Atl. 366.

In South Carolina only the State can question the validity of

a sale of liquors. *Ex parte Neal, etc. Co.*, 58 S. C. 269; 36 S. E. 584.

A statute rendering void all contracts for the sale of liquors to be delivered in any other State or county to enable the purchaser to violate the provisions of such statute by there being reshipped back into the State where sold, is constitutional. *Reynolds v. Geary*, 26 Conn. 179.

<sup>78</sup> *State v. Williams*, 10 Tex. Civ. App. 346; 30 S. W. 477; *Corbin v. Houlehan*, 100 Me. 246; 61 Atl. 131.

<sup>79</sup> *Coggeshall v. Groves*, 16 R. I. 18; 11 Atl. 296.

<sup>80</sup> *State v. Williams*, 10 Tex. Civ. App. 346; 30 S. W. 477; *DeGrazier v. Stephens* (Tex.), 105 S. W. 992.

**Sec. 98. Effect of prohibition upon liquors on hand at time of its adoption.**

It is no longer a question of doubt that a State may forbid the future sale of intoxicating liquors within her boundaries. The right to sell intoxicating liquors is not one of the rights of citizenship.<sup>81</sup> A more serious question, however, is the effect upon the ownership of liquors on hand within the State at the time a prohibitory law is adopted. If the ownership of the liquor was obtained when a law was in force requiring a license to sell them, and the law providing that a license must be obtained before a sale could be made, and this law is repealed, thus leaving it impossible to sell the liquors, there is no question that the repealing law is valid, and that the license immediately ends; for no one has a vested right in a license, as has been elsewhere discussed.<sup>82</sup> The effect upon liquors he has on hand is to effectually prevent the ex-licensee selling them or in any way disposing of them; and of this fact he cannot complain, for he purchased them with the knowledge (which he was bound to have) that the law authorizing the granting of a license could at any time be repealed and the liquors left upon his hands. But the law goes still further. Although it was lawful for the owner, at the time he purchased liquors or acquired property in them, to sell or otherwise dispose of them, yet a subsequent law may absolutely forbid him either selling or giving them away, and thus in a limited extent confiscating the liquor. A law making the keeping or sale of liquors already on hand unlawful is not an *ex post facto* law, and is valid, although at the time of the acquisition of ownership

<sup>81</sup> *Baremeier v. Iowa*, 18 Wall. 129; *State v. Doss*, 70 Ark. 312; 67 S. W. 867.

<sup>82</sup> See also *Moore v. Indianapolis*, 120 Ind. 483; 22 N. E. 424; *Metropolitan Board v. Barrie*, 34 N. Y. 659; *Fell v. State*, 47 Md. 71; 20 Am. Rep. 83; *Brown v. State*, 82 Ga. 224; 7 S. E. 915; *Prohibitory Amendment Cases*, 24

*Kan.* 700; *Calder v. Kurby*, 5 Kan. 597; *Beer Co. v. Massachusetts*, 97 U. S. 25; *Wheeler v. State*, 64 Miss. 462; 1 So. 632; *Powell v. State*, 69 Ala. 10; *Territory v. Miguel*, 18 Hawaii, 402; *State v. Bolt*, 31 La. Ann. 663; 33 Am. Rep. 224; *State v. Chester*, 18 S. C. 464.



in them the sale or keeping of them was not an offense.<sup>83</sup> There are a few cases which hold that a prohibition law is unconstitutional, so far as it relates to liquors on hand at the date of the adoption, its effect being to deprive a party of his property without due process of law.<sup>84</sup> But it may be laid down as a well-established rule at the present day that the owner of liquors which he has on hands at the time of the adoption of a prohibitory law cannot successfully complain of the law, although deprived of his power to sell or give them away.<sup>85</sup> The property in liquors still remains in the owner. But a much more serious question arises when the statute attempts to make the liquors on hand "contraband" or to confiscate them. In a recent case this exact phase was incidentally discussed. "It has been said," the court observed, "that intoxicating liquors are property, and that a law prohibiting their sale as a drink is the exercise of a despotic power, calling for an unconstitutional interference with the rights of property, and necessarily impairing and even destroying those rights, which, it is claimed, is against natural right and justice and beyond the pale of consti-

<sup>83</sup> *State v. Paul*, 5 R. I. 185; *State v. Keeran*, 5 R. I. 497; *Rose v. State*, 171 Ind. 662; 87 N. E. 103; *Grumbaugh v. Leland*, 154 Cal. 679; 98 Pac. 1059; *McClanahan v. Breeding* (Ind.), 88 N. E. 695; *Viefhaus v. Bohenstehn*, 71 Ark. 419; 75 S. W. 585; *Stickrod v. Commonwealth*, 86 Ky. 285; 5 S. W. 580; 9 Ky. L. Rep. 563.

<sup>84</sup> *Wynehamer v. People*, 13 N. Y. 378; 2 Parker Cr. Rep. 421; affirming 2 Parker Cr. Rep. 377; 12 How. Pr. 238; and reversing 20 Barb. 567; *People v. Tonybee*, 2 Parker Cr. Rep. 329. See also *Berry v. De Maris* (N. J.), 70 Atl. 337.

<sup>85</sup> *Mugler v. Kansas*, 123 U. S. 623; 8 Sup. Ct. 273; *Kidd v. Pearson*, 128 U. S. 1; 9 Sup. Ct. 6;

*Prohibitory Amendment Cases*, 24 Kan. 700; *Heck v. State*, 44 Ohio, 536; 9 N. E. 305; *Menken v. Atlanta*, 78 Ga. 668; 2 S. E. 559; *Savage v. Commonwealth*, 84 Va. 582; 5 S. E. 565; *Kissinger v. Hinkhouse*, 27 Fed. 883; *Weil v. Calhoun*, 25 Fed. 865; *Tanner v. Alliance*, 29 Fed. 196; *Shear v. Bolinger*, 74 Iowa, 757; 37 N. W. 164; *Drake v. Jordan*, 73 Iowa, 707; 36 N. W. 653; *Kaufman v. Dostal*, 73 Iowa, 691; 36 N. W. 643; *McLane v. Leight*, 69 Iowa, 401; *Oviatt v. Pond*, 29 Conn. 479; *Moore v. Indianapolis*, 120 Ind. 483; 22 N. E. 424; *Burnside v. Lincoln County*, 86 Ky. 423; 7 S. E. 276; *Brown v. State*, 82 Ga. 224; 7 S. E. 915.

tutional authority. It is not to be assumed by us that intoxicating liquors, under the act, are not to be regarded as property, at least in a certain sense. The act does not declare that they are not property, and there is no language which should receive a construction to forbid them being property. Though there is a prohibition not to sell them, yet that cannot prevent a man from having a property in them for his own use, without any intention to sell them; and they may be transported through the State, where there is no intention to violate the law; indeed, the act itself authorizing the town agents to sell them for certain specified purposes, thereby admits them to be property for such purposes.”<sup>86</sup> The Supreme Court of West Virginia, however, held that a clause in the statutes which forbade any one to keep in his possession spirituous liquor for another was unconstitutional. “The keeping of liquor in his possession,” continued the court, “by a person, whether for himself or another, unless he does so for the illegal sale of it, or for some other improper purpose, can by no possibility injure or affect the health, morals, or safety of the public, and, therefore, the statute prohibiting such keeping in possession is not a legitimate exertion of the police power. It is an abridgment of the privileges and immunities of the citizen without any legal justification, and therefore void.”<sup>87</sup> The courts have

<sup>86</sup> “Those who engage in the traffic, after the enactment of such a law [a statute requiring a license to sell], must be regarded as having notice from the beginning, that the power of regulation is a continuing one, and that the State reserves to itself the right to deal with the subject as the special exigencies of the moment may require.” *Moore v. Indianapolis*, 120 Ind. 483; 22 N. E. 424. Citing *Stone v. Mississippi*, 101 U. S. 814; *Kidd v. Pearson*, 128 U. S. 1; 9 Sup. Ct. 6; *Pearson v. International Distillery*, 72 Iowa, 348; 34 N. W. 1; *Ex*

*parte Burnside*, 86 Ky. 423; 7 S. W. 276; *Edgar v. McDonald* (Tex. Civ. App.), 106 S. W. 1135.

<sup>87</sup> *State v. Gilman*, 33 W. Va. 136; 10 S. E. 283; *Lincoln v. Smith*, 27 Vt. 328; *Kidd v. Pearson*, 128 U. S. 1; 9 Sup. Ct. 6; *Pearson v. International Distillery*, 72 Iowa, 348; 34 N. W. 1; *State v. Allmond*, 2 Houst. (Del.) 612; *State v. Wheeler*, 25 Conn. 290; *Oviatt v. Pond*, 29 Conn. 479; *State v. Paul*, 5 R. I. 185; *Preston v. Drew*, 33 Me. 558; 54 Am. Dec. 639.

gone so far, however, as to hold that liquors kept in violation of law may be the subject of larceny, and when sold the proceeds may be the subject of embezzlement.<sup>88</sup> This is practically upon the same ground that a thief cannot insist he cannot be convicted, because the person from whom he stole the article which is the subject of the larceny, also stole it from another. A statute, however, which authorizes a seizure and destruction of liquors that were on hand before its enactment, is invalid, because it deprives its owner of his property without due process of law.<sup>89</sup>

### Sec. 99. Keeping liquor.

A Legislature has no power to prevent an inhabitant of a State keeping in store intoxicating liquors for others; for such a law is an invasion of the constitutional provision guaranteeing to every person the free use and exercise of his property.<sup>90</sup> But a city ordinance prohibiting the keeping within the city of intoxicating liquors, with the intent to illegally sell them is valid,<sup>91</sup> and so is a statute.<sup>92</sup> These cases turn upon the intent of the person having them to violate the law. This feature of a statute is noticeable when it is held that an attempt to make it illegal to bring into a county

<sup>88</sup> Commonwealth v. Smith, 129 Mass. 104.

<sup>89</sup> Berry v. DeMaris (N. J. L.), 70 Atl. 337.

An ordinance prohibiting sale on Sunday is not an impairment of the right given by a license to sell liquors. State v. Bolt, 21 La. Ann. 663; 33 Am. Rep. 224.

There is no vested right to continue in the pursuit of the liquor business where a person was engaged in it when a prohibitory law was enacted. Grumbaugh v. Lelande (Cal.), 98 Pac. 1059; Viefhaus v. Bohenstehn, 71 Ark. 419; 75 S. W. 585.

A statute providing for the destruction of contraband liquors is

valid. Lindley v. State (Ark.), 120 S. W. 987.

<sup>90</sup> *Ex parte* Brown (Tex. Cr. App.), 42 S. W. 554; State v. Gilman, 33 W. Va. 146; 10 S. E. 283; 6 L. R. A. 847; Brown v. Social Circle, 105 Ga. 834; 32 S. E. 141; Papworth v. Fitzgerald, 106 Ga. 378; 32 S. E. 363; Tucker v. Moultrie, 122 Ga. 160; 50 S. E. 61.

<sup>91</sup> Rooney v. Augusta, 117 Ga. 709; 45 S. E. 72; La Fitte v. Ft. Collins, 42 Colo. 293; 95 Pac. 927.

<sup>92</sup> State v. Williams (N. C.), 61 S. E. 61; *Ex parte* Dupree (Tex.), 105 S. W. 493; State v. Four Jugs, 58 Vt. 240; 2 Atl. 586; *Ex parte* Byrd (Tex.), 105 S. W. 496.

more than one-half gallon of liquors except for delivery to a druggist for medicinal purposes, is void, because it prevents a citizen from himself using them, and thus unduly restricts his right as a citizen to the use of liquor.<sup>93</sup> So a statute providing that the keeping of more than one quart of liquor at a time shall be *prima facie* evidence of a keeping for sale is constitutional.<sup>94</sup>

### Sec. 100. Corporate charter changed—Police power.

While it is true that the charter of a private corporation which contains a grant of powers and privileges is a contract within the meaning of the constitutional provision that no State shall pass any "law impairing the obligation of contracts," yet a Legislature, acting under the police power of the State, has the power to alter, amend or repeal such a charter if it becomes necessary for the protection of the lives, health and property of the citizens of the State, the maintenance of good order, and the preservation of the public morals, even though the power to do so was not reserved in the charter, and by the doing of it the property rights of the corporation are interfered with. By such a charter the corporation is endowed with the same power as a natural person to do that which its charter authorizes; and by implication with the same power as an individual to deal with and sell its property when manufactured. But the authority of the Legislature over the property of a corporation is not lost, because no power is reserved to repeal or amend its charter. Any laws the sovereign power may find it necessary or salutary to enact, regulating, controlling, restricting or prohibiting the sale of a particular kind of property for the general benefit, apply as well to the property of corporations as to individuals. Such laws are in the nature of police regulations, and individuals and corporations are alike subject to them. Indeed, all property is held subject to such restriction, and it is immaterial that the restriction is imposed after the property is acquired or becomes valuable, or

<sup>93</sup> State v. Williams (N. C.), 61 S. E. 61.

<sup>94</sup> State v. Barrett, 138 N. C. 130, 50 S. E. 506.



after the charter is granted, or before it became necessary in the judgment of the Legislature to pass a law on the subject. Any such law limits, restrains, impairs, and in some cases destroys the uses, which were previously enjoyed, of the property so made the subject of legislation, but the extent to which it may do so does not affect the validity of such law or its equal application to all owners of such property. Such laws are presumed to be passed for the common good, and to be necessary for the protection of the public, and cannot be said to impair any right or do any injury in the proper legal sense of these terms.<sup>95</sup> Whatever differences of opinion may exist as to the extent and boundaries of the police power, and however difficult it may be to render a satisfactory definition of it, there seems to be no doubt that it does extend to the protection of the lives, health and property of the citizens and to the preservation of good order and the public morals. The Legislature cannot, by any contract, divest itself of the power to provide for these objects. They belong emphatically to that class of objects which demand the application of the maxim, *salus populi suprema lex*; and they are to be attained and provided for by such appropriate means as the legislative discretion may devise. That discretion can no more be bargained away than the power itself.<sup>96</sup>

### Sec. 101. Prohibition in particular places and localities.

By an act of Congress it is provided that no license shall be granted for the sale of intoxicating liquor at any place within one mile of the Soldier's Home property in the District of Columbia.<sup>97</sup> In various States statutes of like tenor

<sup>95</sup> Commonwealth v. Intoxicating Liquors, 115 Mass. 153; People v. Hawley, 3 Mich. 330; Vanderbuilt v. Adams, 7 Cow. (N. Y.) 349; Coates v. New York, 7 Cow. (N. Y.) 585, 604, 606.

<sup>96</sup> Boyd v. Alabama, 94 U. S. 645; Beer Co. v. Massachusetts, 97 U. S. 25; Store v. Mississippi, 101

U. S. 814; McKinney v. Town of Salem, 77 Ind. 213; State v. Fell, 42 Md. 7L; Commonwealth v. Brennan, 103 Mass. 70; Freleigh v. State, 8 Mo. 606; Metropolitan Board, etc., v. Barrie, 34 N. Y. 657; Stone v. Mississippi, 101 U. S. 814; State v. Paul, 5 R. I. 185.  
<sup>97</sup> 26 U. S. Stat. at L., p. 797.



and prohibiting the sale of such liquors at or near educational institutions, churches, camp-meetings, agricultural fairs, places of exhibition and amusement, public State buildings and near railroads during construction have been enacted and enforced. In Indiana a statute of this character provides that "whoever sells or exposes for sale, gives, barter or in any way disposes of any spirituous, vinous, malt or other intoxicating liquor, or any article of traffic whatsoever; or shall erect, bring, keep, continue, or maintain any booth, tent, wagon, shed, huckster shop, or other place for the sale of spirituous, vinous, malt or other intoxicating liquor, or any other article whatever; or being the proprietor, owner, or occupant of any real property, shall lease or permit the same to be occupied for any such purpose, or any place within one mile from the place where any religious society or assemblage of people is collected or collecting together for religious worship, or any agricultural fair or exhibition, or picnic, or cemetery or other place where, on the 30th day of May, commonly known as Memorial Day, any public exercises are being held in commemoration of dead soldiers and sailors, in such cemetery or such soldiers' and sailors' graves are being or about to be decorated by the public or any portion thereof, shall be fined in any sum not more than fifty dollars nor less than ten dollars, and imprisoned in the county jail not exceeding ten days."<sup>98</sup> Under a statute of this character the Supreme Court of Rhode Island held that in the ascertainment of the distance between the points named in the statute, measurement must be made in a direct line, in that case, from any part of the building or place where the liquors were sold to any part of the school building; in other words, that in ascertaining the distance between the points the nearest direct distance between them was that which was contemplated by the statute and that which must control.<sup>99</sup> Substantially this is the rule adopted by the courts of Massachusetts.<sup>1</sup> If the law in such case provides that liquor

<sup>98</sup> Ind. R. S. 1881, § 2100; 1 Burns' R. S. 1908, § 2497.

<sup>99</sup> *In re Liquor Locations*, 13 R. I. 733.

<sup>1</sup> *Commonwealth v. Emerson*, 140 Mass. 434; 5 N. E. 155; *Commonwealth v. Jones*, 142 Mass. 573; 8 N. E. 603.

shall not be sold within a given distance of a certain **factory** building, the fact that the operation of the factory ceases to be continued by the corporation named in the statute, but is operated by a new and different corporation organized for that purpose, will not vitiate the provisions of the statute.<sup>2</sup> And the same is true if a church or schoolhouse is named in the statute, and the building is thereafter destroyed or removed, or a vacation of the school is being had.<sup>3</sup> In the first instance the law is not a charter privilege which can be dissolved by the dissolution of the corporation. The reason for the continuation of the law is just as great after the old company ceases to exist as before, in view of the fact that its purpose is to protect the owners and employes of the factory against the evils incident to the sale of intoxicating liquors, and the same kind of business is continued in the same place by the owners of the same property. And in the second instance, as well as that of the church or school, the provisions of the law are not only for the benefit of the employers and employes of the factory and for the people attending the church and the pupils being taught in the school, but also for all persons within the entire area of country extending the distance named in the statute in every direction from the buildings named. The operation of the law in either case cannot be affected by any subsequent event except by legislative action. The only power that can repeal or suspend such a law is the one by which it was established—the General Assembly, in which alone is vested the constitutional authority to make and unmake laws.<sup>4</sup>

<sup>2</sup> Asherst v. State, 79 Ala. 276.

<sup>3</sup> Carlisle v. State, 91 Ala. 1; 8 So. 386; Love v. Porter, 93 Ala. 384; 9 S. E. 585; State v. Eaves, 106 N. C. 752; 11 S. E. 370; State v. Barringer, 110 N. C. 525; 14 S. E. 781; Tillery v. State, 78 Tenn. (10 Lea) 35.

<sup>4</sup> Love v. Porter, 93 Ala. 384; 9 S. E. 585.

A statute prohibiting the location of a saloon within three miles of an orphan's home; and prohib-

iting a sale to an inmate of the home except upon the written permit of the superintendent, is valid. State v. Barringer, 110 N. C. 525; 14 S. E. 781.

So a state law forbidding the location of a drinking place within one mile of a soldier's home is valid. Whitney v. Township, etc., 71 Mich. 234; 39 N. W. 40; Driggs v. State, 52 Ohio St. 37; 38 N. E. 882.

A statute prohibiting sales with-

### Sec. 102. Confining sale of liquors to certain districts.

Aside, in the discussions, from all questions of local option, the Legislature may require what liquors are sold to be sold in certain districts of a community and prohibit their sale in others. Perhaps an extreme phase of this question is a law prohibiting sales except on licensed premises, but we here allude to districts in a city or town. It is nothing uncommon for the Legislature (or by empowering a municipality to do so) to forbid sales in resident sections of a city and confine them to the business districts. Such provisions have been universally held constitutional.<sup>5</sup> And a statute confining sales in a county to cities and towns therein is valid.<sup>6</sup> Laws forbidding sales in cities and towns and within certain distances thereof, but allowing it in the remaining parts of a county are valid.<sup>7</sup> And where special charters for cities were admissible, a charter providing that the Board of County Control should have no power to grant a license in a certain designated part of the city by name, except in a park in the prohibition territory, for which prohibitory territory a license, with the consent of the authorities, might be granted, was held constitutional, not containing a discrimination forbidden either by the State or Federal Constitutions.<sup>8</sup>

in half a mile of the city limits is valid. *Paul v. State* (Tex. Cr. App.), 106 S. W. 448; so to one prohibiting sales, exchanges or gifts of liquors in brothels, *Schmeltz v. State*, 8 Ohio Cir. Ct. Rep. 82; *State v. Somerville*, 1 Ohio N. P. 422.

<sup>5</sup> *Rowland v. Greencastle*, 157 Ind. 591; 62 N. E. 474; *Gorrell v. Newport*, 1 Tenn. Ch. App. 120; *Howell v. State*, 71 Ga. 224; *Shea v. Muncie*, 148 Ind. 14; 46 N. E. 138; *Otte v. State*, 29 Ohio Cir. Ct. Rep. 203; *Paul v. State* (Tex. Civ. App.), 106 S. W. 448; *Moore v. Danville*, 232 Ill. 307; 83 N. E. 845; *Williams v. State*, 52 Tex. Civ. App. 371; 107 S. W. 1121;

*Henderson v. Galveston* (Tex.), 114 S. W. 108.

<sup>6</sup> *State v. Berlin*, 21 S. C. 292; 53 Am. Rep. 677; *United States v. Ronan*, 33 Fed. 117.

<sup>7</sup> *State v. Rauscher*, 1 Lea, 96; *State v. Muse*, 4 D. & B. L. (N. C.) 319; *State v. Stovall*, 103 N. C. 416; 8 S. E. 900; *Whitney v. Township Board*, 71 Mich. 234; 39 N. W. 40; *Dorman v. State*, 34 Ala. 216.

The same is true of a town or city when it adopts by local option, prohibition, while sales in other parts of the county are permitted. *Ex parte Massey*, 49 Tex. Cr. App. 60; 92 S. W. 1083.

<sup>8</sup> *Williams v. State*, 52 Tex. Cr. App. 371; 107 S. W. 1121.

**Sec. 103. Agricultural fairs.**

Agricultural societies are justly considered of public benefit, and large numbers of people congregate at them, and from the very nature of such assemblies regulations for the preservation of order are necessary, and for this reason a Legislature under the police power of the State has the power to enact such laws and provide for such regulations as will preserve good order and promote the interest and comfort of those who assemble at them for purposes of pleasure or for the advancement of agricultural interests. Such a statute deprives no one of any vested right nor interferes with any one's "regular business." Therefore a law which forbade the sale of intoxicating liquors within half a mile of such grounds was held constitutional.<sup>9</sup> And the fact that such a fair is organized for profit and awards premiums for articles placed on exhibition, will not vitiate the law.<sup>10</sup> A law of this character which provides that "whosoever sells intoxicating liquors within two miles of the place where an agricultural fair is being held" shall be fined, includes sales made by one whose place of business is permanently located within such distance; and the fact that it applies to the liquor dealer whose place of business is just within, and does not apply to the one that is just without, the prescribed limit does not make it unconstitutional for want of uniformity. A law is general and uniform that applies to all persons and things coming within its provisions throughout the State. Its uniformity consists in the fact that no person or thing of the description of any person affected by it is exempt from its operation.<sup>11</sup> If a statute in such cases makes exceptions, a prosecution under it can not be maintained where the indictment does not negative the exception of facts which under the statute are excepted.<sup>12</sup>

<sup>9</sup> State v. Stovall, 103 N. C. 416; 8 S. E. 900; Earle v. Latonia, etc., Ass'n (Ky.), 106 S. W. 312; 32 Ky. L. Rep. 469, 586.

<sup>10</sup> State v. Long, 48 Ohio St. 509; 28 N. E. 1038.

<sup>11</sup> Heck v. State, 44 Ohio St. 536; 9 N. E. 305.

<sup>12</sup> State v. Cappy, 50 Ind. 291.



**Sec. 104. Educational institutions.**

A statute which provides that it shall be unlawful to manufacture, sell or give away intoxicating liquors within a given distance of any common school or incorporated educational institution is constitutional, and the fact that it provides that it shall not apply to the sale of such liquors within the limits of an incorporated town will not deprive it of its character as a general law;<sup>13</sup> nor will it be deprived of its general character because it exempts those persons who already have established places of business within the prescribed limits.<sup>14</sup> In Massachusetts, under a statute which provided that "no license shall be granted for the sale of intoxicating liquors in any building or place, on the same street, within 400 feet of any building occupied, in whole or in part, by a public school," it was held that the distance between the schoolhouse and building is to be determined by measuring from the nearest point of such house to the other, and that it is not necessary that the building should be situated on the line of the same street; in other words, that the measurement is to be made, not from the nearest point of the room, but the "building or place" in which the sale is made to the school building, and that the word "place" as used in the statute is intended to cover the case where there is no building, but where a tent, booth, excavation in the ground, or some other locality, is resorted to for the purpose of selling such liquor.<sup>15</sup> Under that statute it was also held that if the defendant's saloon did not front on the street on which the schoolhouse was located, but had in the rear a lot, in the fence around which a gate had been put, and through which and across this lot persons were accustomed to go from the defendant's premises to the street on which the school-

<sup>13</sup> *Boyd v. Bryant*, 35 Ark. 69; *Wilson v. State*, 35 Ark. 414; *White v. Bracelin*, 144 Mich. 332; 107 N. W. 1055; 13 *Detroit Leg. N.* 156; *State v. Ranscher*, 69 Tenn. (1 Lea) 96; *Murphy v. State*, 77 Tenn. (9 Lea) 373; *Hutcher v. State*, 80 Tenn. (12

Lea) 368; *Howell v. State*, 71 Ga. 224; 51 Am. Rep. 259; *Butler v. State*, 89 Ga. 821; 15 S. E. 763. <sup>14</sup> *State v. Ranscher*, 69 Tenn. (1 Lea) 96.

<sup>15</sup> *Commonwealth v. Jones*, 142 Mass. 578; 8 N. E. 60).



house was situated, it was a question for the jury whether there was such a general use by all persons of the gate and passageway as to make the premises on the same street as the schoolhouse.<sup>15</sup> A local law which prohibits the sale of such liquors within a given distance of a schoolhouse not only protects the school there taught from the evils of the liquor traffic, but also all persons within the entire area of the community extending the distance named in every direction from the center of the house in which the school is taught, and the removal of the school to another building in the neighborhood, because of the destruction of the schoolhouse or the taking of a vacation by the school, will not in any way change or affect the operation of the law. Its operation in the prescribed territory can not be affected by any subsequent event, except by legislative action. The only power that can repeal or suspend such a law is the one by which it has been established—the General Assembly—in which alone is vested the constitutional authority to make and unmake laws.<sup>17</sup> In Arkansas and Tennessee laws have been enacted making it unlawful to sell such liquors within a given distance of any incorporated university, college, academy, or institution of learning. It has been held that these laws do not apply to the common schools provided for by the Legislature, even though they are taught in the building of a college or academy,<sup>18</sup> and that to sustain a conviction for selling such liquors within the prescribed distance of such incorporated institution of learning, the certificate of the Secretary of State must have previously been registered in the office of the county register.<sup>19</sup> A statute prohibiting sales within four miles of a schoolhouse, except in towns of a cer-

<sup>15</sup> Commonwealth v. Everson, 140 Mass. 572; 5 N. E. 155.

<sup>17</sup> Love v. Porter, 93 Ala. 384; 9 So. 585; Dorman v. State, 34 Ala. 216; Tilley v. State, 78 Tenn. (10 Lea) 35.

<sup>18</sup> DeBois v. State, 34 Ark. 381; Blackwell v. State, 36 Ark. 178; Brewer v. State, 75 Tenn. (7 Lea)

682. Such a statute is valid. Dorman v. State, 34 Ala. 216.

<sup>19</sup> Brewer v. State, 75 Tenn. (7 Lea) 682; Dorman v. State, 34 Ala. 216; Webster v. State, 110 Tenn. 491; 82 S. W. 179; State v. Rauscher, 69 Tenn. (1 Lea) 96; Hatcher v. State, 80 Tenn. (12 Lea) 368.

tain designated population, is valid, and not open to the objection that it grants unequal privileges.<sup>20</sup>

### Sec. 105. Religious assemblies.

An enforceable law may be enacted making it a misdemeanor for any person to sell, give, barter, or in any way dispose of intoxicating liquors within a given distance from the place where any religious society or assemblage of people collect together for religious worship,<sup>21</sup> and where the statute makes an exception as to such persons as carry on their regular business at their usual places of transacting the same, a person may not rent property within the prohibited limit for the purpose of selling such liquors during the continuance of a meeting of such society without violating the statute.<sup>22</sup> Such a law has been held valid, notwithstanding a part of the territory so specified is within the limits of a town whose charter had prior to enactment of such law empowered the town to license liquor selling.<sup>23</sup> Under a local law of this character which prohibits the sale of such liquors within a given distance of the Methodist and Baptist Churches of a town, a conviction may be had on proof of a sale at a place which is within the district named of either one or both of such churches, the court holding that the manifest purpose of the law was to protect worshipping assemblies from annoying disturbances which sometimes attend the sale of such liquors, and that protection was intended to be extended

<sup>20</sup> *Sate v. Frost*, 103 Tenn. 685; 54 S. W. 986. See *Jung Brewing Co. v. Frankfort*, 100 Ky. 409; 38 S. W. 710; 18 Ky. L. Rep. 855.

A statute authorizing a local board to enter an order, upon petition of a majority of the voters in the district, to prohibit the sale of liquors within three miles of an educational institution is constitutional. *Trammell v. Bradley*, 37 Ark. 374.

<sup>21</sup> *Boyd v. Bryant*, 35 Ark. 69; *Wilson v. State*, 35 Ark. 414;

*Blackwell v. State*, 36 Ark. 178; *Trammell v. Bradley*, 37 Ark. 374; *Meyer v. Baker*, 120 Ill. 567; 12 N. E. 79; *State v. Midgett*, 85 N. C. 538; *State v. Partlow*, 91 N. C. 550; 49 Am. Rep. 652; *State v. Snow*, 117 N. C. 774; 23 S. E. 322; *West v. State*, 28 Tenn. (9 Humph.) 66; *Meyer v. Baker*, 120 Ill. 567; 12 N. E. 79.

<sup>22</sup> *State v. Solomon*, 33 Ind. 450.

<sup>23</sup> *State v. Snow*, 117 N. C. 774; 23 S. E. 322.

equally and alike to the two churches. In other words, the legislative intent was to establish a prohibition district, which should include an area extending the distance named in every direction from the churches, and that district necessarily included every foot of ground which was less than the required distances from the churches.<sup>24</sup> It has been held, however, that such a law was ambiguous and inoperative, where it prohibited the sale of such liquors within a given distance "of Mt. Zion Church in Gaston County," and it appeared on the trial of an indictment for a violation of it that there were two churches of that name in the county.<sup>25</sup> Nor can an indictment, under such a statute, for selling such liquors within a prescribed distance of a church be sustained where the evidence shows that the sale was made within the prescribed distance of a house conveyed primarily for educational purposes, with permission to hold divine services therein on suitable occasions.<sup>26</sup> Nor can there be a conviction under such a statute unless the sale is completed within the prohibited district, so that the title to the liquor sold passes there from the vendor to the purchaser.<sup>27</sup> But a conviction was sustained where the evidence showed that the defendant was a practicing physician within the prescribed territory; that he was a member of a firm of saloon keepers in a town outside thereof; that he sent by messenger from his place of residence to his partner a dollar for a quart of a particular whisky for medicinal purposes; that his partner at the saloon delivered to the messenger, upon receipt of the dollar, the quart of whisky, which, by the messenger, was carried and delivered to the physician. In that case it was held that the sale was not complete until the whisky had been delivered to the physician.<sup>28</sup> A Pennsylvania statute forbidding the sale of any kind of articles of traffic, spirituous liquors, wine, porter, beer, or any fermented, mixed or strong drink, within

<sup>24</sup> Carlisle v. State, 91 Ala. 1;  
8 So. 386.

<sup>25</sup> State v. Partlow, 91 N. C.  
550; 49 Am. Rep. 652.

<sup>26</sup> State v. Midgett, 85 N. C.  
538.

<sup>27</sup> Carl v. State, 43 Ark. 353;  
Bage v. State, 50 Ark. 20; 6 S.  
W. 15; Herron v. State, 51 Ark.  
133; 10 S. W. 25.

<sup>28</sup> Yowell v. State, 41 Ark. 355.

three miles of any place of religious worship during meetings held for that purpose has been construed as applying to the sale of such articles as would have a tendency to produce intoxication and consequent disturbance, and not to articles of food which could not have that tendency.<sup>29</sup> The fact that the statute permits a sale of mead with the consent of those in charge of the meeting does not render the prohibitory clause invalid.<sup>30</sup> It cannot be objected that a statute of this kind regulates the internal affairs of a near-by city or town.<sup>31</sup> And a statute prohibiting within a certain distance of a church the sale of intoxicating liquors, except in licensed stores and taverns, is valid, the exception not rendering it invalid.<sup>32</sup>

### **Sec. 106. License state may require.**

As the Legislature has the power to prohibit the sale of intoxicating liquors, much more so has it the power to require all vendors of such liquors to have a license to sell them, and punish all persons making sales without a license first obtained. "If the State has power to prohibit, it certainly has the power to regulate the traffic," said the Supreme Court of Maryland, "by determining who, and what character of persons, shall be licensed to deal in the article. \* \* \* Having full and complete control over the subject, as an article of internal commerce, the State can prescribe what conditions it may think proper upon which license can be obtained. It becomes simply a question of degree of prohibition."<sup>33</sup> A statute requiring a license to sell and ex-

<sup>29</sup> *Fetter v. Wilt*, 46 Pa. St. 457; *Kramer v. Marks*, 64 Pa. St. 151.

<sup>30</sup> *Meyers v. Baker*, 120 Ill. 567; 12 N. E. 79.

<sup>31</sup> *Sexton v. Board* (N. J.), 69 Atl. 470.

<sup>32</sup> *State v. Muse*, 4 Dev. & B. (N. C.) 319.

<sup>33</sup> *Cohoes v. Jarrett*, 42 Md. 571; *Crowley v. Christensen*, 137 U. S. 86; 11 Sup. Ct. 13; 34 L. Ed. 620; *People v. Meyers*, 95 N. Y. 223; *Keller v. State*, 11 Md. 520; 69

Am. Dec. 226; *Pierce v. State*, 13 N. H. 536; *Ingersoll v. Skinner*, 1 Denio, 540; *Metropolitan Board v. Barrie*, 34 N. Y. 657; *Thomasson v. State*, 15 Ind. 449; *Territory v. Grinnell*, 2 Ariz. 339; 16 Pac. 209; *State v. Searcy*, 20 Mo. 489; *Rohrbacker v. Jackson*, 51 Miss. 725; *Streeter v. People*, 69 Ill. 595; *Anderson v. Brewster*, 44 Ohio St. 576; 9 N. E. 683; *Schuller v. Borda*, 64 Miss. 59; 8 So. 201; *Schwuchow v. Chicago*, 68 Ill. 444;



acting a fee for its issuance is not in conflict with a constitutional provision providing that "no tax shall be levied except in pursuance of law."<sup>34</sup> Nor does an ordinance requiring a fee to be paid for the license violate a provision in a Constitution providing that every person shall pay a tax in proportion to the value of his property; for a license fee is not a tax.<sup>35</sup> So a provision in a Constitution providing that the Legislature may levy a license tax, but must graduate the amount thereof to be collected from the persons pursuing the several trades, professions and occupations, does not prohibit the exacting of a license from a social club that restricts its sales to its members without intending to make a profit on its sales.<sup>36</sup> A license law does not infringe a constitutional provision guaranteeing the acquiring, possessing and protection of property.<sup>37</sup> Nor is such a law void because it applies the license fees to the payment of the State's debts,<sup>38</sup>

*Mugler v. Kansas*, 123 U. S. 623; 8 Sup. Ct. 273; 31 L. Ed. 205, affirming 29 Kan. 252; 44 Am. Rep. 634; *License Cases*, 5 How. 504; 12 L. Ed. 256; *Commonwealth v. Schowenhutt*, 3 Phila. 20; *Smith v. People*, 1 Parker Cr. Rep. 583; *Charleston v. Ahrens*, 4 Strobbh. 241; *State v. Peckham*, 3 R. I. 289; *Wolcott v. Burlingame*, 112 Mich. 311; 70 N. W. 831; *In re Intoxicating Liquor Cases*, 25 Kan. 751; 37 Am. Rep. 284; *State v. Buechler*, 10 S. D. 156; 72 N. W. 114; *Cantini v. Tillman*, 54 Fed. 969; *State v. Bixman*, 162 Mo. 1; 62 S. W. 828; *Commonwealth v. Blackington*, 24 Pick. 352; *Sasser v. Martin*, 101 Ga. 447; 29 S. E. 278; *In re DeWalt*, 186 Pa. 204; 42 W. N. C. 114; 40 Atl. 470; *State v. Porterfield*, 47 S. C. 75; 25 S. E. 39; *State v. Mattle*, 48 La. Ann. 728; 19 So. 748; *Durein v. Kansas*, 208 U. S. 226; 28 Sup.

Ct. 567; 52 L. Ed. —, affirming 70 Kan. 1; 78 Pac. 152; 80 Pac. 987; *State v. Williams*, 146 N. C. 618; 61 S. E. 61; *In re Boyle*, 190 Pa. St. 577; 42 Atl. 1025; 45 L. R. A. 399; *Joliff v. State*, 53 Tex. Cr. App. 61; 109 S. W. 176; *Webber v. State* (Tex. Cr. App.), 109 S. W. 182; *Commonwealth v. Fredricks*, 119 Mass. 199.

<sup>34</sup> *Henry v. State*, 26 Ark. 523; *Ex parte Hurl*, 49 Cal. 557; *State v. Hudson*, 78 Mo. 302; *Pleuler v. State*, 11 Neb. 547; 10 N. W. 481.

<sup>35</sup> *King v. Jacksonville*, 2 Scam. 305; *Thomasson v. State*, 15 Ind. 449; *Mason v. Lancaster*, 4 Bush. 406.

<sup>36</sup> *State v. Boston Club*, 45 La. Ann. 585; 12 So. 895; 20 L. R. A. 185.

<sup>37</sup> *In re Lunt*, 6 Greenl. 412.

<sup>38</sup> *Keller v. State*, 11 Md. 625; 69 Am. Dec. 226; *Winona v. Whipple*, 24 Minn. 61.



and it is not an unlawful restraint of trade.<sup>39</sup> The enactment of a statute requiring a license does not exhaust the power of the Legislature; and it may enact further laws restricting the right to sell while licenses issued under the former law are still in force.<sup>40</sup> So it is competent for the Legislature to fix a yearly fee for the license and require all taking out a license for that part of the year unexpired when the statute was adopted to pay a full yearly fee.<sup>41</sup> Nor can it be successfully claimed that the statute is invalid because it requires a license of those engaged in the sale of liquors and not of those engaged in the sale of groceries, dry goods, and the like.<sup>42</sup> The State may authorize a municipality to exact a license.<sup>43</sup>

**Sec. 107. State may permit sales under a license—Biblical prohibition.**

It has been contended that a State has no power to license the sale of intoxicating liquors. In one such instance the claim was made "that the sale of intoxicating liquors to be drank as a beverage at the place of sale is so destructive to the public health and so inherently immoral that no law upholding it can be valid either under the Constitution of this State or of the United States." In this same instance it was argued that as the people of the State, in the preamble of their Constitution, gratefully acknowledged "the good providences of God, in having permitted them to enjoy a free government," that that was a recognition of God as the source of that government; that the Bible contains the "Word of God," which condemns the use and sale of intoxicating liquors as a beverage, and therefore that the State cannot permit it in any terms. To this contention the court said: "There was a time in the early history of the Commonwealth when the Bible was, 'in the defect of a law in any

<sup>39</sup> Rochester v. Upman, 19 Minn. 108; State v. Hardy, 7 Neb. 377; Commonwealth v. Schoenhut, 3 Phila. 20; 15 Leg. Int. 4.

<sup>40</sup> Reithmiller v. People, 44 Mich. 280; 6 N. W. 667.

<sup>41</sup> Carroll v. Wright, 131 Ga. 728; 63 S. E. 260.

<sup>42</sup> Carroll v. Wright, 131 Ga. 728; 63 S. E. 260.

<sup>43</sup> State v. Harper, 42 La. Ann. 312; 7 So. 446.

particular case,' a rule of political government.<sup>44</sup> But even then it was never considered to contain any absolute prohibition of such a business as that for which the license now in question was granted. As early as 1643 it was provided by the colonial laws that no person or persons should sell wine or 'strong water in any place within these libertyes, without license from the particular court or any two magistrates.'

\* \* \* In the face of this long history of dealing with the use and sale of intoxicating liquors as a beverage, to be drank at the place where they are purchased, it is idle to claim that the framers of the Constitution understood or intended that anything contained in it should be regarded as prohibiting altogether the licensing of such a business. Our Constitution vests 'the legislative power of this State' in the General Assembly. That power covers the whole field of legitimate legislation, except so far as limitations are to be found in other provisions of this Constitution or in that of the United States. The latter provides that the 'United States shall guarantee to every State in the Union a republican form of government.' Connecticut is therefore impliedly bound forever to maintain such a form of government. She put her legislative power in the hands of the General Assembly. She put only, because she could put only, such power of that nature as was consistent with a republican form of government. In constitutional republics, as was observed by Chief Justice Chase in a case where arguments somewhat resembling those now made at our bar were advanced, 'there are undoubtedly, fundamental principles of morality and justice which no Legislature is at liberty to disregard; but it is equally undoubted that no court, except in the clearest case, can properly impute the disregard of those principles to the Legislature.'"<sup>45</sup> "However broad the scope that has been given to the guaranty of due process of law by such decisions as those to which reference has been made, that there is nothing unrepubli- can nor beyond the legitimate sphere of legislative power, in the maintenance of such a system as that

<sup>44</sup> Citing Colonial Records of Connecticut, I, 509.

<sup>45</sup> License Tax Cases, 5 Wall. 462; 18 L. Ed. 497.

long established here for governmental license to sell intoxicating liquors, is plain from the fact, of which judicial notice must be taken, that most free governments have, at all periods of time, made that business a subject, not of prohibition, but of regulation. Either mode of treatment is equally legitimate. At common law it was a business lawful and open to any man. Our statutes do not enlarge, but restrict, this right.”<sup>46</sup> In an Indiana case the same contention was made, that a licensing statute was unconstitutional “for the reason that the traffic in intoxicating liquors is dangerous and hurtful to society, and therefore wrong, and the licensing thereof cannot be upheld under the Constitution.” “Counsel for the State repeatedly assert that the right to engage in the retail of intoxicating liquors is not an inherent or inalienable right. Therefore they argue that, if the right to traffic in intoxicating liquors exists in this State, it must arise out of some valid legislative grant, and that a statute granting such right is in violation of the general import or spirit of the State Constitution, and therefore must be held invalid. They assert that the object of the liquor license law of this State is to restrict a supposed common law right; but they affirm that no such right existed under the common law, and therefore there is no cause for the passage of such laws by the Legislature. \* \* \* They further argue that, if the saloon business is dangerous and hurtful to the public, it must be deemed and held to be a common nuisance, and if the act of 1875 creates the right of the liquor dealer to engage in the business of retailing intoxicating liquors, to be drank as a beverage on the premises where sold, such act operates to license a wrong of the nature of a public nuisance, and therefore should be held to be unconstitutional by the court, and the license granted thereunder to appellant in this case is no protection to him in maintaining a nuisance.” After stating that it is the unrestricted, unregulated traffic in intoxicating liquors that has been fraught with evils resulting in demoralizing influences upon private morals and the peace

<sup>46</sup> Appeal of Allyn, 81 Conn. 534; See also *Campbell v. Jackson* 71 Atl. 794; 68 Cent. L. Jr. 449. *Bros. (Iowa)*, 118 N. W. 755.

and safety of the public,<sup>47</sup> the court proceeds: "Such being the tendency of the traffic, the British Parliament, several centuries ago, as we have heretofore shown,<sup>48</sup> and the Legislature of this State, as well as the Legislatures of sister States, following the example of our ancestors, have deemed it essential that the business should be permitted to exist only under such restrictions and regulations as, in their judgment, would serve to secure society or the public against the dangers and evils of the traffic, or, in other words, operate to mitigate or minimize as much as possible such dangers and evils. This has been the legislative policy adopted and pursued from the very beginning of our territorial existence down to the present time. Should we now deny the power of the Legislature, under our Constitution, to permit the traffic in intoxicating liquors to exist under such restrictions and regulations as that body may consider fit and proper to impose, we would have no constitutional warrant for so holding. Such a decision would be nothing more than the exercise of the mere arbitrary will of the judges composing this tribunal. It would be nullification by the judiciary of a long and well-settled legislative policy. If such a revolution is desired it must be inaugurated, not by the courts, but by the people, through their representatives in the General Assembly. The legislative and judicial departments of our State government, under the Constitution, are separate and distinct from each other. Each is forbidden by our fundamental law to exercise the functions of the other. Therefore, the courts cannot make laws or regulations pertaining to the health, morals or safety of the public. The making of these laws, the same as others, is a question to be dealt with by the legislative department and not by the courts. Neither is a court authorized to adjudge a thing to be a public nuisance which is not regarded as such by law." After reviewing the early State legislation and the action of the Constitutional Con-

<sup>47</sup> Citing *State v. Gerhardt*, 145 Ind. 439; 44 N. E. 469; 33 L. R. A. 313, and *Schwuchow v. Chicago*, 68 Ill. 444.

<sup>48</sup> By Act of 1552, 5 and 6 Edw. VI, c. 25.



vention of 1851 to insert a clause in the State Constitution concerning the sale of ardent spirits, the court proceeds: "By these deliberate acts of the convention which formed and molded our present Constitution, that body appears to have left the question in regard to the traffic in intoxicating liquors in the hands of the legislative department, where the convention found it at the time it convened. Its action, therefore, in the matter fully serves to contradict or break down the contentions of counsel for the State, that the Legislature, in continuing its former policy to restrict and regulate the sale of intoxicating liquors, by passing the act of 1875<sup>49</sup> violated the general import and spirit of our present Constitution. Since the adoption of the latter, and prior and subsequently to the passage of the act of 1875, the Legislature has enacted other laws regulating the sale of intoxicating liquors, by imposing restrictions and conditions upon the traffic. The validity of these laws and of municipal ordinances of similar import and effect, has been repeatedly sustained by this court, and the question of the constitutional validity of such laws as the act of 1875 is no longer an open one in this jurisdiction."<sup>50</sup> "The infirmity of the argument presented by counsel for the State is that therein they assume that to be true which is not, viz., that the statute in controversy grants the right to sell intoxicating liquors, which right or privilege

<sup>49</sup> A licensing statute.

<sup>50</sup> Citing *Thomasson v. State*, 15 Ind. 449; *Harrison v. Lockhart*, 25 Ind. 112; *Wiley v. Owens*, 39 Ind. 429; *O'Dea v. State*, 57 Ind. 31; *Walter v. Columbia City*, 61 Ind. 24; *McKinney v. Salem*, 77 Ind. 213; *Hedderich v. State*, 101 Ind. 564; *Vinson v. Monticello*, 118 Ind. 103; 19 N. E. 734; *Emerick v. Indianapolis*, 118 Ind. 279; 20 N. E. 795; *Bush v. Indianapolis*, 120 Ind. 476; 22 N. E. 422; *Moore v. Indianapolis*, 120 Ind. 483; 22 N. E. 424; *Decker v. Sargeant*, 125 Ind. 404;

25 N. E. 458; *Welsh v. State*, 126 Ind. 71; 25 N. E. 883; 9 L. R. A. 664; *Indianapolis v. Bieler*, 138 Ind. 30; 36 N. E. 857; *State v. Gerhardt*, 145 Ind. 439; 44 N. E. 469; 33 L. R. A. 313; *Flynn v. Taylor*, 145 Ind. 533; 44 N. E. 546; *Daniels v. State*, 150 Ind. 438; 50 N. E. 74; *Boomershine v. Uline*, 159 Ind. 500; 65 N. E. 513; *Jordan v. Evansville*, 163 Ind. 512; 72 N. E. 512, 544; 67 L. R. A. 613; *Schmidt v. Indianapolis*, 168 Ind. 631; 80 N. E. 632; *Green-castle v. Thompson*, 168 Ind. 493; 81 N. E. 497.



so granted is in derogation of the common law. Upon this unfounded or empty assumption they base their argument. We may repeat what has been herein fully shown under the authorities cited, that, from the beginning of the common law (in force in this State by adoption) on down to the present time, the traffic in intoxicating liquors at retail or otherwise was, under the law, regarded as lawful, unless declared to be unlawful by a positive act of the legislative department. Reducing counsel's argument to a simple proposition, it may be said to be more in the nature of a quarrel with the Legislature, because that body did not enact the law in dispute more fully and more completely along the lines of absolute prohibition, than it is a legal argument. With the wisdom or policy of such laws as the act of 1875 we, as a court, have no concern. The judgment of the Legislature in respect to the expediency or wisdom of laws enacted by it is not a matter subject to judicial review."<sup>51</sup> "It is not the province of the judges of this court, nor of those of the lower courts, in the discharge of their official duties, to criticize the policy of the legislative department, which the latter has adopted in dealing with the liquor traffic. In the administration of justice all courts must be controlled, so far as applicable, by the laws which the Legislature has constitutionally enacted, without regard to the individual views, in respect to the wisdom or expediency of such laws, of the persons who may preside over such courts. Neither boards of commissioners nor courts can be held responsible for granting a license under the laws to sell intoxicating liquors to an applicant therefor who is to be legally entitled to such license. In discharging this duty such boards of commissioners and courts but carry out the mandate of the law, above which no one can rise, and not the individual views of those who preside over them. It must be evident to every unprejudiced mind that a court cannot nullify an act of the Legislature on the mere assertions of persons assailing it that a license granted thereunder permits the licensee to

<sup>51</sup> The court quotes at length from *Haggart v. Stehlin*, 137 Ind. 43; 29 N. E. 1073; 22 L. R. A.

577, where **similar views** are expressed.

maintain a public nuisance *per se* by merely selling intoxicating liquors, without violating any of the laws of the State in conducting the place in which such liquors are sold, for, as heretofore shown, whatever is authorized by an act of the Legislature, which that body is competent, under the Constitution to pass, is not, in the eyes of the law, a nuisance. While all citizens of this State have a perfect right to cry out, or declare upon the rostrum or before the Legislature, or other assembled bodies, that the liquor traffic cannot be legalized without committing a sin, and while their argument might be sufficiently potent to induce the Legislature to prohibit absolutely the traffic, they could be of no avail before a court which can neither make nor unmake laws. It is true that there is a diversity of opinion among the people in respect to the manner in which the Legislature should deal with the question in regard to intoxicating liquors. There are very many good people who declare that the absolute prohibition of the traffic is the only system which the State should adopt, while, on the other hand, very many others, equally as good, express views to the contrary, and assert that the qualified prohibition system which has been adopted by the Legislature is the better plan. With this mooted legislative question judges of courts, in their official relations, are not concerned. The only standard which they can recognize, to measure their duty in dealing with the question of granting a license in the case before them, is the one prescribed by law." "If it could be said that the Legislature, under our Constitution, in dealing with the traffic, must be confined to the passage of a prohibitory measure, then the eminent men who formulated our fundamental law, members of the Legislature and courts, have been for many years quite ignorant and uninformed in respect to the power of the Legislature in dealing with the question. Especially may this be said in regard to the Legislature of 1881, which passed a joint resolution proposing to engraft a prohibitory amendment upon our present Constitution."<sup>52</sup>

<sup>52</sup> *Sopher v. State*, 169 Ind. 177;  
51 N. E. 912; 14 L. R. A. (N. S.)  
172.

In the course of its opinion, the court, in addition to those already noted, cites *Thurlow v. Common-*

**Sec. 108. Fourteenth Amendment, effect on power to regulate sale of intoxicating liquors.**

The Fourteenth Amendment to the Constitution of the United States provides that, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws;" and this provision has been repeatedly invoked in questions arising concerning the validity of license and other laws regulating the sale and control of intoxicating liquors, but without avail. This is particularly true of that part of the amendment concerning the abridg-

wealth, 5 How. 504; 12 L. Ed. 256; *Pervear v. Commonwealth*, 5 Wall. 475; 18 L. Ed. 608; *Crowley v. Christensen*, 137 U. S. 86; 11 Sup. Ct. 13; 34 L. Ed. 620; *In re Hoff.*, 197 U. S. 488-505; 25 Sup. Ct. 506; 49 L. Ed. 848; *Pabst Brewing Co. v. Crenshaw*, 198 U. S. 17; 25 Sup. Ct. 552; 49 L. Ed. 925; *Vance v. W. A. Vandercook Co.*, 170 U. S. 438; 18 Sup. Ct. 674; 42 L. Ed. 1100; *Cronin v. Adams*, 192 U. S. 108; 24 Sup. Ct. 219; 48 L. Ed. 365.

Under the Rhode Island constitution prohibiting the manufacture and sale of intoxicating liquors as a beverage, a licensing statute cannot be enacted concerning sales of liquors as a beverage. *State v. Tonks*, 15 R. I. 385; 5 Atl. 636; but the legislature may license and regulate sales for medicinal and mechanical purposes. *State v. Clark*, 15 R. I. 383; 5 Atl. 635; *State v. Kane*, 15 R. I. 395; 6 Atl. 783; *State v. Kennedy*, 16 R. I. 409; 17 Atl. 51.

The Ohio constitution provides that "no license to traffic in in-

toxicating liquors shall hereafter be granted in this State." Under this a statute providing for a license is void. *State v. Hipp*, 38 Ohio St. 199. And an act making it a misdemeanor to sell intoxicating liquors in on upon the land or premises of another without his written consent; and providing that the assessments on the business shall be a lien on the premises occupied by the tenant, is in effect a license law and void. *King v. Cappellar*, 42 Ohio St. 218; *Butzman v. Whitbeck*, 42 Ohio St. 223. *Contra State v. Freme*, 39 Ohio St. 399. But this provision does not prohibit the levying of a tax on the traffic. *Adler v. Whitbeck*, 44 Ohio St. 539; 9 N. E. 672; *Anderson v. Brewster*, 44 Ohio St. 576; 9 N. E. 683; and making it a lien on the property in which it is conducted. *Adler v. Whitbeck*, *supra*. This provision applies both to wholesale and retail licenses. *Senior v. Ratterman*, 44 Ohio St. 661; 11 N. E. 321; affirming 17 Wkly. L. Bull. 115.

ment of the privileges and immunities of citizens of the United States. The right to sell intoxicating liquors is not one of such privileges or immunities.<sup>53</sup> "The privileges and immunities of citizens of the United States," said Chief Justice Fuller, "are privileges and immunities arising out of the nature and essential character of the national government, and granted or secured by the Constitution of the United States, and the right to sell intoxicating liquor is not one of the rights growing out of such citizenship."<sup>54</sup> The amendment [fourteenth] does not take from the States their powers of police that were reserved at the time the original Constitution was adopted. Undoubtedly it forbids any arbitrary deprivation of life, liberty or property, and secures equal protection to all under like circumstances in the enjoyment of their rights; but it was not designed to interfere with the power of the State to protect the lives, liberty and property of its citizens, and to promote their health, morals, education and good order."<sup>55</sup> In another case Justice Fields said: "There is no inherent right in a citizen to \* \* \* sell intoxicating liquors by retail; it is not a privilege of a citizen of the United States \* \* \*. The manner and extent of regulation rest in the discretion of the governing authority \* \* \*. It is a matter of legislative will only. As in many other cases,

<sup>53</sup> *Jordan v. Evansville*, 163 Ind. 512; 72 N. E. 544; *State v. Lindgrove*, 1 Kan. App. 51; 41 Pac. 688; *Bartemeyer v. Iowa*, 18 Wall. 129; 21 L. Ed. 929; *Mugler v. Kansas*, 123 U. S. 623; 8 Sup. Ct. 273; 31 L. Ed. 205; affirming 29 Kan. 452; 44 Am. Rep. 634; *Crowley v. Christensen*, 137 U. S. 86; 11 Sup. Ct. 13; 34 L. Ed. 620; *Giozza v. Tiernan*, 148 U. S. 657; 13 Sup. Ct. 721; 37 L. Ed. 599; *Mette v. McGuckin*, 18 Neb. 323; 25 N. W. 338; *Farmville v. Walker*, 101 Va. 323; 43 S. E. 558; 61 L. R. A. 125; *Danville v. Hatcher*, 101 Va. 523; 44 S. E. 723; *Kidd v. Pearson*, 128 U. S. 1; 9 Sup. Ct. 6; 32 L. Ed. 346; *Kansas v. Brad-*

*ley*, 6 Fed. 289; *Hoboken v. Goodman*, 68 N. J. L. 217; 51 Atl. 1092; *Meehan v. Board*, 73 N. J. L. 382; 64 Atl. 689; *State v. Richardson*, 48 Ore. 309; 85 Pac. 225; *State v. Brennan*, 2 S. D. 384; 50 N. W. 625; *State v. Hodgson*, 66 Vt. 134; 28 Atl. 1089; *Craig v. Werthmueller*, 78 Iowa, 598; 43 N. W. 606; *Pabst Brewing Co. v. Crenshaw*, 120 Fed. 144; *Lloyd v. Dollison*, 23 Ohio Cir. Ct. Rep. 571; *State v. Jordan*, 72 Iowa, 377; 34 N. W. 285.

<sup>54</sup> Citing *Bartemeyer v. Iowa*, 18 Wall. 29.

<sup>55</sup> *Giozza v. Tiernan*, 148 U. S. 657; 13 Sup. Ct. 721; 37 L. Ed. 599.



the officers may not always exercise the power conferred upon them with wisdom or justice to the parties affected. But that is a matter that does not affect the authority of the State, nor is it one which can be brought under the cognizance of the courts of the United States.”<sup>56</sup> Thus, where a person had been engaged in the manufacture and sale of beer, having a large brewery, and the State adopted a constitutional provision forbidding the manufacture and sale of beer in the State, and thereafter he was arrested under this law for having sold the beer that he had made in his brewery, it was held that the law was valid, and that it did not invade his rights, privileges or immunities as a citizen.<sup>57</sup> And a law which prohibits sales of intoxicating liquors is not in violation of any provisions of this amendment.<sup>58</sup> And this is, of course, true of any law requiring a license or regulation of the sale of intoxicating liquors.<sup>59</sup> And a law requiring a saloon keeper to

<sup>56</sup> *Crowley v. Christensen*, 137 U. S. 86; 11 Sup. Ct. 13; 34 L. Ed. 620; *Danville v. Hatcher*, 101 Va. 523, 527; 44 S. E. 723.

“It has been repeatedly decided that the subject is wholly within the police power of the legislature, and that the traffic is not one of the privileges or immunities of citizenship guaranteed and protected by the United States Constitution or the Fourteenth Amendment thereto.” *Mugler v. Kansas*, 123 U. S. 623; 8 Sup. Ct. 273; 31 L. Ed. 205; *Kidd v. Pearson*, 128 U. S. 1; 9 Sup. Ct. 6; 32 L. Ed. 246; *Huckless v. Childrey*, 135 U. S. 622; 10 Sup. Ct. 972; 34 L. Ed. 304; *Ex parte Campbell*, 74 Cal. 20; 15 Pac. 318; 5 Am. St. Rep. 418; *Cantini v. Tillman*, 54 Fed. 969; *Kansas v. Bradley*, 26 Fed. 289; *In re Hoover*, 30 Fed. 51; *Reynolds v. Geary*, 26 Conn. 179; *State v. Lindgrove*, 1 Kan. App. 51; 41 Pac. 688; *Trageser v. Gray*, 73 Md. 250; 20 Atl. 905; 25 Am.

St. 587; 9 L. R. 780; *State v. Berlin*, 21 S. C. 292; 53 Am. Rep. 677; *State v. Aiken*, 42 S. C. 222; 20 S. E. 221 (overruling *McCullough v. Brown*, 41 S. C. 220; 19 S. E. 458; 23 L. R. A. 410); *State v. Brennan*, 2 S. D. 384; 50 N. W. 625; *State v. Hodgson*, 66 Vt. 134; 28 Atl. 1089; *Ex parte Burnside*, 86 Ky. 423; 6 S. W. 276; *Wynehamer v. People*, 13 N. Y. 378; 2 Parker Cr. 421; affirming 2 Parker Cr. 377; *State v. Porterfield*, 47 S. C. 75; 25 S. E. 39.

<sup>57</sup> *Mugler v. Kansas*, 123 U. S. 623; 8 Sup. Ct. 273; 31 L. Ed. 205; affirming 29 Kan. 452; 44 Am. Rep. 634.

<sup>58</sup> *Crowley v. Christensen*, 137 U. S. 86; 11 Sup. Ct. Rep. 13; 34 L. Ed. 620; *Cantini v. Tillman*, 54 Fed. 969; *In re Hoover*, 30 Fed. 51; *Kansas v. Bradley*, 26 Fed. 289.

<sup>59</sup> *Crowley v. Christensen*, *supra*; *Kansas v. Bradley*, 26 Fed. 289; *In re Hoover*, 30 Fed. 51.



give a bond conditioned not to sell to certain prohibited persons and providing a civil penalty for its infringement, and also requiring a payment of a tax in advance, is valid.<sup>60</sup> And so is a law valid which provides that no suit shall be brought in any court of the State to recover the price of liquors sold in any other county or State with intent to enable any person to violate any provision of such law.<sup>61</sup> Nor does this amendment prevent the enactment of a law forbidding a sale by any person except a druggist for medicinal or other specified purpose;<sup>62</sup> nor does a statute violate this amendment which creates a board of commissioners for a city and empowers them to issue only to citizens of the United States of good moral character and temperate habits licenses to retail intoxicating liquors;<sup>63</sup> nor does a law preventing sales within cities and towns under license and prohibiting them outside thereof;<sup>64</sup> nor is one prohibiting sales by private individuals and establishing State dispensaries for dispensing liquors;<sup>65</sup> nor does a law restricting the privilege of securing a license to certain classes of citizens of the State and restricting purchases and sales by them to purchases and sales for mechanical, medicinal and sacramental purposes only, on the ground that it prevents citizens of other States selling liquors within the State;<sup>66</sup> nor is a statute making it discretionary with a board to issue a license;<sup>67</sup> nor is one providing that no person paying a manufacturer's tax shall pay a wholesale dealers' tax, and providing a punishment for carrying on the business without paying the tax, defining a wholesale dealer as one who sells in quantities of more than three gallons, or

<sup>60</sup> *Giozza v. Tiernan*, 148 U. S. 657; 13 Sup. Ct. 721; 37 L. Ed. 599.

<sup>61</sup> *Reynolds v. Geary*, 26 Conn. 179.

<sup>62</sup> *State v. Lindgrove*, 1 Kan. App. 51; 4 Pac. 688.

<sup>63</sup> *Trageser v. Gray*, 72 Md. 250; 20 Atl. 905; 25 Am. St. 587; 9 L. R. A. 780.

<sup>64</sup> *State v. Berlin*, 21 S. C. 292; 53 Am. Rep. 677.

<sup>65</sup> *State v. Aiken*, 42 S. C. 222; 20 S. E. 221; overruling *McCullough v. Brown*, 41 S. C. 220; 19 S. E. 458; 23 L. R. A. 410, and *State v. O'Donnell*, 19 S. E. 748.

<sup>66</sup> *Kohn v. Melcher*, 29 Fed. 433.

<sup>67</sup> *Gray v. Connecticut*, 159 U. S. 74; 15 Sup. Ct. 985; 40 L. Ed. 80; *State v. Gray*, 61 Conn. 39; 22 Atl. 675; *Welsh v. State*, 126 Ind. 71; 25 N. E. 883.

more than a dozen quarts, and extending its criminal provisions to clerks and agents;<sup>68</sup> nor is one restricting the license to citizens of the State.<sup>69</sup> But a statute providing that any fruit grower may make and sell wine "on the premises where the fruit is grown and the wine made" in quantities not less than one quart, and may also sell like quantities in places where intoxicating liquors are authorized to be sold in the State, yet not in any district where the sale is prohibited, is void in so far as it authorizes a sale of wine grown on the premises where made and prohibits a sale of wine made out of the State, it being a violation of the privileges and immunities of citizens of other States.<sup>70</sup> A statute, however, which requires of a foreign manufacturer of beer brought within the State for sale to make an affidavit showing that only certain ingredients were used in its manufacture is valid, although no such an affidavit is required of a home manufacturer, since it is practically impossible for the State to send its agents into another State there to inspect and watch the process of manufacture.<sup>71</sup> So a statute is valid which permits a manufacturer to sell at wholesale to dealers outside a municipality adopting prohibition, not being a discrimination between parties living within and without the municipality, and between manufacturers and dealers.<sup>72</sup> A statute forbidding the shipping into a State whisky marked with the name of the consignee State, or for the purpose of so marking it, is constitutional.<sup>73</sup> So a statute regulating the sale of a non-intoxicant beer is not in conflict with the amendment.<sup>74</sup>

### Sec. 109. Fourteenth Amendment—Keeping saloon.

A municipal ordinance prohibiting the keeping of a place for the sale at retail of intoxicating liquors will not conflict

<sup>68</sup> *People v. Lyng*, 74 Mich. 579; 42 N. W. 139.

<sup>69</sup> *Austin v. State*, 10 Mo. 591; *Mette v. McGurkin*, 18 Neb. 323; 25 N. W. 338.

<sup>70</sup> *State v. Deschamp*, 53 Ark. 490; 14 S. W. 653.

<sup>71</sup> *Pabst Brewing Co. v. Crenshaw*, 120 Fed. 144.

<sup>72</sup> *Lloyd v. Dollison*, 23 Ohio Cir. Ct. Rep. 571.

<sup>73</sup> *Brown-Forman Co. v. Commonwealth (Ky.)*, 101 S. W. 321; 30 Ky. L. Rep. 793.

<sup>74</sup> *Campbell v. Thomasville (Ga. App.)*, 64 S. E. 81.

with the Fourteenth Amendment to the Constitution of the United States, which provides that "no State shall deprive any person of life, liberty or property without due process of law." Such an ordinance undertakes only to prevent the keeping within the corporate limits a place where intoxicating liquors are sold at retail. Under it a man may sell his stock in trade in any way he can, except in such a way as will make him a "keeper" of a place for the retail of such liquors. Such an ordinance is only a police regulation in the interest of the public morals and for the public good; and, although it may in some measure affect the value of property or interfere with its use in the purposes for which it was obtained, it will not thereby "deprive" the owner of such liquors of his property.<sup>75</sup>

#### **Sec. 110. Privileges and immunities of citizens of other states.**

Section 2 of Article IV. of the Federal Constitution provides that, "The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States." This clause is very similar to the provision in the Fourteenth Amendment providing that, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;" and a number of decisions concerning the regulation of intoxicating liquors have been based on the first quoted clause. It has been held that this clause does not restrict the State from confining the right to a license to its own citizens and prohibiting sales without such license.<sup>76</sup> Nor is an act void which forbids an action to be maintained in any court of the State to recover the price of liquors sold in another State with intent to enable any person to violate the provisions of the act forbidding the

<sup>75</sup> *Tanner v. Village of Alliance*, 29 Fed. 196.

<sup>76</sup> *Cantini v. Tillman*, 54 Fed. 969; *State v. Allmond*, 2 Houst. (Del.) 612; *Welsh v. State*, 126 Ind. 71; 25 N. E. 883; *Trageser v.*

*Gray*, 73 Md. 250; 20 Atl. 905; 25 Am. St. 587; 9 L. R. A. 780; *Sinclair v. State*, 69 N. C. 47; *Cohn v. Melcher*, 29 Fed. 433; *Campbell v. Jackman Bros.* (Iowa), 118 N. W. 755.

retail of liquors in the enacting State.<sup>77</sup> A statute which applies alike both to local and foreign agents selling intoxicating liquors in the State is valid.<sup>78</sup> A statute providing, if a place to sell or manufacture liquors is established, that in either a criminal or civil proceeding the court shall at once enter a judgment for its abatement, and that the fixtures used in making sales or in manufacturing liquors shall be ordered sold, does not violate this provision of the Constitution.<sup>79</sup> In such an instance the fact that the remedy is given in chancery does not affect the validity of the statute.<sup>80</sup>

**Sec. 111. "Import" defined—Statute in violation of Constitution.**

A statute of a State which provides that before it shall be lawful for any dealer or dealers in intoxicating liquors to offer any such liquors for sale within the limits of the State, such dealer or dealers introducing any such liquors shall first pay a certain tax per gallon upon each and every gallon thus introduced, does not violate that clause of the Constitution of the United States which says that, "No State shall levy any imposts or duties on imports or exports," if the tax is not different from that charged upon like liquors manufactured in the State. The term "import" as used in this clause of the Constitution does not refer to articles imported from one State into another but only to articles imported from foreign countries into the United States; hence, the uniform tax imposed by a State on all sales made in it, whether they be made by the citizens of it or the citizens of some other State, and whether the goods so sold are produced in the State enacting the law, or in some other State, is valid. Such a

<sup>77</sup> Reynolds v. Geary, 26 Conn. 179; United Breweries Co. v. Colby, 170 Fed. 100.

<sup>78</sup> People v. Lyng, 74 Mich. 579; 42 N. W. 139; Commonwealth v. Shaffer, 128 Pa. St. 575; 18 Atl. 390; 24 W. N. C. 539; State v. Hodgson, 66 Vt. 134; 28 Atl. 1089.

<sup>79</sup> Craig v. Werthmueller, 78 Iowa, 598; 43 N. W. 606.

<sup>80</sup> State v. Jordan, 72 Iowa, 377; 34 N. W. 285.

A court of equity will not enjoin the enforcement of a void liquor statute. J. W. Kelly & Co. v. Conner (Tenn.), 123 S. W. 622.



statute does not discriminate against productions of sister States and is not an attempt to regulate commerce but a proper and legitimate exercise of the taxing power of the State.<sup>81</sup> A State statute which imposes a tax upon persons not residing or having their principal place of business within the State, who engage therein in the business of selling or soliciting the sale of intoxicating liquors to be shipped into the State from places without it, but does not impose a similar tax upon persons selling or soliciting the sale of intoxicating liquors manufactured in the State, is a regulation in restraint of commerce repugnant to the constitutional provision here referred to; and the defect cannot be justified on the ground that the statute is an exercise by the Legislature of the police power of the State for the discouragement of the use of intoxicating liquors and the preservation of the health and morals of the people. This would be a perfect justification of the law if it did not discriminate against citizens of other States in the matter of commerce between the States and thus usurp one of the prerogatives of the national Legislature. The police power cannot be set up to control the inhibitions of the Federal Constitution or the powers of the United States government created thereby.<sup>82</sup> And the same is true of a statute which forbids carriers to bring any intoxicating liquors into the State from any other State or territory. The police power of a State cannot obstruct foreign commerce or intercept commerce beyond the extent of its exercise, and, under color of it, objects not within its scope may not be secured at the expense of the protection afforded by the Federal Constitution.<sup>83</sup>

<sup>81</sup> *Woodruff v. Parkham*, 8 Wall. (U. S.) 123; *Hinson v. Lot*, 8 Wall. (U. S.) 148.

<sup>82</sup> *Walling v. Michigan*, 116 U. S. 446; 6 Sup. Ct. 454.

<sup>83</sup> *Bowman v. Chicago, etc., R. Co.*, 125 U. S. 465; 8 Sup. Ct. 689; *United States v. Fiscus*, 42 Fed. 395; *In re Beine*, 42 Fed. 545; *Tuchman v. Welch*, 42 Fed. 548;

*M. Schendler Bottling Co. v. Welch*, 42 Fed. 561; *State v. Intoxicating Liquors*, 82 Me. 558; 19 Atl. 913.

In the *License Cases*, 5 How. 504; 12 L. Ed. 256, it was held that a statute of Rhode Island forbidding a sale of liquor in less quantities than ten gallons was valid, even as applied to liquor in



### **Sec. 112. Discrimination against liquors of other states.**

Much litigation has grown out of laws enacted by many of the States discriminating against the products and manufactures of other States. A fruitful cause of such litigation has been the effort to protect the local manufacture of intoxicating liquors and especially the wine industry. As a rule, when such laws have been put to the test they have been held to be in conflict with that clause of Article I, Section 8, of the Constitution of the United States, which provides that Congress shall have power to regulate commerce among the several States, and that part of Article IV, Section 2, which provides that the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States. The test of such a statute is "whether there is any discrimination in favor of the State or citizens of the State which enacted the law. Wherever there is such discrimination it is fatal." In support of such laws the contention has been that they were within the police powers of the States. In answer to this contention the Supreme Court of the United States has held that the only way in which commerce between the States can be legitimately affected by State laws, is when, by virtue of its police power, and its jurisdiction over persons and property within its limits, a State provides for the security of the lives, limbs, health and comfort of persons and the protection of property; or when it does those things which may otherwise incidentally affect commerce, such as the establishment and regulation of highways, canals, railroads, wharves, ferries, and other commercial facilities; the passage of inspection laws to secure the due quality and measure of products and commodities; the passage of laws to regulate or restrict the sale of articles deemed injurious to health or morals of the community; the imposition of taxes upon persons residing within the State or belonging to its population and upon vocations

the original packages imported from France, not being a regulation of commerce: but in view of the later decisions of the Federal Supreme Court, this case, on this

particular point, is no longer an authority. *State v. Peckham*, 3 R. I. 289, follows, in principle, the License Cases.

and employments pursued therein, not directly connected with foreign or interstate commerce or with some other employment or business exercised under the authority of the Constitution and laws of the United States; and the imposition of taxes upon all property within the State, mingled with and forming part of the great mass of property therein. But in making such internal regulations a State cannot impose taxes upon persons passing through the State or coming into it merely for a temporary purpose, especially if connected with interstate or foreign commerce; nor can it impose such taxes upon property imported into the State from abroad, or from another State, and not yet become part of the common mass of property therein; and no discrimination can be made, by any such regulations adverse to the persons or property of other States; and no regulation can be made affecting interstate commerce.<sup>84</sup> In accordance with this statement of the law, it has been uniformly held that a State statute requiring the payment of a license tax from persons dealing in goods, wares and merchandise which are not the growth, produce or manufacture of the State, and requiring no such license tax from persons selling similar goods which are the growth, produce or manufacture of the State, is an unconstitutional regulation;<sup>85</sup> and this rule of law has been applied in relation to a tax upon non-resident sellers of intoxicating liquors to be shipped into a State from places without it.<sup>86</sup> In the language

<sup>84</sup> *Robbins v. Shelby County Taxing District*, 120 U. S. 489, 493; 7 Sup. Ct. 592.

<sup>85</sup> *Wolton v. Missouri*, 91 U. S. 275; *Machine Co. v. Gage*, 100 U. S. 679; *Walling v. Michigan*, 102 U. S. 123; *County of Mobile v. Kimball*, 102 U. S. 691; *Webber v. Virginia*, 103 U. S. 344; *Hinson v. Lott*, 8 Wall. 148; *Weil v. Calhoun*, 25 Fed. Rep. 865; *Kohn v. Melcher*, 29 Fed. Rep. 433; *Stockton v. Baltimore*, 32 Fed. Rep. 9; *Swift v. Sutphin*, 39 Fed. Rep. 631; *Baird v. St. Louis R. Co.*, 41

Fed. Rep. 492; *In re Rebman*, 41 Fed. Rep. 867; *Vines v. State*, 67 Ala. 73; *Powell v. State*, 69 Ala. 10; *State v. Nash*, 97 Ala. 514; *McCreary v. State*, 73 Ala. 480; *Wrought Iron, etc., Co. v. Johnson*, 84 Ga. 754; 11 S. E. 233; *State v. Nash*, 97 N. C. 514.

<sup>86</sup> *Gray v. Baltimore*, 100 U. S. 434; *Walling v. Michigan*, 116 U. S. 446; 6 Sup. Ct. 454; *Robbins v. Shelby Co. Taxing District*, 120 U. S. 489; 7 Sup. Ct. 592; *Leisy v. Hardin*, 135 U. S. 100; 10 Sup. Ct. 681; *Lyng v. Michigan*, 135

of Justice Harlan, "it must be regarded as settled that no State can, consistently with the Federal Constitution, impose upon the products of other States, brought therein, for sale or use, or upon citizens, because engaged in the sale therein, or the transportation to, of the products of other States more onerous public burdens or taxes than it imposes upon the like products of its own territory."<sup>87</sup> There is good reason for this conclusion, for, if the power of a State to exact a license tax of any amount is admitted, then no authority would remain in the United States to control its action, however unreasonable or burdensome. Imposts operating as an absolute exclusion of the goods would be possible, and all the evils of discriminating State legislation favorable to the interests of one State and injurious to the interests of other States and countries, which existed previous to the adoption of the Federal Constitution, might follow.<sup>88</sup> The law as here stated is not only applicable to the States but also to the municipal corporations within them, the courts holding that an ordinance which requires a license fee from citizens of another State, or their agents, who offer goods within the corporate limits which have not been produced, manufactured or grown within the State, is void, because it assumes to establish a regulation affecting commerce between the States.<sup>89</sup> In Iowa and Ohio, however, it has been held that the State, as a police regulation, may prohibit the sale of any kind of intoxicating liquors and allow the sale of another kind, and the prohibition of wines made from fruits grown in other States is no invasion of the privileges and immunities of the citizens of those

U. S. 161; 10 Sup. Ct. 725; *State v. Marsh*, 37 Ark. 356; *State v. Deschamp*, 53 Ark. 490; 14 S. W. 653.

<sup>87</sup> *Gray v. Baltimore*, 100 U. S. 434; *State v. Marsh*, 37 Ark. 356.

<sup>88</sup> *Welton v. Missouri*, 91 U. S. 275.

<sup>89</sup> *Robbins v. Shelby Co. Taxing District*, 120 U. S. 489; 7 Sup. Ct. 592; *Asher v. Texas*, 128 U. S.

129; 9 Sup. Ct. 1; *Stountebugh v. Hennick*, 129 U. S. 141; 9 Sup. Ct. 256; *McCall v. California*, 136 U. S. 104; 10 Sup. Ct. 881; *In re Kimmell*, 41 Fed. Rep. 775; *Grafty v. Rushville*, 107 Ind. 502; 8 N. E. 609; *McLaughlin v. South Bend*, 126 Ind. 471; 26 N. E. 185; *Indianapolis v. Bieler*, 138 Ind. 30; 36 N. E. 857.

States, and not repugnant to Article IV, Section 2, of the Constitution of the United States. In so deciding the Supreme Court of Ohio said: "If the State has the power, as a police regulation, to prohibit the sale of intoxicating liquors, it may, in its discretion, prohibit the sale of one kind of liquor and allow the sale of another kind. It may say that certain wines may not be sold. Because the sale of all things which may be deleterious to the public is not prohibited, is no good reason why the sale of such as are prohibited is invalid. And because the sale of wines manufactured from fruit grown in this State is allowed, and the sale of wines manufactured from fruit grown in Illinois is prohibited, is no 'invasion of the privileges and immunities of the citizens of' Illinois, because this State, in the exercise of its police authority, has the power to determine what kind of intoxicating liquors it will prohibit the sale of, and what kind it will allow." <sup>90</sup>

<sup>90</sup> State v. Stucker, 58 Ia. 496; 12 N. W. 483; McGuire v. State, 42 O. St. 530; McLaury v. Watelsky, 39 Tex. Civ. App. 394; 87 S. W. 1045.

An ordinance fixing saloon limits and allowing saloons outside of them to continue until their licenses expired, is valid and not an unjust discrimination among liquor dealers outside such limits. *Andreas v. Beaumont* (Tex. Civ. App.), 113 S. W. 614; *State v. Board* (Wyo.), 105 Pac. 295.

In these cases it has been held that a statute authorizing the sale of domestic wine—wine made in the State—and prohibiting the sale of wine made out of the State, was invalid. *State v. Deschamp*, 54 Ark. 490; 14 S. W. 653; *McCreary v. State*, 73 Ala. 480 (see *Powell v. State*, 69 Ala. 10); *Ex parte Kinnebrew*, 35 Fed. 52 (cider); *Weil v. Calhoun*, 25 Fed. 865; *Glover v. State*, 126 Ga. 594; 55

S. E. 592; *Commonwealth v. Petranich*, 183 Mass. 217; 66 N. E. 807. (Rule extended to cider.) *State v. Scampini*, 77 Vt. 92; 59 Atl. 201; *State v. Hazleton*, 78 Vt. 567; 63 Atl. 305.

So a statute limiting the sales to wine made from grapes grown on the premises is invalid. *State v. Deschamp*, 54 Ark. 490; 14 S. W. 653, though the Supreme Court of the United States held that a statute authorizing the manufacture of wine or liquor for one's own use, and prohibiting the keeping and sale of all other liquors, is valid. *Vance v. W. A. Vandereock Co.*, 170 U. S. 468; 18 Sup. Ct. 674; *Douthit v. State*, 98 Tex. 344; 83 S. W. 795; modifying 82 S. W. 352.

Where a statute excepted from its prohibitory provisions "the manufacture, sale and use of domestic wines or cider," it was so construed as to except other wines,



**Sec. 113. Manufacture for shipment out of state.**

A statute which provides that, "No person shall manufacture or sell \* \* \* directly or indirectly, any intoxicating

in order to hold it constitutional; in other words, the word "domestic" was stricken out by construction. *Ex parte Kinnebrew*, 35 Fed. 52; *Glover v. State*, 126 Ga. 594; 55 S. E. 592.

In Kentucky, where an ordinance required a license fee from all selling beer brewed out of the city, it was presumed, in the absence of an averment in the pleadings, that a like fee was required of local manufacturers, in order to uphold the ordinance. *Jung Brewing Co. v. Frankfort*, 100 Ky. 409; 38 S. W. 710.

In Texas it was decided that liquor sellers are not denied the privileges and immunities of citizens of the United States because producers of domestic wines are given certain exemptions while such wines are in their hands, from the tax imposed and bond required by the statute regulating the sale of liquors. *Cox v. State*, 202 U. S. 446; 26 Sup. Ct. 71; 50 L. Ed. 1099, affirming 37 Tex. Civ. App. 607; 85 S. W. 34.

In Vermont it is held that a statute prohibiting the sale of intoxicating liquors, but permitting farmers to sell cider by the barrel, made from their own grown apples, is valid and is not class legislation. *State v. Hamilton*, 78 Vt. 467; 63 Atl. 7.

A statute permitting a manufacturer having his place of business in a prohibitory district to there sell the liquors he there

manufactures, and forbidding others to sell there, does not discriminate against a non-resident or wholesale dealer or manufacturer; and is therefore valid. *Jung Brewing Co. v. Commonwealth (Ky.)*, 98 S. W. 307; 30 Ky. L. Rep. 267.

If the general law of a State authorizes domestic wines to be sold, a city cannot prohibit their sale. *Duren v. Stephens*, 126 Ga. 496; 54 S. E. 1045; but it may require their inspection and require a fee paid for the inspection. It cannot require the inspection of wines made by the owner of grapes grown on his own land, unless he opens a place of business to make sales of them. *Stephens v. Henderson*, 120 Ga. 218; 47 S. E. 498.

A State cannot impose a license on sales of liquor in another State, to be there delivered. *State v. Stilsing*, 23 Vroom, 517; 20 Atl. 65.

A statute declaring certain liquors intoxicating, when they are not, does not violate this provision of the Constitution. *State v. Frederickson*, 101 Me. 37; 63 Atl. 535. A State may prohibit the soliciting or taking orders for sale of liquors to be delivered within its boundaries, though the solicitor is a non-resident and the liquors are without its boundaries. *State v. Miller (W. Va.)*, 66 S. E. 522.



liquors, except as hereafter provided," and in a subsequent section further provides, "that nothing contained in this law shall prevent any persons from manufacturing in this State liquors for the purpose of being sold according to the provisions of this chapter, to be used for mechanical, medicinal, culinary or sacramental purposes," will not authorize the manufacture of intoxicating liquors for transportation out of the State. The first clause of such a statute is a sweeping provision against the manufacture *and* sale; not a dealing which is composed of both steps, and consequently must include manufacture as well as sale, or, *e converso*, sale as well as manufacture, in order to incur the denunciation of the statute, but is against either the sale *or* the manufacture. The conjunction is disjunctive. The sale is forbidden, the manufacture is forbidden, and each is forbidden independently of the other. The unqualified prohibition of any and all manufacture of such liquors by the clause is subsequently modified by four exceptions, viz.: Sale for mechanical purposes, to an extent limited by the wants of the particular locality of the seller; sale for medicinal purposes, to the same extent; sale for culinary purposes, to the same extent; and sale for sacramental purposes, to the same extent. The effect of such a statute is simply and clearly to prohibit all manufacture of intoxicating liquors except for one or more of the four purposes specified. "For the purpose," says the statute. The excepted purpose is all that saves it from being *ab initio*, and, through each and every step of its progress, unlawful.<sup>91</sup> Such a statute does not conflict with Section 8, Article I, of the Constitution of the United States, by undertaking to regulate commerce among the States, for it does not exercise jurisdiction of the State over persons or property or transactions within the limits of other States; nor does it act upon liquors *as* exports, or while they are in process of exportation or importation. Its avowed object is to prevent not the carrying of intoxicating liquors *out* of the state, but to prevent their manufacture, except for specified purposes, *within* the state. The prohibition of the statute is directed alone to the manu-

<sup>91</sup> Kidd v. Pearson, 128 U. S. 1; 9 Sup. Ct. 6.

facture of intoxicating liquors for purposes other than for sale according to the provision of the statute. If the law is obeyed, no liquor will be manufactured for transportation. Its operation is to prevent the production of an article which might be lawfully transported out of the state. No distinction is more popular to the common mind, or more clearly expressed in economic and political literature, than that between manufacture and commerce. Manufacture is transformation—the fashioning of raw materials into a change of form or use. The functions of commerce are different. The buying and selling and the transportation incidental thereto constitute commerce; and the regulation of commerce, in a constitutional sense, embraces the regulation at least of such transportation. Commerce consists in the interchange of commodities or property which is the subject of trade. It does not consist in the impossible interchange of things not in existence. They must be articles of trade before commerce can exist.<sup>92</sup> Nor does such a statute conflict with the Fourteenth Amendment to the Constitution of the United States by depriving the manufacturers of intoxicating liquors of their property without “due process of law.” The Supreme Court of the United States has decided that a State has the right to prohibit or restrict the manufacture of intoxicating liquors within her limits; to prohibit all sale and traffic in them in the State; to inflict penalties for such manufacture and sale, and to provide regulations for the abatement as a common nuisance of the property used for such forbidden purposes; and that such legislation by a State is a clear exercise of her undisputed police power which does not abridge the liberties or immunities of citizens of the United States, nor deprive any person of property without due process of law, nor in any way contravene any of the provisions of said amendment.<sup>93</sup> And a statute may require a manufacturer of liquor

<sup>92</sup> *Kidd v. Pearson*, 128 U. S. 1; 9 Sup. Ct. 6; *Pearson v. International Distillery*, 72 Iowa 348; 34 N. W. 1; *State v. Fitzpatrick*, 16 R. I. 54; 11 Atl. 767.

<sup>93</sup> *Mugler v. Kansas*, 123 U. S. 623; 8 Sup. Ct. 273; *Kidd v. Pearson*, 128 U. S. 1; 9 Sup. Ct. 6.

in another State, before selling it in the State enacting the law, to produce his affidavit showing the ingredients entering into the composition of the liquor, although no such an affidavit is required of a home manufacturer; for a State cannot send its agents into another State to there inspect the manufacture of liquor to be shipped into it.<sup>94</sup>

**Sec. 114. Non-intoxicating liquors—Declaring a liquor to be intoxicating.**

The power of the State to prohibit the sale of beverages seems to be unlimited. Thus, as has been elsewhere discussed, States have prohibited the sale of cider, a liquor usually not considered intoxicating, at least in most communities, although, as is well known, "hard" cider if drank in excessive quantities will produce intoxication, usually of a serious character. All such laws have been upheld. And so it has been held that the Legislature may prohibit the sale of malt liquor, whether intoxicating or not.<sup>95</sup> As is well known, a malt liquor is made that is wholly or very nearly devoid of intoxicating effects. So the State may prohibit the sale of a non-intoxicating wine, such as is usually called grape juice.<sup>96</sup> And it would seem there is no liquor that the State may not declare shall not be sold; or that it may not declare shall be considered intoxicating.<sup>97</sup> But in all instances where the question has been considered the liquor in question was what is usually considered intoxicating, or one that is usually considered to contain alcohol, though the alcohol is known to be a very small

<sup>94</sup> Pabst Brewing Co. v. Crenshaw, 120 Fed. 144.

<sup>95</sup> Feibelman v. State, 130 Ala. 122; 30 So. 384; Bell v. State, 91 Ga. 227; 18 S. E. 288; Redding v. State, 91 Ga. 231; 18 S. E. 289; Penel v. State, 123 N. W. 115; Campbell v. Thomasville, (Ga. App.), 64 S. E. 815 (regulating sale). It may require a license for the sale of "near beer," a non-intoxicating liquor, resembling malt beer in

appearance. State v. Dannenberg (N. C.), 66 S. E. 301; Barber v. Griffith (N. C.), 66 S. E. 565; Cassidy v. Mason (Ga.), 64 S. E. 941.

<sup>96</sup> See State v. Frederickson, 101 Me. 37; 63 Atl. 535.

<sup>97</sup> The Legislature may define intoxicating liquors, and it usually does. State v. Guinness, 16 R. I. 401; 16 Atl. 910; State v. Gravelin, 16 R. 407; 16 Atl. 914.

percentage of the entire bulk. Possibly, under the plea, especially sustained by proof, that the usual soda water is detrimental to health, the sale might be prohibited, for, as is well known, as a food for the sustenance of life, it possesses no nourishing qualities. But if the Legislature should undertake to prohibit the sale of milk, the courts would, without hesitation, declare the act void, although the Legislature may—or it may empower a municipality to—regulate its sale in order to secure for the purchaser a pure and healthy product. That is the extent of the power of the Legislature with reference to its sale.<sup>98</sup>

### Sec. 115. Regulation of sales and saloons.

It has from time immemorial been thought that the business of selling intoxicating liquors was one dangerous to the public morals, and such is the experience, in northern climes at least; and it has been the uniform practice to subject it to regulations, require a license from some public functionary before it is engaged in, and to punish, as a crime, the pursuit of it without a license.<sup>99</sup> The power of the State not only extends to the prohibition of sales or the requiring of a license, but the prohibition of sales on certain days, as election days,<sup>1</sup> or on Sundays.<sup>2</sup> In the first instance it is deemed by the Legislature a necessary precaution in order to prevent disorders, secure undisturbed elections and protect electors from violence; and in the second instance it cannot be seriously contended that the compelling of the observance of Sunday by

<sup>98</sup> The oleomargarine cases furnish illustrations on this point, as well as the pure food laws. *People v. Arensberg*, 105 N. Y. 123; *People v. Arensberg*, 103 N. Y. 388; 57 Am. Rep. 741; *Commonwealth v. Miller*, 131 Pa. St. 118; *Commonwealth v. Gray*, 150 Mass. 327; 23 N. E. 47; *Bayles v. Newton*, 50 N. J. L. 549; 14 Atl. 604; *State v. Newton*, 50 N. J. L. 534.

<sup>99</sup> *Burch v. Savannah*, 42 Ga. 596; *Crowley v. Christensen*, 137

U. S. 86; 11 Sup. Ct. 13; *Campbell v. Jackman Bros.* (Iowa), 118 N. W. 755; *State v. Gibbs* (Vt.), 74 Atl. 229.

A statute is not invalid because it requires a saloon to be removed to the ground floor and rearranged. *Nelson v. State*, 17 Ind. App. 403; 46 N. E. 941.

<sup>1</sup> *Thomasson v. State*, 15 Ind. 449; *State v. Roberts*, 74 N. H. 476; 69 Atl. 722.

<sup>2</sup> *State v. Bott*, 31 La. Ann. 663; 33 Am. Rep. 224.



requiring saloons closed has anything to do with the Christian religion. It is a day of almost universal rest, when men are not at their labors and have a tendency to assemble in crowds, conditions under which universal experience teaches us that men are more given to drinking and rowdyism than when employed. There are other days when the sale of liquor is frequently prohibited—as on Memorial Day, July Fourth, Thanksgiving Day, Christmas and New Year's Day. So the Legislature may prohibit the use of screens, as elsewhere noted, and require the complete exposure of the bar where liquors are dispensed. It may also require all saloons or places where liquors are sold to front on a public street and forbid them fronting on alleys or private courts. It may also prohibit the playing of musical instruments in saloons, or any kind of music;<sup>3</sup> and prohibit their being open certain hours of the night.<sup>4</sup> Where a statute prohibited the keeping open on Sunday for trade any store, shop, building or place of business, and exempting hotels, restaurants, livery stables and stores in making sales of medicines and supplies for the sick, news stands, engaged in the quiet sale and delivery of papers, magazines and non-intoxicating liquors, but prohibited the opening of a play house, theater, dance hall, circus, merry-go-round, pool or billiard room, bowling alley, variety hall, and any place of public amusement, and prohibited horse racing, it was held constitutional as to saloons, and not void, on the ground that it took property without due course of law.<sup>5</sup> The State may forbid the keeper of a saloon to permit anyone entering it during prohibited hours or days, and punish him if he does.<sup>6</sup> So it may require him to keep his license posted in a conspicuous place in the saloon or in his house.<sup>7</sup> And after a license has been granted the State may

<sup>3</sup> *Ex parte* Smith, 38 Cal. 702; *State v. Gerhardt*, 145 Ind. 439; 44 N. E. 469; 33 L. R. A. 313.

<sup>4</sup> *Ex parte* Smith, 38 Cal. 702.

<sup>5</sup> *State v. Dolan*, 13 Idaho, 693; 92 Pac. 995; *Ex parte* Jacobs, 13 Idaho 720; 92 Pac. 1003; *State v. Bott*, 31 La. Ann. 663; 33 Am. Rep. 224.

<sup>6</sup> *State v. Calloway*, 11 Idaho 719; 84 Pac. 27; *State v. Gerhardt*, 145 Ind. 439; 44 N. E. 469; 33 L. R. A. 313.

<sup>7</sup> *Ex parte* Bell, 24 Tex. App. 428; 6 S. W. 197; *Bell v. State*, 28 Tex. App. 96; 12 S. W. 410.



pass a law prohibiting sales to minors, drunkards, intoxicated and insane persons;<sup>8</sup> or sales on certain hours.<sup>9</sup> A statute making the place of delivery the place of sale of whisky is constitutional.<sup>10</sup> The Legislature may authorize police officers "to enter upon the premises of anyone licensed to sell, to ascertain the manner in which such person conducts his business, and to preserve order."<sup>11</sup> So the Legislature may prohibit the giving away or selling food to be eaten on the premises where liquor is sold;<sup>12</sup> and it may authorize a city to enact an ordinance to that effect.<sup>13</sup> So the State may provide that all moneys paid for liquors sold in violation of a statute shall be held under a valid promise to repay them on demand.<sup>14</sup> So a Legislature may authorize a municipality to prescribe saloon limits.<sup>14\*</sup>

**Sec. 116. Permitting persons to go into saloon at prohibited times.**

In Indiana a statute makes it unlawful for a proprietor of a saloon "to permit any person or persons other than himself and family to go into such room [the saloon] and place where intoxicating liquors are to be so sold upon such days and hours when the sale of such liquors is prohibited by law. The fact that any person or persons are permitted to be in or go in and out of such room upon any day or hour when the sales of such liquors are prohibited by law, shall be *prima facie* evidence of guilt upon trial of a cause charging the proprietor of such room with violating the law in the sale of such liquors upon such days or hours." This statute was

<sup>8</sup> Commonwealth v. Sellers, 130. Pa. St. 32; 18 Atl. 541.

<sup>9</sup> Smith v. Knoxville, 3 Head 245; Hedderich v. State, 101 Ind. 564; 1 N. E. 47; 51 Am. Rep. 768.

<sup>10</sup> State v. Herring, 145 N. C. 418; 58 S. E. 1007.

<sup>11</sup> Commonwealth v. Doucey, 126 Mass. 269. In this case it was an ordinance that authorized the mayor and aldermen to enter upon the licensed premises.

<sup>12</sup> People v. Warder, 6 N. Y. App. Div. 520; 39 N. Y. Supp. 582.

<sup>13</sup> State v. Clarke, 8 Fost. 176; 61 Am. Dec. 611.

<sup>14</sup> United Breweries Co. v. Colby, 170 Fed. 100. The action to recover the money is a civil action of which a Federal court may take jurisdiction.

<sup>14\*</sup> Andreas v. Beaumont, (Tex. Civ App.), 113 S. W. 614.

held to be constitutional.<sup>15</sup> “As the closing features of Section 3 apply only to the prohibited days and hours, we fail to recognize how any great hardships can result from the enforcement of this law. In answer to the contention that the enforcement of the requirements of this section might inadvertently result in interfering, during such interdicted time, with other business that may be conducted by the proprietor in the same room where such liquors are sold, or may restrict him in the enjoyment in his own house of the society of his friends, it may be said that when he accepted his license, under the statute, and embarked in the sale of intoxicating liquors thereunder, he must be deemed to have consented to all proper conditions and restrictions which had been imposed by the Legislature, or which might in the future be imposed in the interest of public morals and safety, relative to the traffic in such liquors, or to the place wherein he was granted a permit to sell the same, notwithstanding their burdensome character.” “It is true that the part relative to the exclusion of persons is somewhat sweeping, making but one exception; however, criminal statutes are not always literally construed, and possibly an emergency might arise of great necessity, to admit some one other than those mentioned in the section, and, while such admission might infringe upon the letter of the statute, it would not come within its spirit, and the court, under the particular circumstances, might make the necessary exception; but as to this point we do not decide. We, therefore, sustain the validity of the section and adjudge that it defines a public offense.”<sup>16</sup>

### **Sec. 117. Delegation of power to license and regulate sale of liquors.**

Municipalities—cities and towns—are simply smaller divisions of a State for its better government. They are the

<sup>15</sup> State v. Beach, 147 Ind. 74; 43 N. E. 949; Decker v. Sargeant, 125 Ind. 404; 25 N. E. 458; Davis v. Fasig, 128 Ind. 271; 27 N. E. 726.

<sup>16</sup> State v. Gerhardt, 145 Ind.

439; 49 N. E. 469; 33 L. R. A. 313.

An ordinance may prescribe that the lighting up of a saloon shall be *prima facie* evidence that it is open. Piqua v. Zimmerlin, 35 Ohio St. 507.

creatures of the Legislature—may be created or may be legally annihilated. To them the Legislature may confide its police powers for the regulation of local affairs and concerns, and when given, it may be taken away without any cause whatever. It has always been considered that in affairs local to a small territory, a city or town is a better agency to suppress vice and disorder and to regulate matters requiring the use of local police powers than the State at large. Such has been the history and practice of the English Parliament from time immemorial, and of American Legislatures from the first settlements of this country. It does not require the citation of authority to gain assent to this proposition, for it is universally admitted in jurisprudence.<sup>17</sup> “It seems to be generally conceded,” said Judge Bell, of the Supreme Court of New Hampshire, “that powers of local legislation may be granted to cities, towns, and other municipal corporations. And it would require strong reasons to satisfy us that it would have been the design of the framers of our Constitution to take from the Legislature a power which has been exercised in Europe by governments of all classes from the earliest history, and the exercise of which has probably done more to promote civilization than all other causes combined; which has been constantly exercised in every part of our country from its earliest settlement, and which has raised up among us many of our most valuable institutions.”<sup>18</sup> Not only may the Legis-

<sup>17</sup> *Jordan v. State*, 2 Tex. App. 425; *Moundsville v. Fountain*, 27 W. Va. 182; *State v. Bott*, 31 La. Ann. 663; 33 Am. Rep. 224; *St. Paul v. Troyer*, 3 Minn., 291; *Flack v. Fry*, 32 W. Va. 364; 9 S. E. 240; *Mason v. Trustees*, 4 Bush 406; *Board v. Watson*, 5 Bush 660; *State v. Harper*, 42 La. Ann. 312; 7 So. 446; *Baton Rouge v. Butler*, 118 La. 73; 42 So. 650; *Commonwealth v. Fredericks*, 119 Mass. 199; *Chicago etc., Co. v. Chicago*, 88 Ill. 221; 30 Am. Rep. 545; *State v. Frank-*

*lin*, 40 Kan. 410; 19 Pac. 801; *State v. King*, 37 Iowa, 462; *Van Hook v. Schea*, 70 Ala. 361; 45 Am. Rep. 85; *O'Hare v. Chicago*, 125 Ill. App. 73; *Timm v. Caledonia Station*, 149 Mich. 323; 112 N. W. 942; 14 Det. L. N. 442; *Cohen v. Rice* (Tex. Civ. App.), 101 S. W. 1052.

<sup>18</sup> *State v. Noyes*, 30 N. H. 279, 292; *Cohen v. Rice* (Tex. Civ. App.), 101 S. W. 1052; *Gower v. Agee*, 128 Mo. App. 427; 107 S. W. 999; *Schwuchow v. Chicago*, 68 Ill. 444; *State v. Aiken*, 42 S.

lature delegate the power to exact a license for, or regulate, or prohibit the sales of intoxicating liquors and also regulate the place wherein liquors are sold, but it may also empower them to exact a license for, regulate, or prohibit the sales of liquors beyond its limits but in territory adjacent thereto.<sup>19</sup> "It is certainly within the power of the Legislature to declare that no unlicensed dramshop shall be kept within a designated number of feet of the corporate limits; otherwise all that need be done to evade the law would be to keep a foot or two beyond the corporate boundaries. If the Legislature has any power at all to designate limits over which the jurisdiction of municipal corporations shall extend, then, necessarily, the subject must be within its discretion; and, if this be so, its judgment upon the question must be conclusive."<sup>20</sup>

C. 222; 20 S. E. 221; Columbus City v. Cutcomp, 61 Iowa 672; 17 N. W. 47; Lutz v. Crawfordsville, 109 Ind. 466; 10 N. E. 411; Metropolitan Board v. Barrie, 34 N. Y. 657; Shea v. Muncie, 148 Ind. 14; 46 N. E. 138; State v. Bott, 31 La. Ann. 663; 33 Am. Rep. 224; State v. Clarke, 8 Fost. 176; 61 Am. Dec. 611; Swartz v. Dover (N. J. L.), 62 Atl. 1135; affirming 70 N. J. L. 502; 57 Atl. 394; Hart v. De Missisgroni, 3 Quebec L. R. 170; *Ex parte* Covey, 21 Low. Can. Jr. 182; Kitson v. Ann Arbor, 26 Mich. 325; Campbell v. Thomasville (Ga. App.), 64 S. E. 815.

<sup>19</sup> Gover v. Agee, 128 Mo. App. 427; 107 S. W. 999.

<sup>20</sup> Lutz v. Crawfordsville, 109 Ind. 466; 10 N. E. 411; Jordan v. Evansville, 163 Ind. 512; 72 N. E. 544; 67 L. R. A. 613; Gower v. Agee, 128 Mo. App. 427; 107 S. W. 999; Falmouth v. Watson, 5 Bush 660; Emerick v. Indianapolis, 118 Ind. 279; 120 N. E.

795; State v. Schraeder, 51 Iowa 197; 1 N. W. 431; State v. Dougherty, 2 Idaho, 1105; 29 Pac. 855; Hunzinger v. State, 39 Neb. 653; 58 N. W. 194; Shannon v. State, 39 Neb. 658; 58 N. W. 196; Soehl v. State, 39 Neb. 659; 58 N. W. 196; Rowels v. State, 39 Neb. 659; 58 N. W. 196.

That the Legislature may empower a city to prohibit the sale of liquor, see *In re* Phillips, 82 Neb. 45; 116 N. W. 950; State v. Superior Court, 49 Wash. 268; 94 Pac. 1086; Duren v. Stephens, 126 Ga. 496; 54 S. E. 1045; Stephens v. Henderson, 120 Ga. 218; 47 S. E. 498; Gunnerssohn v. Sterling, 92 Ill. 569; Osburn v. Marietta, 118 Ga. 53; 44 S. E. 807; Straus v. Galesburg, 203 Ill. 234; 67 N. E. 836, affirming 89 Ill. App. 504; McNulty v. Toopf (Ky.), 75 S. W. 258; 25 Ky. L. Rep. 430; Florence v. Brown (S. C.), 26 S. E. 880; Papworth v. Fitzgerald, 106 Ga. 378; 32 S. E. 363; Tucker v. Moul-



Where a constitutional provision confers on county courts the superintendence of internal police of their counties, the Legislature may give a city or town the exclusive power to grant licenses to sell liquors within its boundaries.<sup>21</sup> The Legislature may authorize a municipality to prohibit the use or keeping of liquors in any refreshment saloon or restaurant within its boundaries.<sup>22</sup> So an act authorizing a city to prohibit the sale of liquors within a resident portion of a municipality is valid and is not void on the ground that it authorizes the grant of special privileges.<sup>23</sup> A Legislature may empower a city to prohibit sales or gifts of liquors, although the general law does not prohibit them, notwithstanding a provision in the State Constitution forbids it authorizing a municipality to enact an ordinance inconsistent with the general laws of the State.<sup>24</sup> But if the Constitution prohibits sales of liquor the Legislature cannot authorize a city to license such sales.<sup>25</sup> So, where the Constitution prohibited the Legislature to pass any statute "regulating the internal affairs of cities," it was held not to prohibit the passage of a general act establishing an excise department in cities, for it was a grant of original powers to a department of a city, the creation of which was entrusted to the city itself; <sup>26</sup> under this clause the power to act may be conferred, but the machinery for its exercise

trie, 122 Ga. 160; 50 S. E. 61; United States Distilling Co. v. Chicago, 112 Ill. 19; 1 N. E. 166; Littlejohn v. Stells, 123 Ga. 427; 51 S. E. 390; *Ex parte* Mogensen, 5 Cal. App. 596; 90 Pac. 1063.

<sup>21</sup> Ward v. County Court, 51 W. Va. 102; 41 S. E. 154.

<sup>22</sup> State v. Clarke, 8 Fost. 176; 61 Am. Dec. 611.

<sup>23</sup> Shea v. Muncie, 148 Ind. 14; 46 N. E. 138; *Ex parte* King, 52 Tex. Civ. App. 383; 107 S. W. 549; Paul v. State (Tex. Civ. App.), 106 S. W. 448.

<sup>24</sup> *Ex parte* Cowert, 92 Ala. 94; 9 So. 225.

If a city charter is in conflict with an earlier general statute of the State on the subject of the sale of liquors, it will repeal *pro tanto*, as to such city, such earlier law. State v. King, 37 Iowa 462.

<sup>25</sup> Yazoo City v. State, 48 Miss. 440; State v. Topeka, 30 Kan. 653; 2 Pac. 587; 31 Kan. 452; 2 Pac. 597; State v. Leavenworth, 36 Kan. 314; 13 Pac. 591; see Dewar v. People, 41 Mich. 401; 29 N. W. 545; Mt. Pleasant v. Vansice, 43 Mich. 361; 5 N. W. 378; 38 Am. Rep. 193.

<sup>26</sup> State v. Trenton, 51 N. J. L. 498; 18 Atl. 116.



cannot be prescribed.<sup>27</sup> Since the Legislature may authorize a municipality to exact licenses for sales of liquors, it may also take away the power, and may even annul those granted without making any provisions for a return of the fees paid for them, or for an amount of such fees as are proportionate to that part of the terms of such licenses remaining unexpired at the time of their revocation.<sup>28</sup> And the Legislature may also confer upon municipalities the exclusive and sole power to require a license.<sup>29</sup> The Constitution of South Carolina gives the Legislature the exclusive right to license the sale of intoxicating liquors, but this does not prevent the Legislature authorizing a city to prohibit the sale of liquors within its limits.<sup>30</sup> The amount of a license fee may be graded according to population, as one amount for a city and another for a town.<sup>31</sup> Where a Constitution provided that any city might "make and enforce within its limits all such local police, sanitary, and other regulations as are not in conflict with the general laws," it was held that an ordinance inflicting a penalty for a refusal to pay a license fee for the carrying on of his business as a

<sup>27</sup> State v. Camden, 40 N. J. L. 156.

<sup>28</sup> Gutzwiller v. People, 14 Ill. 142. This is upon the principle that no one has a vested right in a license or right to sell liquors. Parsons v. People, 32 Colo. 221; 76 Pac. 666.

A statute authorizing a municipality to suspend a dispensary, thereby entirely prohibiting the sale of liquors, or to permanently discontinue it, thereby putting into operation the license laws both of the city and State, is invalid, because it is a delegation of such legislative power as the Legislature cannot make. Mitchell v. State, 133 Ala. 65; 32 So. 687.

<sup>29</sup> State v. Harden, 62 W. Va.

313; 58 S. E. 715; Winona v. Whipple, 24 Minn. 61.

A city may be empowered to prohibit sales on Sunday. State v. Bott, 31 La. Ann. 663; 33 Am. Rep. 224.

<sup>30</sup> Florence v. Brown (S. C.), 26 S. E. 880.

A city may require a license to be taken out at periods less than one year. *Ex parte* Hurl, 49 Cal. 557; *Ex parte* Benninger, 64 Cal. 291; 30 Pac. 846.

<sup>31</sup> Amador County v. Kennedy, 70 Cal. 458; 11 Pac. 757; Amador County v. Isaacs, 11 Pac. 758; State v. Doherty, 2 Idaho 1105; 29 Pac. 855; Hunzinger v. State, 39 Neb. 653; 58 N. W. 194.

saloon keeper was valid.<sup>32</sup> A city may be empowered to adopt an ordinance requiring her police to enter saloons to see if the law is being violated.<sup>33</sup>

### Sec. 118. Compelling towns to engage in liquor traffic.

A law which authorizes county commissioners to appoint an agent to purchase liquors at the expense of a town within the county without the assent of the town, either expressed or implied, and without giving indemnity to the town for the faithful execution of the duties of the agent, is not constitutional. So far as municipal corporations are endowed with the power of contracting and of acquiring and disposing of property, it stands on the same ground of exemption from legislative control and interference as a private corporation. This being true, such a town cannot be held liable for a debt contracted in the purchase of liquors by such an agent. It cannot be claimed that the town is liable for such a debt on the ground that it arises *ex contractu*. This is so because it is a fundamental element in contracts that the party to be bound must have assented to the contract, either expressly or by implication. To require the town to pay such a debt would be in violation of the well established principle that the property of an individual or of a corporation may not be taken without compensation. If, through the artificial contrivance of a municipal corporation, of which the inhabitants of a State must be members, *nolentes volentes*, such consequences can be wrought out, most persons would invoke the exercise of the annihilating power of the

<sup>32</sup> *Ex parte McNally*, 73 Cal. 632; 15 Pac. 365.

<sup>33</sup> *Commonwealth v. Doucey*, 126 Mass. 269. But the Legislature cannot confer power upon a municipality or board which itself must exercise. *State v. Baum*, 33 La. Ann. 981; *Feek v. Bloomington*, 82 Mich. 393; 47 N. W. 37; 10 L. R. A. 69.

Ordinances adopted by a city under its powers to license are

subject to State laws, and cannot contravene them. *Ex parte Sweetman*, 5 Cal. App. 577; 90 Pac. 1069; *Ex parte Huillade*, 5 Cal. App. 111; 90 Pac. 1071; *Cooper v. Greenfield*, 169 Ind. 14; 81 N. E. 56; *State v. Robinson*, 101 Minn., 277; 112 N. W. 269.

A city cannot license a sale the State law forbids. *Cooper v. Greenfield*, 169 Ind. 14; 81 N. E. 56.

government over such corporations rather than of the power of the police regulation, in virtue of which alone such a law, if sustainable, can be sustained.<sup>34</sup>

### Sec. 119. Monopoly of sale.

Monopolies are not in harmony with the genius of our laws nor of our Constitutions; and it is a universal rule that a Legislature, aside from the sale by State dispensaries, cannot create a monopoly in the sale of liquors. Such is the case when an act attempts to create a board of commissioners for a certain city to sell liquors, giving them the exclusive sales therein and permitting them to take the profits of such sales for their own use.<sup>35</sup> But such an act authorizing a city or town to have the exclusive right to sell, and profits thereof, within its boundaries, is not objectionable, on the ground that it creates a monopoly.<sup>36</sup> An ordinance prohibiting the service of liquors with meals, but providing that the city council may grant permits to hotel keepers to thus serve liquors, is not unconstitutional as creating a monopoly of sales, or as an unjust discrimination among citizens of the State.<sup>37</sup> And a statute limiting the number of saloon licenses in a municipality is not invalid, for it is a reasonable exercise of the police power;<sup>38</sup> and so is an ordinance limiting the number of saloons to a block.<sup>39</sup> Nor is it such a discrimination as renders the transaction void to grant a second license at a lower rate than a previous

<sup>34</sup> *Atkins v. Town of Randolph*, 31 Vt. 226.

<sup>35</sup> *Mitchell v. State*, 133 Ala. 65; 32 So. 687. See *Grumbaugh v. Leande*, 154 Cal. 679; 98 Pac. 1059.

<sup>36</sup> *Plumb v. Christie*, 103 Ga. 686; 30 S. E. 759; 42 L. R. A. 181; *Deal v. Singletory*, 105 Ga. 466; 30 S. E. 765; *Guy v. Commissioners*, 122 N. C. 471; 29 S. E. 771. See § 112, *note*.

<sup>37</sup> *In re Kidd*, 5 Cal. App. 159; 89 Pac. 987.

<sup>38</sup> *Decie v. Brown*, 167 Mass. 290; 45 N. E. 765; *Moss v. Warren* (Tex. Civ. App.); 123 S. W. 1157.

An act confining sales of liquor to the business portions of a city is not void on the ground that it creates a monopoly. *Shea v. Muncie*, 148 Ind. 14; 46 N. E. 138.

<sup>39</sup> *Meyer v. Decatur*, 125 Ill. App. 556 [1908].

one; nor can such previous licensee recover back the excess of the fee he paid over and above the amount of the fee paid by the subsequent licensee.<sup>40</sup>

### **Sec. 120. Territorial power to enact liquor laws.**

A territory has no powers, legislative, executive or judicial, except such as are conferred upon it by act of Congress. It can have over its subjects no greater powers than Congress itself has, and such powers may be as limited as Congress may determine. It has no powers, in fact, except such as are expressly or by implication conferred by Congress itself. The sovereignty of a territory, so called, comes from Congress, not the people. If Congress have no power under the Constitution, it can confer none upon the territory. It has been aptly said that a "territory is an outlying province of the national government," subject to its direct control through congressional supervision of territorial legislation. That it has national sovereignty over the territories has never been denied. It is expressly provided that Congress shall have power "to make all needful rules and regulations respecting a territory." From this provision it must follow that the legislative power of a territory is limited, not only by the powers of Congress granted by the Constitution itself, but it must be confined to the powers also expressly or by necessary inference conferred by statute of Congress upon the legislative assembly. Independent of this rule, however, it has been held that it is one of the police powers of a territory to license and regulate the traffic in intoxicating liquors. In this regard the Constitution of the United States and acts of Congress, so far as applicable, are the only limitations upon the legislative powers of a territory. Such laws are looked upon as police regulations when established by the Legislature of a territory for the prevention of intemperance, pauperism and crime, and for the abatement of nuisances. The power to pass such laws is inherent in a State or territory.<sup>41</sup>

<sup>40</sup> *Silver v. Sparta*, 107 Ga. 275;  
33 S. E. 31.

<sup>41</sup> *United States v. Stephens*,  
12 Fed. 52; *Nelson v. United*



### Sec. 121. State engaging in liquor traffic—Dispensary laws.

Whether or not a State can go so far in its regulation of the use or sale of intoxicating liquors as to prohibit all sales by individuals, establish its own agencies for their sale and appoint its own agents to conduct such sales, has been variously decided. The dispensary law of South Carolina, enacted in 1893, forbade any private individual to keep intoxicating liquors in the State, vested the exclusive right in the State to sell such liquors, and designated certain officers to make such sales. In the first decisions where the validity of this law was drawn in question, the courts held it unconstitutional, being an invasion of that clause in the State Constitutions declaring that no person should be despoiled or deprived of his liberty or estate except by the judgment of his peers. The State was engaged in the traffic for a profit.<sup>42</sup> It was said that the statute created a monopoly in the State, and the police power did not extend so far as to create a monopoly. But in a subsequent case the law was held valid, and the earlier cases overruled.<sup>43</sup> So a law empowering a city or town to establish and operate dispensaries for the buying or selling of intoxicating liquors has been held valid.<sup>44</sup> In Georgia a law authorizing the State

States, 30 Fed. 112; Territory v. Connell, 16 Pac. (Ariz.) 209; Territory v. O'Connor, 5 Dak. 397; 37 N. W. 765; 41 N. W. 746; 36 L. R. A. 355; United States v. Cohn (Ind. T.), 52 S. W. 38; *Ex parte* Brown, 38 Tex. Cr. App. 295; Endelman v. United States, 86 Fed. 456; Minnehaha County v. Champion, 37 N. W. 766; Thornton v. Territory, 3 Wash. 1. 482; 17 Pac. 896; Territory v. Miguel, 18 Hawaii 402.

<sup>42</sup> McCullough v. Brown, 41 S. C. 220; 19 S. E. 458; 23 L. R. A. 410; State v. O'Donnell, 41 S. C. 553; 19 S. E. 748.

<sup>43</sup> State v. City Council of Aiken, 42 S. C. 222; 20 S. E. 221;

26 L. R. A. 345. These points are not involved in the decision of the United States Supreme Court which passed upon another provision of the statute. *Scott v. Donald*, 165 U. S. 58; 17 Sup. Ct. 265. See *Cantini v. Tillman*, 54 Fed. 969; *State v. Holleyman* (S. C.), 31 S. E. 362.

<sup>44</sup> *Childers v. Shepherd* (Ala.), 39 So. 235; *Mitchell v. State*, 133 Ala. 65; 32 So. 687.

An act for a particular town was held invalid. *Newman v. State* (Ala.), 39 So. 648; *Lee v. State*, 143 Ala. 93; 39 So. 720; *Harlan v. State*, 136 Ala. 150; 33 So. 858; *Elba v. Rhodes*, 142 Ala. 689; 38 So. 807.



to engage in the liquor traffic, and prohibiting private citizens engaging therein, was held not to violate that provision of the Federal Constitution relating to interstate commerce.<sup>45</sup> But in Indiana a statute of this kind, at an early day, was held unconstitutional, on the ground that it created a monopoly in the State in a business from which its citizens were excluded.<sup>46</sup> In North Carolina such a law has been held valid, not being a monopoly, since the whole community shares in the profits.<sup>47</sup> In Alabama, where prohibition prevailed in a county, a statute authorizing a town therein, in its discretion, to open a dispensary for the sale of liquors under its agency, was held valid, the act of the town in deciding to open a dispensary in no sense being a delegation of legislative power and not, therefore, a repeal of the prohibitory provisions of the statute. The statute was also generally held valid.<sup>48</sup>

<sup>45</sup> *Plumb v. Christie*, 103 Ga. 686; 30 S. E. 759; 42 L. R. A. 181; *Deal v. Singletory* (Ga.), 30 S. E. 765; *Chamlee v. Davis*, 115 Ga. 266; 41 S. E. 691; *Butler v. Merritt*, 113 Ga. 238; 38 S. E. 751.

<sup>46</sup> *Beebe v. State*, 6 Ind. 501; 63 Am. Dec. 391.

<sup>47</sup> *Garsed v. Greensboro*, 126 N. C. 159; 35 S. E. 254.

It has been held that the Board of Directors of a State Dispensary in South Carolina cannot close it. *State v. Board*, 70 S. C. 509; 50 S. E. 203.

The State dispensaries in South Carolina are subject to the liquor revenue laws of the United States. *South Carolina v. United States*, 199 U. S. 437; 26 Sup. Ct. 110; affirming 39 Ct. of Cl. 257.

<sup>48</sup> *Ex parte Hall* (Ala.), 47 So. 199. See *Mitchell v. State*, 133 Ala. 65; 37 So. 407.

A statute levying a tax to enforce the dispensary law is valid under a clause in the Constitution, authorizing the levying of a tax "for litigation, quarantine and court expenses." *Murphy v. Landron*, 76 S. C. 21; 56 S. E. 850.

That the local option and dispensary laws of Georgia are general laws and valid. See *Dispensary Commissioners v. Hooper*, 128 Ga. 99; 56 S. E. 997.

It has been held that a statute limiting sales to such liquors as should be manufactured for sacramental, medicinal, chemical and mechanical uses under authority of the selectmen of a town was valid, not being void on the ground that it established an exclusive privilege repugnant to the prohibition of the Constitution. *State v. Brennan*, 25 Conn. 278; *State v. Wheeler*, 25 Conn. 290.

A statute giving those agents

**Sec. 122. Carolina dispensary and Wilson laws construed—Discrimination.**

What is known as the State Dispensary Law of South Carolina did not purport to prohibit either the importation, the manufacture, the sale, or the use of intoxicating liquors. By it liquors and wines were recognized as commodities which might be lawfully made, bought and sold. While it was true that the first section of the law made it penal to manufacture, sell, barter, deliver, store or keep in possession any spirituous malt, vinous, fermented, brewed or other liquors which contained alcohol to be used as a beverage, and declared all such liquors to be contraband and against the morals, good health and safety of the State, and authorized them to be seized wherever found, without warrant, and turned over to the State commissioners, yet those enactments were not absolute but were made subject to the subsequent provisions of the law. When those provisions were examined it was found that, so far from the importation, manufacture and sale of such liquors being prohibited, those operations were turned over to State functionaries, by whom alone, or under whose direction, they were to be carried on. By them liquors and wines were recognized as commodities which might be lawfully made, bought

of a city managing a dispensary a personal interest in the sales, is void. *Mitchell v. State*, 133 Ala. 65; 32 So. 687.

Power given to commissioners to suspend the dispensary or discontinue it permanently, thereby making the sale of liquor in the territory valid, or putting into effect a license law, is unconstitutional, being an unlawful delegation of legislative power, and a city ordinance prohibiting the sale except as allowed by such void statute, is also invalid, because it cannot be enforced according to its original intent. *Mitchell v. State*, 133 Ala. 65; 32 So. 687.

The State has power to establish and maintain dispensaries under its own agents or officials created for that purpose. *Plumb v. Christie*, 103 Ga. 686; 30 S. E. 759; 42 L. R. A. 181; *Deal v. Singleton*, 105 Ga. 466; 30 S. E. 765.

Effect of act of February 16, 1907, winding up South Carolina dispensaries on the relation of vendors of liquors to them. *Murray v. Wilson Distilling Co.*, 213 U. S. 151; 29 Sup. Ct. 453. Sale to dispensary on credit in Louisiana. *Cottonwood v. H. M. Austin & Co. (La.)*, 48 So. 345.

and sold, and, therefore, the subject of foreign and interstate commerce. In February, 1895, two suits at law were instituted in the Circuit Court of the United States for the District of South Carolina to recover damages caused by the action of the defendants, State constables acting under the law, in seizing and carrying away several packages of wines and liquors belonging to the plaintiffs. One of the packages consisted of a case of domestic California wine which came by rail from Savannah, Georgia, whither it had been imported by the plaintiff; another was a case of whisky made in Maryland and imported by the plaintiff by way of a Baltimore steam packet line; and the other consisted of a barrel of beer, made at Rochester, New York, and imported into the State by way of the Old Dominion Steamship Line. The suits were tried and determined by the court with a judgment in favor of the plaintiff. Writs of error from the Supreme Court of the United States were sued out and allowed. In that court the records presented the question of the validity, under the Constitution of the United States, of the South Carolina dispensary law. The court conceded that the law in question was passed in the *bona fide* exercise of the police power and disclaimed any imputation to the lawmakers of South Carolina of a design, under the guise of a domestic regulation, to interfere with the rights and privileges of either her own citizens or those of her sister States, which were secured to them by the Constitution and laws of the United States. The court, however, held that the law was void as a hindrance to interstate commerce and an unjust preference of the products of the enacting State. It was first sought to defend the act as an inspection act within the meaning of that provision of the Constitution of the United States, which permits the States to impose excise duties as far as they may be absolutely necessary for executing their inspection laws. In answering this contention, after a full review of the authorities upon the subject, the court said: "It is not an inspection law. The prohibition of the importation of the wines and liquors of other States by citizens of South Carolina for their own use is made absolute, and does not depend on the purity or im-

purity of the articles. Only the State functionaries are permitted to import into the State, and thus those citizens who wish to use foreign wines and liquors are deprived of the exercise of their own judgment and taste in the selection of commodities. To empower a State chemist to pass upon what the law calls the 'alcoholic purity' of such importations by chemical analysis, can scarcely come within any definition of a reasonable inspection law." In the next place, it was sought to sustain the legislation under the provisions of the Wilson Law. In answering this contention the court said: "It is not a law purporting to forbid the importation, manufacture, sale and use of intoxicating liquors as articles detrimental to the welfare of the State and to the health of the inhabitants, and hence it is not within the scope and operation of the Act of Congress of August, 1890. That law was not intended to confer upon any State the power to discriminate injuriously against the products of other States in articles whose manufacture and use are not forbidden, and which are, therefore, the subjects of legitimate commerce. When that law provided that 'all fermented, distilled or intoxicating liquors transported into any State or territory, remaining therein for use, consumption, sale or storage therein, should, upon arrival in such State or territory, be subject to the operation and effect of the laws of such State or territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or territory, and should not be exempt therefrom by reason of being introduced therein in original packages or otherwise, evidently equality or uniformity of treatment under State laws was intended. The question whether a given State law is a lawful exercise of the police power is still open and must remain open to this court. Such a law may forbid entirely the manufacture and sale of intoxicating liquors and be valid. Or it may provide equal regulations for the inspection and sale of all domestic and imported liquors and be valid. But the State cannot, under the Congressional legislation referred to, establish a system which, in effect, dis-



eliminates between interstate and domestic commerce in commodities to make and use which are admitted to be lawful." <sup>49</sup>

### Sec. 123. *Ex post facto* laws—Municipal ordinance.

A law is retrospective, retroactive or *ex post facto*, which makes acts committed prior to its enactment criminal, or, as applied to past transactions, which creates a new duty or impairs vested property rights acquired under existing law; <sup>50</sup> therefore, an ordinance of a municipal corporation providing for an increased license fee and declaring that all sales of intoxicating liquors thereafter made by persons failing to comply with its provisions shall be unlawful, is not an *ex post facto* law. <sup>51</sup> A license issued under a law regulating the sale of intoxicating liquors has neither the qualities of a contract nor of property, but merely forms a part of the internal police system of the State. <sup>52</sup> No one can acquire a vested right or prevent a change of policy by the State, or by a municipal corporation acting under a charter from it, where the varying interests of society may require and where the privilege under which he is acting is merely a statutory one. <sup>53</sup> The power to grant, withhold or annul licenses to sell intoxicating liquors is an exercise of the police power, and no limitation can be placed upon it by any statutory provision. <sup>54</sup> When the premise is once established that one cannot acquire any vested or contractual interest in the police regulation, the conclusion must follow that subsequent regulations on the same subject cannot be retrospective in a technical sense. The contracts which the

<sup>49</sup> Scott v. Donald, 165 U. S. 58; 17 S. Ct. 265; 67 Fed. 854. In *ex parte* Jervey, 66 Fed. 957, the Circuit Court held that § 33, forbidding anyone to bring liquor into the State was void; and so in Donald v. Scott, 67 Fed. 854; and so in Jervey v. The Carolina, 66 Fed. 1013.

<sup>50</sup> Anderson's Law Dict., p. 897.

<sup>51</sup> Moore v. City of Indianapolis, 120 Ind. 483; 22 N. E. 424; Beer Co. v. Massachusetts, 97 U. S. 25; State v. Paul, 5 R. I. 185.

<sup>52</sup> Metropolitan Board v. Barrie, 34 N. Y. 657.

<sup>53</sup> Cooley Const. Lim., 5th ed., p. 473.

<sup>54</sup> State v. Bonnell, 119 Ind. 494; 21 N. E. 1101.



Constitution protects are those that relate to property rights, not governmental.<sup>55</sup>

**Sec. 124. No property right in a license—Annuling a license.**

There is no such property right in a license to sell intoxicating liquors as prevents its revocation by the authority issuing or granting it. This rule arises out of the fact that a State cannot divest itself of its right to exercise its police power—cannot bargain it away—a power “ever present and available, to be exercised by the State as emergencies may require;” and “neither the State, nor any of its agencies to whom the power has been delegated, can divest itself of the right to impose such other or additional restrictions upon the sale of intoxicating liquors, as the maintenance of good order or the preservation of the public morals may require.” Again, in this same case, it is said: “If, by authorizing a license or permit for one year, the State could deprive itself of the right to impose new restrictions upon the licensee during that period, a law authorizing licenses might bind successive Legislatures for three, five, or even ten years. If the legislative discretion could be fettered or bargained away for one year, it could, upon the same principle, be bargained away for an indefinite period. It is \* \* \* abundantly settled that a license or permit issued in pursuance of a mere police regulation has none of the elements of a contract, and that it may be changed, or entirely revoked, even though based upon a valuable consideration. A license issued under the law regulating the sale of intoxicating liquors has neither the qualities of a contract nor of property, but merely forms a part of the internal police system of the State. No one can acquire a vested right in a mere statutory privilege so as to bind the State, or prevent a change of policy, as the varying interests of society may require.” “The enactment of a law placing restrictions upon the sale of intoxicating liquors, and requiring the payment of a specified sum of money, and that a license be

<sup>55</sup> *Stone v. Mississippi*, 104 U. S. 814.

obtained before the business of selling can be lawfully entered upon, is not to be regarded as a proposition on the part of the State to contract for privileges, or to sell indulgences, but rather as a public proclamation, announcing that the State regards the unrestricted sale of intoxicating liquors as prejudicial to the general welfare, and that in the exercise of its police power, the traffic has been placed under regulation and restraint. Those who engage in the traffic after the enactment of such a law, must be regarded as having notice from the beginning, that power of regulation is a continuing one, and that the State reserves to itself the right to deal with the subject as the special exigencies of the moment may require. They are bound to know that the license or permit has no force or vitality except as it derives it from the law under which it was issued, and that if the public good requires that the law be modified or repealed, no incidental inconvenience which they may suffer can stay the hand of the State. No one can acquire a vested right in the law. Even if it were conceded that a permit was possessed of some of the characteristics of property, or that it was a thing of value, in the eye of the law, it would still offer no impediment against the exertion of the police power."<sup>56</sup> "Even though the enforcement of an ordinance may operate to destroy a business theretofore lawful, and to seriously impair the value of property acquired under the sanction of a special law or charter, these considerations do not render the ordinance invalid or prevent its enforcement, when the protection of the public health or the promotion of the general welfare requires it."<sup>57</sup> "The licensee," said the court, in the case from which this lengthy quotation has been made, "acquired no vested right under the previous ordinance which was taken away, nor was there any contract relation existing, the obligation of which was impaired. When the promise is once established that one can acquire

<sup>56</sup> "The acknowledged police power of the State extends often to the destruction of property." License Laws, 5 How. 504, 577;

Mugler v. Kansas, 123 U. S. 623. 658; 8 Sup. Ct. 273.

<sup>57</sup> Citing *Fertilizing Co. v. Hyde Park*, 97 U. S. 659; and *Beer Co. v. Massachusetts*, 97 U. S. 25.

no vested right or contractual interest in a police regulation, the conclusion follows that subsequent regulations on the same subject cannot be retrospective in a technical sense.”<sup>58</sup>

<sup>58</sup> Moore v. Indianapolis, 120 Ind. 483; 22 N. E. 424.

The court concludes its opinion with this quotation from Stone v. Mississippi, 101 U. S. 814. “The contracts which the Constitution protects are those that relate to property rights, not governmental.”

See also Fitzgerald v. Witchard (Ga.), 61 S. E. 227 (where the license fee was increased after the license was issued), Cassidy v. Macon (Ga.), 66 S. E. 941.

This Indiana case is abundantly sustained by other cases to the same effect. Thus: “The law is now settled that the Legislature has the power to revoke licenses granted to retail liquor. Such a license is in no sense a contract by the State, county or city with the person taking out the license. It is simply a permit granted by the authorities to do business under the license; and the license may be revoked by the Legislature at any time.” Brown v. State, 82 Ga. 224; 7 S. E. 915; Calder v. Kurby, 5 Gray 597; Commonwealth v. Brennan, 103 Mass. 70; Martin v. State, 23 Neb. 371; 36 N. W. 554; Plenler v. State, 11 Neb. 547; Burnside v. Lincoln County Court, 86 Ky. 423; 7 S. E. 276; Metropolitan Board v. Barrie, 34 N. Y. 657; State v. Holmes, 38 N. H. 225; Freleigh v. State, 8 Mo. 606; State v. Sterling, 8 Mo. 697; Baltimore v. Clunet, 23 Md. 449; Fell v. State, 42 Md.

71; 20 Am. Rep. 83; McKinney v. Salem, 77 Ind. 213; State v. Burgoyne, 7 Lea 173; Bass v. Nashville, Meigs (Tenn.), 421; 33 Am. Dec. 154; State v. Morris, 77 N. C. 512; Sprayberry v. Atlanta, 87 Ga. 120; 13 S. E. 197; Stone v. Mississippi, 101 U. S. 814; Justice v. Commonwealth, 81 Va. 209; State v. Woodward, 89 Ind. 110. (The last five cases are cases of lottery licenses.) Frost v. State, 64 Miss. 188; 1 So. 49; Lacroix v. State, 50 Conn. 321; 47 Am. Rep. 648; Schwuchow v. Chicago, 68 Ill. 444.

“The granting of a license is not the execution of a contract, and the counsel for appellants are in error in assuming, as they do, that a license issued pursuant to a general law of the State is a contract. The enactment of a law regulating the liquor traffic is an exercise of the police power of the State. The police power is a governmental one, and permits obtained under laws enacted in its exercise are not contracts. In enacting laws for the regulation of the business of retailing liquor, a sovereign power is asserted, and its exercise does not confer upon any officer authority to make a contract which will abridge this great and important attribute of sovereignty. Sovereigns may make contracts which, under our Constitution, will preclude them from impairing vested rights by subsequent legislation, but this result never follows the exercise of a

As illustrating these statements, though not giving, by any means, all of the cases on the subject, it may be stated that

purely police power. The right to legislate for the promotion and security of the public safety, morals and welfare cannot be surrendered or bartered away by the Legislature. A license to retail liquor is nothing more than a mere permit; it is neither a contract nor a grant. The person who receives it takes it with the tacit condition and full knowledge that the matter is at all times within the control of the sovereign power of the State." *McKinney v. Salem*, 77 Ind. 213; *Shea v. Muncie*, 148 Ind. 14; 46 N. E. 138; *Metropolitan Board v. Barrie*, 34 N. Y. 659; *Voight v. Board*, 59 N. J. L. 358; 36 Atl. 686.

"Notwithstanding his payment of large sums of money for license fees both to the county and the city, his license could be revoked without refunding his money." *Haggart v. Stehlin*, 137 Ind. 43; 35 N. E. 997; *Shea v. Muncie*, 148 Ind. 14; 46 N. E. 138; *State v. Bonnell*, 119 Ind. 494; 21 N. E. 1101; *State v. Isabel*, 40 La. Ann. 340; 4 So. 1; *State v. Mulenhoff*, 74 Iowa, 271; 37 N. W. 329.

There is an occasional case holding that a license cannot be annulled, because it partakes of the nature of a contract. *State v. Baker*, 32 Mo. App. 98; *Watts v. Commonwealth*, 78 Ky. 329; *Adams v. Hickett*, 27 N. H. 289; 59 Am. Dec. 376; *State v. Andrews*, 28 Mo. 14; *Holt v. Commissioners*, 31 How. Pr. 334, *note*; *People v. Kansas*, 31 How. Pr.

334, *note*; *Gibbs v. State*, 74 Atl. 229; *State v. Doss*, 70 Ark. 312; 67 S. W. 867.

That licenses are not contracts to sell intoxicating liquors between the State and licensee, see *Powell v. State*, 69 Ala. 10; *Reed v. Ball*, 42 Miss. 472; *Coulson v. Harris*, 43 Miss. 728; *People v. Bashford*, 112 N. Y. Supp. 502; affirmed (N. Y. App. Div.), 112 N. Y. Supp. 1143; *Schweirman v. Highland*, 113 S. W. 507; *State v. Louis (La.)*, 49 So. 167; *State v. Grunald (La.)*, 49 So. 162; *State v. Flanders (La.)*, 49 So. 169; *Arie v. State (Okla.)*, 100 Pac. 23; *Ashembauch v. Carry*, 73 Atl. 436; *Moran v. Commonwealth*, 130 Mass. 138; 39 Am. Rep. 442; *Columbus City v. Cutcomp*, 61 Iowa 672; 17 N. W. 47; *La Croix v. Fairfield County*, 49 Conn. 591; *Moran v. Goodman*, 130 Mass. 158; 39 Am. Rep. 443; *Baker v. Pope*, 2 Hun 556; *Franklin v. Schermerhorn*, 8 Hun 112; *Kresser v. Lyman*, 74 Fed. 765; *La Croix v. Fairfield Co.*, 50 Conn. 321; 47 Am. Rep. 648; *Gutzweiler v. People*, 14 Ill. 142; *State v. Carney*, 20 Iowa 82; *Prohibitory Amendment Cases*, 24 Kan. 700; *State v. Bott*, 31 La. Ann. 663; 33 Am. Rep. 224; *Hadtner v. Williamsport*, 15 W. N. C. 138; *State v. Chester*, 39 S. C. 307; 17 S. E. 752; *Smith v. Knoxville*, 3 Head 245; *Rowland v. State*, 12 Tex. App. 418; *Martin v. State*, 23 Neb. 371; 36 N. W. 554; *Guy v. Cumberland Co. (N. C.)*, 29 S. E. 771.



a statute allowing a recovery from a person already licensed to sell liquors, for an injury caused by a person to whom he has sold liquor until he became intoxicated, is valid.<sup>59</sup> So is a law taking away the right to manufacture liquors under a license not yet expired;<sup>60</sup> and likewise declaring an unexpired license void and requiring of dealers to take out another license at a higher rate;<sup>61</sup> and so one authorizing a board to revoke a license without providing for a trial;<sup>62</sup> or to raise the fee for the unexpired term;<sup>63</sup> or to prohibit sales on Sundays.<sup>64</sup> So a law prohibiting sales, enacted while a license is in force, is valid;<sup>65</sup> as is a law authorizing a municipality to require an additional license of those already licensed by the State,<sup>66</sup> or requiring saloons to be closed by a certain hour in the evening.<sup>67</sup> In the consideration of the validity of statutes or ordinances annulling licenses in force, the question that no provision is made for a return of a proportionate amount of the license fee is not to be considered, for that fact does not render the statute or ordinance void.<sup>68</sup> The fact that a State has enacted a statute

<sup>59</sup> *Moran v. Goodman*, 130 Mass. 138; 39 Am. Rep. 443; *Baker v. Pope*, 2 Hun 556; *Franklin v. Schermerhorn*, 8 Hun 112.

<sup>60</sup> *Beer Co. v. Massachusetts*, 97 U. S. 525; 24 L. Ed. 989.

<sup>61</sup> *Kresser v. Lyman*, 74 Fed. 765; *Brown v. State*, 82 Ga. 224; 7 S. E. 915; *Gutzwiller v. People*, 14 Ill. 142; *Fell v. State*, 42 Md. 71; 20 Am. Rep. 83; *Commonwealth v. Brennan*, 103 Mass 70; *Metropolitan Board v. Barrie*, 34 N. Y. 657; *Hadtner v. Williamsport*, 15 Wkly. N. C 138; *Caldner v. Kurby*, 5 Gray 597; *Prohibitory Amendment Cases*, 24 Kan. 700; *Columbus City v. Cutcomp*, 61 Iowa, 672; 17 N. W. 47.

<sup>62</sup> *La Croix v. Fairfield*, 50 Conn. 321; 47 Am. Rep. 648; *Co-*

*lumbus City v. Cutcomp*, 61 Iowa 672; 17 N. W. 47.

<sup>63</sup> *Moore v. Indianapolis*, 120 Ind. 483; 22 N. E. 424; *Rowland v. State*, 12 Tex. App. 418; *Hadtner v. Williamsport*, 15 Wkly. N. C. 138.

<sup>64</sup> *State v. Bott*, 31 La. Ann. 363; 33 Am. Rep. 224; *State v. Calloway*, 11 Idaho 719; 84 Pac. 27.

<sup>65</sup> *Calder v. Kurby*, 5 Gray, 597; *State v. Chester*, 39 S. C. 307; 17 S. E. 752.

<sup>66</sup> *Hadtner v. Williamsport*, 15 W. N. C. 138; *Moore v. Indianapolis*, 120 Ind. 483; 22 N. E. 424.

<sup>67</sup> *Smith v. Knoxville*, 3 Head 245.

<sup>68</sup> *Gutzwiller v. People*, 14 Ill. 142; *Rowland v. State*, 12 Tex. App. 418; *Peyton v. Hot Springs*



requiring a license to sell liquor, or regulating its sale, does not prevent it changing the law not only with respect to the regulations but also with respect to the license.<sup>69</sup>

### Sec. 125. Revocation of license.

Since a license is not a contract, the Legislature may provide that on conviction of the licensee of a violation of the liquor law—or on his conviction of a violation of any other law, especially one involving moral turpitude—his license shall, by the act of conviction, be avoided or annulled.<sup>70</sup> So statutes under which licenses have been granted may be repealed and thereby the licenses be annulled without impairing the obligation of any contract between the State and licensee.<sup>71</sup> A statute authorizing a license board to revoke a license without providing for a trial has been held valid.<sup>72</sup> Even though the money paid for a license has been appropriated to a particular purpose and no provision is made for its return, yet the act revoking the license is valid.<sup>73</sup>

Co., 53 Ark. 236; 13 S. W. 764; see also *Lydick v. Korner*, 15 Neb. 500; 20 N. W. 26, and *Martel v. East St. Louis*, 94 Ill. 67; *State v. Chester*, 39 S. C. 307; 17 S. E. 752.

<sup>69</sup> *Reithmiller v. People*, 44 Mich. 280; 6 N. W. 667; *People v. Brown (Mich.)*, 48 N. W. 158; *Heck v. State*, 44 Ohio S. 536; 9 N. E. 305.

Of course, law *ex post facto* in effect and rendering a licensee criminally liable for past offense is invalid. *State v. Isabel*, 40 La. Ann. 340; 4 So. 1.

<sup>70</sup> *Hildreth v. Crawford*, 65 Iowa 339; 21 N. W. 667; *La Croix v. Fairfield Co.*, 50 Conn. 321; 47 Am. Rep. 648; *Martin v. State*, 23 Neb. 371; 36 N. W. 554; *Schwuchow v. Chicago*, 68 Ill. 444.

<sup>71</sup> *Littleton v. Burgess*, 13

Wyo. 261; 82 Pac. 864; *Brown v. State*, 82 Ga. 224; 7 S. E. 915; *People v. Flynn*, 110 N. Y. App. Div. 279; 96 N. Y. Supp. 655; reversing 48 N. Y. Misc. Rep. 159; 96 N. Y. Supp. 653; *Fell v. Maryland*, 42 Md. 71; 20 Am. Rep. 83; *Carbondale v. Wade*, 106 Ill. App. 654.

As a rule, however, a statute concerning licenses will be held to apply only to those issued thereafter, unless its explicit terms requires it to be applied to those issued before its passage. *State v. Andrews*, 26 Mo. 171.

<sup>72</sup> *La Croix v. Fairfield Co.*, 50 Conn. 321; 47 Am. Rep. 648; *Columbus City v. Cutcomp*, 61 Iowa 672; 17 N. W. 47.

<sup>73</sup> *Gutzwiller v. People*, 14 Ill. 142; *Calder v. Kurby*, 5 Gray 597; *Commonwealth v. Brennan*,

**Sec. 126. Amount of license fees.**

A larger license fee may be required in a city than in a town, or in a large city in population than in a small one. A classification according to population for the determination of the amount of license fee that may be charged is legitimate and a valid classification.<sup>74</sup> Practically, there is no limit on the amount of a fee that may be exacted for a license. The amount is a matter for the Legislature and not the courts; they have nothing to do with it. The Legislature may prohibit altogether the sale of liquors, unless some positive clause of the Constitution forbids the prohibition; and as a method of prohibition or *quasi*-prohibition it may fix the amount of the license fee so high as to make it an unprofitable adventure to engage in selling liquors.<sup>75</sup>

103 Mass. 70; Metropolitan Board v. Barrie, 34 N. H. 657; State v. Chester, 39 S. C. 307; 17 S. E. 752; Rowland v. State, 12 Tex. App. 418.

A few early cases held that a license cannot be revoked, on the ground that the licensee has a vested right in it. Adams v. Hickett, 27 N. H. 289; 59 Am. Dec. 376; Holt v. Commissioners, 31 How. Pr. 334, *note*; People v. Krushaw, 31 How. Pr. 344, *note*.

A statute authorizing a revocation of a liquor license on conviction of the licensee of having violated the liquor laws, is constitutional. Krueger v. Colville, 49 Wash. 295; 95 Pac. 81; People v. Flynn, 110 N. Y. App. Div. 279; 96 N. Y. Supp. 655; reversing 48 N. Y. Misc. Rep. 159; 96 N. Y. Supp. 653.

A statute requiring the licensee, in a proceeding to revoke his license, to deny under oath every alleged violation set out in the petition and raise an issue as to

any material fact, or the license issued be cancelled, is unconstitutional, in that it permits the taking of property without due process of law. *In re Collian*, 82 N. Y. App. Div. 445; 81 N. Y. Supp. 567.

Where an order prohibiting sales of liquor in a particular district is set aside, and then a license issued for such district; and thereafter a prohibition order is again issued, the order annuls such license and is valid. State v. Doss, 70 Ark. 312; 67 S. W. 867.

<sup>74</sup> State v. Circuit Court, 50 N. J. L. 585; 15 Atl. 272. See State v. Keaough, 68 Wis. 135; 31 N. W. 723; Commonwealth v. Smoulter, 126 Pa. St. 137; 17 Atl. 532; Commonwealth v. Miller, 126 Pa. St. 137; 17 Atl. 623; Foster v. Burt, 76 Ala. 229.

<sup>75</sup> Dennehy v. Chicago, 140 Ill. 627; State v. Roberts, 74 N. H. 476; 69 Atl. 722; 12 N. E. 227; Coffey v. Elizabethtown (Ky.), 99

Nor can it be urged that the cost of issuing the license is out of all proportion to the amount of the fee charged, for "liquor dealers are subjected to the payment of a special tax because the object of this class of legislation is to restrict the business. \* \* \* The theory of the legislation upon this subject is that the business is one which requires restraint because it is harmful to society."<sup>76</sup> And if the Legislature has empowered a city to exact a license fee, not limiting it in amount, it cannot be held that the ordinance is void because the fee is a large one.<sup>77</sup>

### Sec. 127. Increasing amount of fee before license has expired.

Since no one has a natural right to sell intoxicating liquors, nor a vested right in a license, a license may be revoked before it has expired; or a larger fee may be re-

S. W. 608; 30 Ky. L. Rep. 706 (\$1,000); United States Distilling Co. v. Chicago, 112 Ill. 19; 1 N. E. 166; Tenney v. Lenz, 16 Wis. 566; New Orleans v. Clark, 42 La. Ann. 9; 7 So. 58; *In re Guerrero*, 69 Cal. 88; 10 Pac. 261; Commonwealth v. Fowler, 96 Ky. 166; 28 S. W. 786; Commonwealth v. Fowler, 98 Ky. 648; 34 S. W. 31.

<sup>76</sup> *Emerich v. Indianapolis*, 118 Ind. 279; 20 N. E. 795.

<sup>77</sup> *Indianapolis v. Bieler*, 138 Ind. 30; 36 N. E. 857 (\$1,000).

An ordinance requiring \$25 a month has been held valid. *Ex parte Benninger*, 64 Cal. 291; 30 Pac. 846; and also one requiring a license to be taken out every ninety days. *In re Hurl*, 49 Cal. 557; or \$200 annually. *Ex parte McNally*, 73 Cal. 632; 15 Pac. 368.

A statute requiring \$500 for a license every year in cities and towns where total vote exceeds

150, \$300 in all other cities and towns, and \$100 for hotel and tavern keepers three or more miles distant from any city or town was held to be reasonable and not an unjust discrimination. *State v. Doherty*, 2 Idaho 1105; 29 Pac. 855. So an ordinance imposing a license fee of \$1,000 is valid. *State v. Hardy*, 7 Neb. 377; *Indianapolis v. Bieler*, 138 Ind. 30; 36 N. E. 857.

License fees may be graded according to the population of cities, or one amount for a city and another for a town. *Amador County v. Kennedy*, 70 Cal. 458; 11 Pac. 757; *Amador County v. Isaacs*, 11 Pac. 758.

A statute dividing the city license fees between the city and the county is valid, although the city by its original charter was entitled to the whole of the fee. *Winona v. Whipple*, 24 Minn. 61.

quired for the time it has yet to run. And a city, unless expressly restrained by statute, has the power to make such an exaction.<sup>78</sup>

### Sec. 128. License for and sales by druggists.

A State has full power to require all druggists selling intoxicating liquors to take out a license; and fixing the license fee at fifty dollars is not an unconstitutional abuse of its power, though in certain localities it may have the effect to absolutely prohibit a druggist selling such liquors.<sup>79</sup> And a statute requiring all sales by a druggist to be based upon a physician's prescription is valid.<sup>80</sup> The Legislature may even prescribe the form of the prescription, and make it an offense to sell liquor upon any other form.<sup>81</sup>

### Sec. 129. Limiting licenses to a certain class of persons.

Not only may a State require a license of all persons selling intoxicating liquors—even in case of a single sale—but it may limit the right to obtain such a license to a certain class of persons, and in doing so violate no provisions of the Constitution. "The general rule undoubtedly is, that any person is at liberty to pursue any lawful calling, and to do

<sup>78</sup> *Moore v. Indianapolis*, 120 Ind. 483; 22 N. E. 424; *Rowland v. State*, 12 Tex. App. 418. See also *Silver v. Sparta*, 107 Ga. 275; 33 S. E. 31. *Contra*, *State v. Baker*, 32 Mo. App. 98.

The passage of a law increasing the amount of the license fee operates as a revocation of a license already issued, unless the additional amount is paid. *Rowland v. State*, 12 Tex. App. 418.

A city, after a county license is issued, may pass an ordinance requiring the licensee, if he desires to sell, to take out a city license. *Hadtner v. Williamsport*, 15 Wkly. N. C. 138.

<sup>79</sup> *Commonwealth v. Fowler*, 96 Ky. 166; 28 S. W. 786; *Commonwealth v. Fowler*, 98 Ky. 648; 34 S. W. 21; *State v. Forcier*, 65 N. H. 42; 17 Atl. 577; *State v. Heinemann*, 80 Wis. 253; 49 N. W. 818; 27 Am. St. 34; *Seattle v. Foster*, 47 Wash. 172; 91 Pac. 642.

<sup>80</sup> *Edgar v. State*, 46 Tex. Civ. App. 171; 102 S. W. 439. *Ex parte Fedderwitz*, 130 Cal. xviii; 62 Pac. 935. See *Sweeney v. Webb*, 33 Tex. Civ. App. 324; 76 S. W. 766; 77 S. W. 1135.

<sup>81</sup> *Hotson v. Commonwealth (Ky.)*, 105 S. W. 955; 32 Ky. L. Rep. 392.



so in his **own** way, not encroaching upon the rights of others. This general right cannot be taken away. It is not competent, therefore, to forbid any person or class of persons, whether citizens or resident aliens, offering their services in lawful businesses, or to subject others to penalties for employing them.<sup>82</sup> But here, as elsewhere, it is proper to recognize distinctions that exist in the nature of things, and under some circumstances to inhibit employments to some one class while leaving them open to others. Some employments, for example, may be admissible for males and improper for females, and regulations recognizing the impropriety and forbidding women engaging in them would be open to no reasonable objection.<sup>83</sup> The same is true of young children, whose employment in mines and manufactories is commonly, and ought always, to be regulated.<sup>84</sup> And some employments in which integrity is of vital importance it may be proper to treat as privileges merely, and to refuse the license to follow them to any who are not reputable.”<sup>85</sup> This quotation illustrates the scope of the State acting within its police powers in the designation of what certain classes shall not be permitted to follow certain occupations, and also in limiting the right to follow other occupations to a certain class. It is with the latter that we are here concerned. A statute restricting the issuance of a license, to sell intoxicating liquors, to an inhabitant of the State who is a male twenty-one years of age, and who must be of good moral character, is constitutional, although one merely a citizen be deprived of the right to obtain a license.<sup>86</sup> The State may even go farther than this and limit the license

<sup>82</sup> Citing *Baker v. Portland*, 5 Sawyer 566.

<sup>83</sup> Citing *Blair v. Kilpatrick*, 40 Ind. 312. *In re Ouong Woo*, 13 Fed. 229, and *Bergman v. Cleveland*, 39 Ohio St. 651.

<sup>84</sup> Citing *Commonwealth v. Hamilton*, 120 Mass. 383.

<sup>85</sup> *Cooley on Const. Lim.* (6 ed.), 744.

<sup>86</sup> *Thomasson v. State*, 15 Ind.

449; *Robinson v. Miner*, 68 Mich. 549; 37 N. W. 21; *In re Ruth*, 32 Iowa 250; *In re Bickerstaff*, 70 Cal. 35; 11 Pac. 393; *Schwuchow v. Chicago*, 68 Ill. 444; *In re Lunt*, 6 Greenl. 412; *City Council v. Ahrens*, 4 Strobh. 241; *State v. Trageser*, 73 Md. 250; 20 Atl. 905; 25 Am. St. 587; 9 L. R. A. 780; *Boomershine v. Uline*, 159 Ind. 500; 65 N. E. 513.



to such persons as qualified physicians or registered druggists.<sup>87</sup> So a statute prohibiting the sale of liquor by any person not importing it, is valid.<sup>88</sup> A statute restricting the right to a license to males has been held valid.<sup>89</sup>

### Sec. 130. Discrimination in granting licenses.

Neither the Legislature nor a municipality has the power to discriminate between citizens of the same class in the granting of a license.<sup>89\*</sup> It must treat them all alike. It has, however, as has been elsewhere noted, the power to limit the granting of a license to persons of good moral char-

<sup>87</sup> Koester v. State, 36 Kan. 27; 12 Pac. 339; Sarrls v. Commonwealth, 83 Ky. 327; 7 Ky. L. Rep. 473. *In re* Intoxicating Liquor Cases, 25 Kan. 751; 37 Am. Rep. 284; McAllister v. State, (Ala.), 47 So. 161; State v. Lindgron, 1 Kan. App. 51; 41 Pac. 688.

A druggist cannot complain that he is put upon the same plane as a retailer of liquors as a beverage. *Rosenham v. Commonwealth*, 7 Ky. L. Rep. 590.

<sup>88</sup> Wynehamer v. People, 20 Barb. 567.

An ordinance of a city authorizing an exclusive contract with a particular person for the sale of liquors in a particular city park has been held valid and not to create a special privilege within the clause of a Constitution providing that no law conferring "irrevocable grant of special privileges or immunities can be passed by the General Assembly," and that "the General Assembly shall not pass any local or special law granting to any corporation, association or individual any special or exclusive right, privilege or immunity."

*State v. Schweickardt*, 109 Mo. 496; 19 S. W. 47.

<sup>89</sup> Blair v. Kilpatrick, 40 Ind. 312; Blair v. Rutenfram, 40 Ind. 318; Walsh v. State, 126 Ind. 71; 25 N. E. 883; 9 L. R. A. 664.

A statute providing that no person except certain tavern owners shall sell intoxicating liquors in a named district without a license is void, because it confers special rights; the exception having the effect to protect holders of licenses then in force. *Commonwealth v. Petrie Co.*, 90 S. W. 987; 28 Ky. L. Rep. 940.

An ordinance discriminating between persons of the same class is void. *Popel v. Monmouth*, 81 Ill. App. 512.

A male cannot complain of a statute that he has violated because it does not permit a female to take out a license. *Wagner v. Garrett*, 118 Ind. 114; 20 N. E. 706; *Linkenhelt v. Garrett*, 118 Ind. 599; 20 N. E. 708.

<sup>89\*</sup> *State v. New Orleans*, 113 La. 371; 36 So. 999; *Cairo v. Feuchter Bros.*, 59 Ill. App. 112; affirmed 159 Ill. 155; 42 N. E. 308.

acter; and in so doing it does not violate any constitutional provisions. For no one has an inherent right to sell intoxicating liquors.<sup>90</sup> But it may not select out certain persons of those having good moral character and authorize the granting to him a license to the exclusion of others in the same class, though it may require qualifications in addition to those of a good moral character; but those in that class must be all treated alike. And, as has been elsewhere said, statutes may prohibit the granting of a license to women, or to anyone who cannot obtain the consent of those in the neighborhood of the place to be licensed;<sup>91</sup> or to those not citizens or residents of the city or county wherein granted.<sup>92</sup> Nor is a statute void which gives a city the power to require a license to sell liquors within four miles of the corporate limits, on the ground that it discriminates between persons;<sup>93</sup> nor is an ordinance void which imposes a larger license tax on retailers of liquor than on retailers of other articles.<sup>94</sup> A city may classify occupations for the purpose of the imposition of license taxes according to annual sales.<sup>95</sup> An ordinance, so long as it does not discriminate between persons, that imposes different rates for licenses according to the locality in which the saloon licensed is located, is valid.<sup>96</sup> A statute requiring of liquor dealers a bond, conditioned not to sell liquor to drunkards after notice, and imposing a State and county tax, payable a year in advance, is valid, not discriminating against citizens engaged in the liquor trade nor denying to any person the equal protection of the law.<sup>97</sup> Requiring of vendors of liquors a license

<sup>90</sup> *Crowley v. Christensen*, 137 U. S. 86; 11 Sup. Ct. 13; *Ex parte Christensen*, 85 Cal. 208; 24 Pac. 747.

<sup>91</sup> *Crowley v. Christensen*, *supra*.

<sup>92</sup> *Kohn v. Melcher*, 29 Fed. 433; *DeGrazier v. Stephens* (Tex.), 105 S. W. 992.

<sup>93</sup> *Jordan v. Evansville*, 163 Ind. 512; 72 N. E. 544; 67 L. R. A. 613.

<sup>94</sup> *Ex parte Hurl*, 49 Cal. 557.

<sup>95</sup> *Williamsport v. Wenner*, 172 Pa. St. 173; 33 Atl. 544.

<sup>96</sup> *East St. Louis v. Wehrung*, 46 Ill. 392. *Contra*, *Board v. Renfro* (Ky.), 58 S. W. 795; 22 Ky. L. Ren. 806; 51 L. R. A. 897.

<sup>97</sup> *Giozza v. Tiernan*, 148 U. S. 657; 13 Sup. Ct. 721; 37 L. Ed. 599.

cannot be objected to on the ground that the requirement lays upon them a tax which compels them to pay more toward the support of the government than others not so engaged are compelled to pay.<sup>98</sup> So a statute dividing liquor dealers into two classes and providing regulations applicable to one and not to the other, is valid.<sup>99</sup> So a tax on wholesale dealers in malt liquors and not on wholesalers of spirituous and vinous liquors is valid, being merely a classification of occupations, a thing not prohibited by the Constitution.<sup>1</sup> So a statute prohibiting the manufacture and sale of all liquors except cider and wine made in the State has been held not such a discrimination as renders it void.<sup>2</sup> So a statute requiring all liquor dealers to pay a license fee of ten dollars for the support and maintenance of an asylum for inebriates is valid, not imposing an unequal tax.<sup>3</sup> A statute requiring a license to sell liquors, but excepting persons selling at wholesale in quantities exceeding five gallons per sale is valid.<sup>4</sup> So a statute forbidding any person except the proprietor and his family being in a saloon during hours when sales are prohibited is valid.<sup>5</sup> A statute may prohibit sales in less quantities than four gallons in a single package except in licensed saloons, and not be open to the charge of an unjust discrimination.<sup>6</sup> A section of a statute authorized a city to exact a license for sales in less quantities than one gallon, another section fixed the fee for a year, and a third section prescribed a penalty for sales of such quantities without a license except druggists who secure a permit to sell for medicinal purposes. The city enacted an ordinance providing that any person, not a licensee or holding such a

<sup>98</sup> *Keller v. State*, 11 Md. 525; 69 Am. Dec. 226.

<sup>99</sup> *Meehan v. Board*, 75 N. J. L. 557; 70 Atl. 363; affirming 73 N. J. L. 382; 64 Atl. 689.

<sup>1</sup> *Cooper v. Hot Springs*, 87 Ark. 12; 111 S. W. 997.

<sup>2</sup> *State v. Brennan*, 25 Conn. 278; *State v. Wheeler*, 25 Conn. 290.

<sup>3</sup> *State v. Cassidy*, 22 Minn. 312; 21 Am. Rep. 765; *State v. Klein*, 22 Minn. 328.

<sup>4</sup> *State v. Bock*, 167 Ind. 559; 79 N. E. 493.

<sup>5</sup> *State v. Calloway*, 11 Idaho 719; 84 Pac. 27.

<sup>6</sup> *People v. Harrison*, 191 Ill. 257; 61 N. E. 99; affirming 92 Ill. App. 643; *McAllister v. State* (Ala.), 47 So. 161.

permit, who should sell liquors in any quantities should be fined. This ordinance was held invalid because it unjustly discriminated between persons of the same class, by permitting persons having licenses to sell liquors in quantities of less than a gallon to sell in quantities of a gallon or more, and yet prohibited all others selling in quantities of a gallon or more.<sup>7</sup> Where a liquor law applies to all persons alike it does not deny any person the equal protection of the law,<sup>8</sup> and a statute forbidding saloons to be open on Sundays and excepting certain other places from its operations is valid, not being a discrimination between different persons.<sup>9</sup> A statute provided that: "The failure to carry prohibition in a county shall not prevent an election for the same from being immediately thereafter held in a justice's precinct or subdivision of such county as designated by the commissioners' court, or of any town or city in such county; nor shall the failure to carry prohibition in a town or city prevent an election from being immediately thereafter held for the entire justice's precinct or county in which said town or city is situated; nor shall the holding of an election in a justice's precinct in any way prevent the holding of an election immediately thereafter for the entire county in which the justice's precinct is situated; but when prohibition has been carried at an election ordered for the entire county, no election on the question of prohibition shall be thereafter ordered in any justice's precinct, town or city of said county until after prohibition has been defeated at a subsequent election for the same purpose, ordered and held for the entire county, in accordance with the provisions of this title; nor in any case where prohibition has carried in any justice's precinct shall an election on the question of prohibition be ordered thereafter in any town or city of such precinct until after prohibition has been defeated at a subsequent election ordered and held for such entire precinct."

<sup>7</sup> *Monmouth v. Popel*, 183 Ill. 634; 56 N. E. 348; affirming 81 Ill. App. 512.

28 Atl. 1089; *Corbin v. Houlehan*, 100 Me. 246; 6 Atl. 131.

<sup>9</sup> *State v. Dolen*, 13 Idaho, 693;

<sup>8</sup> *State v. Hodgson*, 66 Vt. 134; 92 Pac. 995; *Ex parte Jacobs*, 13 Idaho, 720; 92 Pac. 1003.



It was held that the act was valid and not objectionable on the ground that it discriminated in favor of prohibitionist and denied to anti-prohibitionist the equal protection of the law.<sup>10</sup> Requiring licensees to sell liquors to give bonds conditioned to pay all civil damages incurred by the licensees in making illegal sales is not an unjust discrimination.<sup>11</sup> But a statute forbidding liquor dealers to become sureties on such bonds is void, because it is an unjust discrimination, the Legislature not having the power to make the right to sign the bond to depend upon the business in which one is engaged. "The right to contract a debt or other personal obligation is included in the right to liberty, and one's payment of his debts, and, therefore, the basis of one's credit, and the right to contract a debt, or to enter into a bond or other writing or obligation, is also a right of property. Signing bonds for other parties may be the result of friendship, or because of business interests; but the right to pledge one's estate is as much a right of property as either the title or possession."<sup>12</sup> A statute is not void because by local option it gives the county the opportunity to prohibit druggists of the county selling liquors therein, and yet does not prohibit them selling in other counties.<sup>13</sup>

### Sec. 131. Discretionary power to grant a license.

Many statutes make it discretionary with the issuing committee or board to grant a license to sell liquors, and these statutes have been repeatedly assailed. They have been assailed on the ground that the State has rendered the sale

<sup>10</sup> Rippy v. State, 68 S. W. 687.

<sup>11</sup> Bell v. State, 28 Tex. App. 96; 12 S. W. 410; McGuire v. Glass (Tex.), 15 S. W. 127; Kennedy v. Garrigan (S. D.), 121 N. W. 783.

<sup>12</sup> Kuhn v. Common Council, 70 Mich. 534; 38 N. W. 470.

<sup>13</sup> People v. Shuler, 36 Mich. 161; 98 N. W. 986; 10 Detroit L. News, 1004.

The imposition of a license of \$500 on retailers and \$100 on wholesalers, but providing that a wholesale license should not be required of retailer selling at wholesale, is void, as an unjust discrimination, enabling the retailer thereby procuring his wholesale license for nothing. *Curo v. Fuchter Bros.*, 54 Ill. App 112; affirmed 159 Ill. 155; 42 N. E. 308.



of liquors under license a lawful transaction, and to engage in the business of selling liquors is a lawful occupation, and, therefore, the Legislature has no power to invest the licensing board or committee with discretionary power to grant a license to one person and refuse it to another who is equally fit to engage in the business of selling liquors. But these statutes have been almost universally, if not quite, upheld. It is said that no one has an inherent right to engage in the sale of intoxicating liquors; and the State may, therefore, empower a local board to exercise its discretion in licensing or refusing a license to applicants for permits.<sup>14</sup> Such a law does not deny to persons the equal protection of the laws.<sup>15</sup> A statute making it discretionary with a licensing board to accept or reject the bond tendered by the applicant, where a bond is required before the license can be granted, is constitutional.<sup>16</sup> So one prohibiting the clerks of the circuit courts issuing licenses to anyone until the grand jury of the county recommends such one, is constitutional.<sup>17</sup> But a statute providing that the local board shall refuse to issue a license to any person whom the members of it know to be unfit to conduct the business, and authorizing the county treasurer to require a new bond in any contingency which he may think requires it, is invalid, because it submits one to the will of his neighbor.<sup>18</sup>

### Sec. 132. Appeal to courts from granting, refusing or revoking licenses.

The granting or refusing to grant a license is purely an administrative part of the power of a government and not

<sup>14</sup> *In re Hoover*, 30 Fed. 51; affirmed in *United States v. Ronan*, 33 Fed. 117; *Gray v. Connecticut*, 159 U. S. 74; 15 Sup. Ct. 985; 40 L. Ed. 80; *State v. Gray* 61 Conn. 39; 22 Atl. 675; *Thurlow v. Massachusetts*, 5 How. 504; 12 L. Ed. 256.

<sup>15</sup> *State v. Gray*, 61 Conn. 39; 22 Atl. 675.

<sup>16</sup> *Duay v. Shepard*, 150 Mich. 547; 114 N. W. 238; 14 Detroit Leg. N. 700; *Burke v. Collins*, 18 S. D. 190; 99 N. W. 1112; *Ex parte Christensen*, 85 Cal. 208; 24 Pac. 747; *Ex parte Holinquist*, 27 Pac. 1099; *Plenler v. State*, 11 Neb. 547; 10 N. W. 481.

<sup>17</sup> *Cohen v. Jarrett*, 42 Md. 571.

<sup>18</sup> *Robison v. Mines*, 68 Mich. 549; 37 N. W. 21.

a judicial part of it. But the tendency of the Legislature, largely due to the failure of administration boards to properly perform their duties, owing in part to an indifference on their part to the proper execution or enforcement of the law, or because of politically corrupt influence—political cowardice, if you so please to call it—or because of the ignorance or inefficiency of those charged with the duty of granting, refusing or revoking licenses, has been to cast upon the courts the burden of hearing applications for licenses, remonstrances thereto, and petitions for their revocation. In other lines of the administration of the affairs of a State there has been a decided growth in the tendency to place the burden upon the courts in such matters in the last quarter of a century. In the early judicial history of this country such statutes were regarded with jealousy by the courts, as casting upon them a burden belonging to another department of the Government; and the courts felt that it was not within the power of the Legislature to assign them duties properly belonging to the administrative department of the Government. In addition to this, as the judiciary is the weakest branch of the three great departments of the State, it was necessary for it to regard with jealousy all encroachments upon its domains and to refuse to take on burdens not of a judicial character. But in recent years there has been a manifest yielding on this point. More and more the Legislature has sought to cast upon the courts the administration of the affairs of the government; and more and more the courts have yielded and sought for reasons to uphold such statutes. The action of the Legislature is a high compliment to the integrity of the courts and a signal manifestation of its confidence in their ability and integrity. There will be found many cases where the right to have a license has been determined on appeal from licensing boards to the courts.<sup>19</sup>

<sup>19</sup> As in Virginia, *Lester v.* 785; *Miller v. Wade*, 58 Ind. 91; *Price*, 83 Va. 648; 3 S. E. 529; *Goodwin v. Smith*, 72 Ind. 113; in Nebraska, *State v. Borsfield*, *Castle v. Bell*, 145 Ind. 8; 44 N. E. 2; in Kentucky, *Hoglan v. Commonwealth*, 3 Bush 147; in Indiana, *Groscap v. Rainier*, 111 Ind. 361; 12 N. E. 694; *State v. Pennsylvania, In re Goldman*, 138 Sopher, 157 Ind. 360; 61 N. E. Pa. St. 321; 22 Atl. 23.

The usual line of reasoning, in order to sustain these statutes allowing an appeal to the courts, is, that before a license can be issued the licensing board must find certain facts—as, the applicant is a resident of the State, or a man of good moral character, or that the necessary and qualified persons have signed his application or given their consent—and that the finding of such facts is such a judicial act or determination as authorizes the court to hear and pass upon the sufficiency of the proof to sustain them, and, therefore, in ascertaining these facts the court acts judicially and not administratively. Therefore, statutes allowing appeals in such instances have been upheld, even though there was involved the question of an abuse of discretion on the part of the licensing board in refusing the license.<sup>20</sup>

<sup>20</sup> Appeal of Moynihan, 75 Conn. 358; 53 Atl. 903.

The inebriate law of Minnesota was held invalid so far as it conferred powers on the Probate Judge in relation to the commitment of inebriates. *Foreman v. Hennepin County*, 64 Minn. 371; 67 N. W. 207.

Judicial powers cannot be conferred upon administration officers. *State v. Bates*, 96 Minn. 110; 104 N. W. 709; *People v. Colleton*, 59 Mich. 573; 26 N. W. 771.

A statute requiring a court to appoint an Excise Board for a city does not require the exercise of judicial power. *Schwarz v. Dover*, 72 N. J. L. 311; 62 Atl. 1135; affirming 70 N. J. L. 502; 57 Atl. 394.

In West Virginia the section of the Constitution committing to county courts the superintendence of internal police under such regulations as may be prescribed by

law, and that no license for sale of liquor in any municipality shall be granted without the consent of the authorities, is not self-executing, and is operative only when there is a law in force conferring such jurisdiction in specified instances on the court. *State v. Harden*, 62 W. Va. 313; 58 S. E. 715; 60 S. E. 394. Such clause will not be construed as to deny the power in the Legislature to withhold or take from the power to grant or refuse licenses; for that renders the word "regulating" useless for any purposes. *State v. Harden, supra*.

A statute providing that no license shall be issued if a majority of the voters in the township remonstrate against its issuance, does not violate the provisions of the Constitution providing that all judicial powers shall be vested in the courts. *Hoop v. Affleck*, 162 Ind. 564; 70 N. E. 978.

**Sec. 133. Taxes and fees.**

It is no longer a question of doubt that the State may not only levy a tax against intoxicating liquors and the property used in connection with their sale, but also upon the liquor business, whether the business be one of wholesale or retail. It may even go farther and declare who are liquor dealers.<sup>21</sup> Not only is this true, but the legislation cannot be held unconstitutional where it levies a lump sum upon each person engaged in selling liquors, on the ground that it violates the provisions of the Constitution providing for a uniform rate of taxation, because that provision relates to the general levy alone. "An excise is a direct tax; but, in this case, taxation was not the object of imposing it, and the Legislature was not bound to appropriate its proceeds to any object for which the State is forbidden to raise money by local or special taxation. It was imposed in the exercise of the rightful police power of the State, and is an incident of a legitimate police regulation. Hence, it is not within the prohibition \* \* \* of the Constitution, prohibiting local and special taxation for State purposes."<sup>22</sup> The tax may be levied upon the sales, although by that method one dealer pays more tax than another. Such was the case with the "register" or "bell punch"

<sup>21</sup> Indianapolis v. Bieler, 138 Ind. 40; 20 N. E. 795; Kurth v. State, 87 Tenn. 134; 5 So. 593; State v. Rouch (Ohio), 25 N. E. 59; Senior v. Ratterman, 44 Ohio St. 661; 11 N. E. 321; Portwood v. Baskett, 64 Miss. 213; 1 So. 105; Emerick v. Indianapolis, 118 Ind. 279; 20 N. E. 795; Westinghausen v. People, 44 Mich. 265; 6 N. W. 645; *Ex parte* Marshall, 64 Ala. 266; Albrecht v. State, 8 Tex. App. 216; Hodgson v. New Orleans, 21 La. Ann. 301; Duroch's Appeal, 62 Pa. 491; Straub v. Gordon, 27 Ark. 625; Harris v. State, 4 Tex. App. 131; Longville v. State, 4 Tex. App. 312;

Carr v. State, 5 Tex. App. 153; State v. Rock, 9 Tex. 369.

That a "dispensary" law is not a tax law, see Farmville v. Walker, 101 Va. 323; 43 S. E. 558.

<sup>22</sup> Thomasson v. State, 15 Ind. 449; Parsons v. People, 32 Col. 221; 76 Pac. 666; State v. Hudson, 78 Mo. 302; Senior v. Ratterman, 44 Ohio St. 661; 11 N. E. 321; Lovington v. Board, 99 Ill. 564; Brown-Foreman Co. v. Commonwealth (Ky.), 101 S. W. 321; 30 Ky. L. Rep. 793; Kenney v. Harwell, 42 Ga. 416; Bohler v. Schneider, 49 Ga. 195; Brown v. State, 73 Ga. 38.



law of Texas, which was held valid.<sup>23</sup> The State may constitutionally make it a penal offense for a failure to pay the tax;<sup>24</sup> and may authorize its usual tax collecting officers to collect the tax.<sup>25</sup> The tax must not, however, discriminate against the citizens or products of other States.<sup>26</sup> A tax upon the keeper of a brewery is authorized by a provision of the Constitution permitting a tax to be levied and an income tax imposed on all persons, occupations, trades and callings.<sup>27</sup> The State may impose a tax upon distilled spirits in United States bonded warehouses.<sup>28</sup> But a tax cannot be levied upon beer manufactured for sale within the State if beer manufactured for sale without the State is exempted from it.<sup>29</sup> And an inspection fee cannot be demanded for inspecting liquors manufactured for sale within the State while no inspection or fee is required for those manufactured within for sale without the State.<sup>30</sup> The State may delegate to municipalities the power to levy a tax on dealers in intoxicating liquors, such a law not infringing that provision of the Constitution wherein the power of taxation is given to the Legislature.<sup>31</sup> It may even declare the tax a lien upon the property of the dealer,<sup>32</sup> or lessor.<sup>33</sup> A statute assessing a tax on liquors against the

<sup>23</sup> *Albrecht v. State*, 8 Tex. App. 216; *Napier v. Hodges*, 31 Tex. 287; *State v. Volkman*, 20 La. Ann. 585.

<sup>24</sup> *Tonella v. State*, 4 Tex. App. 325; *Longville v. State*, 4 Tex. App. 312.

<sup>25</sup> *Adler v. Whitbeck*, 44 Ohio St. 539; 9 N. E. 672.

<sup>26</sup> *Tiernan v. Rinker*, 102 U. S. 123; *Welton v. Missouri*, 91 U. S. 275; *Walling v. Michigan*, 116 U. S. 446; 6 Sup. Ct. 454; *Lyng v. Michigan*, 135 U. S. 161; 10 Sup. Ct. 725; *Schmidt v. Indianapolis*, 168 Ind. 631; 80 N. E. 632; *People v. Lyng*, 74 Mich. 579; 42 N. W. 139.

<sup>27</sup> *State v. Volkman*, 20 La. Ann. 585.

<sup>28</sup> *Thompson v. Commonwealth*, 123 Ky. 302; 94 S. W. 654; 29 Ky. L. Rep. 705; *Rosenfield Bros. Co. v. Commonwealth (Ky.)*, 29 Ky. L. Rep. 1179; 96 S. W. 134.

<sup>29</sup> *State v. Bengsch*, 170 Mo. 81; 70 S. W. 710.

<sup>30</sup> *State v. Eby*, 170 Mo. 497; 71 S. W. 52.

<sup>31</sup> *United States Distilling Co. v. Chicago*, 112 Ill. 19; 1 N. E. 166.

<sup>32</sup> *Newton v. McKay (Iowa)*, 102 N. W. 827; *Bolton v. McKay (Iowa)*, 102 N. W. 1131; *Carstairs v. Cochran*, 95 Md. 488; 52 Atl. 601.

<sup>33</sup> *Anderson v. Brewster*, 44 Ohio St. 576; 9 N. E. 683.



person having them in his possession, requiring him to pay the tax, and giving him a lien on the liquor for the amount he pays, is valid under a provision of the Constitution declaring that every person holding property in the State should contribute to a public tax according to his actual worth. It is a tax on the owners of the property and not a tax on the property itself or on the possessor of the liquors, he being merely the agent of the State to collect the tax.<sup>34</sup>

<sup>34</sup> Carstairs v. Cochran, 95 Md. 488; 52 Atl. 601.

See Parsons v. People, 32 Col. 221; 76 Pac. 666, where \$25 license fee per annum was construed to be an "annual" tax.

It is no objection that the taxes are not assessed according to the business transacted, *Youngblood v. Sexton*, 32 Mich. 406; nor is it an objection that the statute is in conflict with the constitutional provision for a uniform rate of taxation. *Straub v. Gordon*, 27 Ark. 625; *Brown v. Chicago*, 110 Ill. 186; *Burlington v. Insurance Co.*, 31 Iowa 102; *Falmouth v. Watson*, 5 Bush 660; *Ash v. People*, 11 Mich. 347; *Johnson v. Philadelphia*, 60 Pa. St. 491; *Commonwealth v. Byrne*, 20 Gratt. 165.

If the apparent scope of the license law is not to prohibit the sale of liquors, but to regulate it, with a view of obtaining a revenue, it is not constitutional on the ground that it abridges the right of citizens in the pursuit of their employment. *In re Bickerstaff*, 70 Cal. 35; 11 Pac. 393.

The Ohio "Dow" liquor law was sustained on the theory that it was a revenue measure and not a license measure, the Constitution of that State prohibiting the

granting of licenses. *Rayman Brewing Co. v. Brister*, 179 U. S. 445; 21 Sup. Ct. 201; 45 L. Ed. 269; affirming 92 Fed. 28; *Adler v. Whitbeck*, 44 Ohio St. 539; 9 N. E. 672; *Anderson v. Brewster*, 44 Ohio St. 576; 9 N. E. 683. Earlier statute invalid. *State v. Sinks*, 42 Ohio St. 345. See also to the same effect *Youngblood v. Sexton*, 32 Mich. 406; 20 Am. Rep. 654; *People v. Lyng*, 74 Mich. 579; 42 N. W. 139.

A statute of South Dakota provided for an annual license fee of \$400, the license year beginning July 1st., to be paid the county treasurer, or a *pro rata* sum if the license be granted after July 1st. The statute required the applicant for a license to file a bond, allowed the city, town or township to levy and collect an additional license fee, to be paid before the applicant began business. A license could be refused if the authorities deemed him an unfit person, in which event his money was returned on a warrant issued by the Board of County Commissioners. The fees paid the county treasurer were placed by him to the credit of the county's general fund, and of each license fee received he was required to "transmit the sum of \$150 to the

### Sec. 134. Taxes must be uniform.

It is axiomatic in constitutional law that taxes must be uniform and not discriminatory.<sup>35</sup> A law taxing all of a class alike is valid, though it taxes those of another class at a different rate. Thus, a law taxing all liquor dealers within five miles of a town at one price and those at wayside inns at less is valid, because each forms a distinct class.<sup>36</sup> But where a statute levied an annual tax of \$25 on all liquor dealers, and provided that no one should engage in selling liquor without obtaining the written consent of two-thirds of all the *bona fide* residents within three miles of the place where the sales were to be made, and then made it discretionary with the licensing board to issue a license, it was held that the statute was not general and of a uniform operation throughout the State, and was, therefore, unconstitutional.<sup>37</sup>

State Treasurer," to be credited to the general fund of the State. It was held that the statute was a police regulation, and the license fee a tax within the provision of the Constitution requiring uniformity in taxation. *State v. Buechler*, 10 S. D. 156; 72 N. W. 114.

Under a statute authorizing a city "to raise revenue by levying and collecting a license tax on any occupation or business," and empowering it "to license, regulate and prohibit" liquor sales and the amount to be paid for licenses, a city can both impose an occupation tax upon liquor dealers and exact a license fee, but it cannot compel the payment of the occupation tax before it will issue a license. *State v. Bennett*, 19 Neb. 191; 26 N. W. 714.

Under a power to license a city cannot levy a tax. *Du Boistown v. Rochester*, 9 Pa. Co. Ct. Rep. 442.

Where a Constitution provided

that articles manufactured of the produce of the State should not be taxed except for inspection fees, but gave the Legislature power to tax "privileges" as it saw fit, it was held that a tax might be imposed upon a liquor dealer, though he sold liquor manufactured out of the products of the State. *Kurth v. State*, 86 Tenn. 134; 5 S. W. 593.

A statute providing for the arrest of a liquor dealer who does not pay his tax and the sheriff can find no property to levy upon, is valid. *Commonwealth v. Byrne*, 20 Gratt. 165.

<sup>35</sup> *Bohler v. Schneider*, 49 Ga. 195; *Smith v. State*, 90 Ga. 133; 15 S. E. 682. See *Richland Co. v. Richland Center*, 59 Wis. 591; 18 N. W. 497; *Thomasson v. State*, 15 Ind. 449.

<sup>36</sup> *Territory v. Connell*, 2 Ariz. 339; 16 Pac. 209.

<sup>37</sup> *Smith v. State*, 90 Ga. 123; 15 S. E. 682.

A tax of one amount to sell generally and another amount to sell malt liquors is valid, even though the Constitution provides that taxes on "liquor dealers" shall be uniform as to the class on which they operate.<sup>38</sup> So a tax on persons of one amount on those dealing in distilled liquors on land and another amount on persons following like occupations on steamboats is valid.<sup>39</sup> Still, in the same State, a tax regulated by the amount of business done has been held invalid;<sup>40</sup> while in two other States practically the same kind of tax has been held valid.<sup>41</sup> A statute authorizing cities to levy a tax on the occupation of liquor selling is not illegal because the State does not levy a tax on other occupations.<sup>42</sup> So one tax may be levied upon breweries and distillers and another on saloons.<sup>43</sup> So a statute imposing a tax on wholesalers but excepting manufacturers, is valid.<sup>44</sup> The fact that a statute enables one county to levy the tax in a certain amount and another county in another amount does not render the statute invalid.<sup>45</sup> Nor is a tax on the occupation of selling liquor void because it must be paid in advance and a license obtained to sell, while on other occupations the tax is payable only quarterly and no license required.<sup>46</sup> Nor is a statute unconstitutional which requires a State officer to secure registrars of sales of liquor, and providing that he shall first supply the cities of the State, and liquor sellers therein must purchase and use them.<sup>47</sup>

<sup>38</sup> *Tiernan v. Harrison*, 109 Ill. 593; *Adler v. Whitbeck*, 44 Ohio St. 539; 9 N. E. 672.

<sup>39</sup> *Kaliski v. Grady*, 25 La. Ann. 576.

<sup>40</sup> *East Feliciana v. Gurth*, 26 La. Ann. 140; *State v. Rolle*, 39 La. Ann. 991; 31 Am. Rep. 234.

<sup>41</sup> *Marxhouser v. Commonwealth*, 29 Gratt. 853; *Albrecht v. State*, 8 Tex. App. 215; 34 Am. Rep. 737; *Helfrick v. Commonwealth*, 29 Gratt. 844; *Gaiocchio v. State*, 9 Tex. App. 387.

<sup>42</sup> *Holberg v. Macon*, 55 Miss. 112. It is not a valid objection to a statute requiring cities to make

a levy that they are not consulted in their levy. *Youngblood v. Sexton*, 32 Mich. 406; 20 Am. Rep. 654.

<sup>43</sup> *Adler v. Whitbeck*, 44 Ohio St. 539; 9 N. E. 672.

<sup>44</sup> *Senior v. Ratterman*, 44 Ohio St. 661; 11 N. E. 321; affirming 17 Wkly. L. Bull. 115; *Fahey v. State*, 27 Tex. App. 146; 11 S. W. 108; 11 Am. St. 182.

<sup>45</sup> *Fahey v. State*, 27 Tex. App. 146; 11 S. W. 108; 11 Am. St. 182.

<sup>46</sup> *Fahey v. State*, *supra*.

<sup>47</sup> *Helfrick v. Commonwealth*, 29 Gratt. 844.

**Sec. 135. Bell-punch law — Uniformity — Discriminating practice.**

In some of the States there is what is known as the "Bell-punch Law," which is a device for registering the number of sales made by a retail liquor dealer, and is much like the ordinary cash register in common use by other retail merchants. They are used for the purpose of determining the amount of tax to be paid by such liquor dealers for the privilege of conducting their business. These laws have been sustained against attacks made on the ground that they were: (1) unequal and lacked uniformity in a constitutional sense; (2) as being an unjust and partial discrimination against liquor dealers in the cities. As to the ground of inequality and want of uniformity of taxation, the court in the case first cited said: "Viewed in its twofold aspect, the law in question is free from objection on this account. It levies a specific occupation tax of \$250 on every dealer in the State, exempting no person or section from its operation, and requires every dealer alike to pay the tax as a prerequisite to his selling, and then it provides that after a certain amount of sales have been made, lays an additional burden on those of the class whose prosperity in business best enables them to bear it."<sup>48</sup> As to the second ground, the Virginia court said: "Absolute equality and justice are unattainable in tax proceedings. The most that can be done is to approximate them as near as possible. It has been repeatedly held by this court that the provisions requiring equality and uniformity of taxation, apply only to a direct tax on property, and not to license taxes, which do not admit of a tax strictly equal and uniform in the sense contended for. But, if it be conceded that the rule must apply to all subjects, yet it can only be applied as far as practicable. If a given subject be only susceptible of a modified application of the principle, it must receive this and not be rejected, because the rule cannot be applied with perfect precision to its whole extent in all its results."<sup>49</sup> In Texas, it was held that under such a

<sup>48</sup> *Albrecht v. State*, 8 Tex. App. 216; 34 Am. Rep. 737.

<sup>49</sup> *Helfrick v. Commonwealth*, 29 Gratt. (Va.) 844.



law a defendant could not be convicted upon an indictment charging him with the sale of intoxicating liquors without turning the crank of the register if the evidence showed that the sale was made by his bartender in his absence, and that the sale was made without any complicity on the part of the defendant.<sup>50</sup> And in Virginia it was held that a person selling such liquors at a time after the passage of the register act, which was declared to be in force from its passage, but before the registers provided for in the act were supplied, was not liable to the punishment provided for by the act, but only the punishment imposed by the former revenue laws.<sup>51</sup>

### **Sec. 136. Consent of voters to license—Validity of statute requiring.**

It is a maxim of constitutional construction that the power to make laws cannot be delegated by the Legislature to any other body or authority. The maxim, however, is not violated when municipal corporations are vested with certain powers of legislation. This is so because it is proper that such corporations should have the right to make regulations for their local government, and that they are supposed to be better judges than the Legislature of what they need. But such powers as are conferred upon such corporations must be executed by the municipality, and, so far as they are legislative, cannot be delegated to any subordinate or to any other authority. The same restriction which rests upon the Legislature as to the legislative functions conferred upon it by the Constitution, rests upon a municipal corporation as to the powers granted to it by the Legislature.<sup>52</sup> Accordingly, the principle is a plain one that the public powers or trusts devolved by law or charter upon the council or governing body to be exercised by it when and in such manner as it shall judge best, cannot be delegated to

<sup>50</sup> *Gaiocchio v. State*, 9 Tex. App. 387.

<sup>51</sup> *Marxhausen v. Commonwealth*, 29 Gratt. (Va.) 853.

<sup>52</sup> *Chicago v. Stratton*, 162 Ill. 494; 45 N. E. 116; *Swift v. People*, 162 Ill. 534; 44 N. E. 28.



others.<sup>53</sup> But there can be no valid objection to an ordinance, which confers an authority or discretion as to its execution, to be exercised under and in pursuance to the ordinance itself. Upon this theory it has been held that an ordinance prohibiting the granting of license to keep dramshops within a described portion of a city unless the applicant presents a petition signed by a majority of the legal voters of that portion of the city, is not invalid as delegating to such voters the power to license dramshops, and that such an ordinance is not invalid as permitting arbitrary discrimination between applicants because one may be able to get the petition and another cannot. Voters of the particular locality may have good and just motives for signing or refusing to sign a petition; and it will not be presumed that they were actuated by a bad rather than a good motive. They may be willing that one saloon shall be kept but be opposed to more. Having signed a petition for one it would not be unjust discrimination against the second applicant to refuse to sign his petition. They might be willing to have saloons in a particular part of the district but not in others. Certainly it would not be discrimination to sign the petition of one for the unobjectionable locality and refuse to sign for the other.<sup>54</sup> So a statute prohibiting the issuance of a license to sell intoxicating liquors at any particular place if the owners of the greater part of the land lying within two hundred feet of such place object, is not unconstitutional, not depriving the applicant for a license of his property without due process of law.<sup>55</sup> Likewise a statute and an ordinance passed in pursuance thereof, forbidding the issuance of a license to anyone for a particular place unless upon the petition of a majority of the property or house holders within three hundred feet of such place is valid, and is not void on the ground that the statute and ordinance confer arbitrary powers upon such property or house holders

<sup>53</sup> 1 Dillon on Munic. Corp., 4th ed., Sec. 96.

<sup>54</sup> Swift v. People, 162 Ill. 534;  
44 N. E. 528; 30 L. R. A. 470;  
reversing 60 Ill. App. 395.

<sup>55</sup> American Woolen Co. v. Smithfield, 28 R. I. 546; 68 Atl. 719; Green v. Smith, 111 Iowa 183; 82 N. W. 448.

and the city council to refuse to grant applications for licenses in particular neighborhoods.<sup>56</sup> So a Federal statute prohibiting a distillery within six hundred feet of a rectifying establishment is valid, not being an undue interference with either the disposition or use of property.<sup>57</sup> In a California case it was said upon this question: "It is well settled that the governing power may prohibit the manufacture and traffic in liquor altogether, provided only that it does not interfere with interstate commerce. And if the governing power can prohibit a thing altogether, it can impose such conditions upon its existence as it pleases."<sup>58</sup> In a lower Federal court the California ordinance was held unconstitutional,<sup>59</sup> but the Supreme Court of the United States held it valid.<sup>60</sup> So a statute is valid which requires the applicant to first procure the consent of a majority of all male persons over twenty-one years of age in the city, district or town, and all female persons over eighteen years of age within such city, district or town; and it cannot be successfully urged that it is unconstitutional because females are not voters.<sup>61</sup>

### Sec. 137. Assent of neighbors may be required.

A statute or municipal ordinance regulating the carrying on of a business harmless in itself and useful to the community violates the provisions of the Fourteenth Amendment to the Constitution of the United States if it makes

<sup>56</sup> *New Orleans v. Macheca*, 112 La. 559; 36 So. 747; citing *Crowley v. Christensen*, 137 U. S. 86; 11 Sup. Ct. 13; 34 L. Ed. 620; *New Orleans v. Smythe*, 116 La. 685; 41 So. 33.

<sup>57</sup> *Mason v. Rollins*, 2 Biss. 99; Fed. Cas. No. 9252.

<sup>58</sup> *Ex parte Christensen*, 85 Cal. 208; 24 Pac. 747.

<sup>59</sup> *In re Christensen*, 43 Fed. 243. The court relied upon *Yick Wo v. Hopkins*, 118 U. S. 356; 6 Sup. Ct. 1069.

<sup>60</sup> *Crowley v. Christensen*, 137 U. S. 86; 11 Sup. Ct. 13.

A statute is valid which forbids the granting of a license if a majority of the voters in the district for which it is applied for shall remonstrate against its issuance. *Hoop v. Affleck*, 162 Ind. 564; 70 N. E. 978; *Cain v. Allen*, 168 Ind. 8; 79 N. E. 201, 896; *Regadanz v. Haines*, 168 Ind. 140; 79 N. E. 352.

<sup>61</sup> *Rohrbacher v. Jackson*, 51 Miss. 735.

arbitrary and unjust discriminations against some of those who may be engaged in it. But a statute or municipal ordinance which requires all retail liquor dealers to procure a license, and makes it an offense to retail intoxicating liquors without such license, and at the same time forbids any such license to be issued unless the written consent of a certain number of persons is obtained does not violate such amendment. The sale of such liquors by retail and in small quantities may be absolutely prohibited or regulated by State and municipal legislation, without violating the Constitution or the laws of the United States, provided such legislation does not conflict with interstate commerce. This is so because the business of retailing intoxicating liquors is one that is hurtful to society. "By the general concurrence of every civilized and Christian community, there are few sources of crime and misery to society equal to the dram-shop, where intoxicating liquors in small quantities, to be drunk at the time, are sold indiscriminately to all parties applying. The statistics of every State show a greater amount of crime and misery attributable to the use of ardent spirits obtained at these retail saloons than to any other source. The sale of such liquors in this way has, therefore, been at all times, by the courts of every State, considered as the proper subject of legislation. Not only may a license be exacted from the keeper of the saloon before a glass of his liquor can be disposed of, but restriction may be imposed as to the class of persons to whom they may be sold, and the hours of the day and the days of the week on which the saloons may be opened. Their sale in that form may be absolutely prohibited. It is a question of public expediency and public morality, and not of Federal law. The police power of the State is fully competent to regulate the business—to mitigate its evils or to suppress it entirely. There is no inherent right in a citizen to sell intoxicating liquors by retail; it is not a privilege of a citizen of the State or of the United States. As it is a business attended with damages to the community, it may, as already stated, be entirely prohibited or be permitted under such conditions as will limit to

the utmost its evils. The manner and extent of regulation rest in the discretion of the governing authority. \* \* \* It is a matter of legislative will only." Where the political power of a State for the safety of its people takes the responsibility of saying that a certain occupation, for instance, that of selling intoxicating liquors, is hurtful, and will not be permitted in its boundaries unless certain conditions are complied with, the occupation so stigmatized is no longer a right, privilege or immunity within the meaning of the Constitution.<sup>62</sup>

### Sec. 138. Indiana statute remonstrances.

In Indiana, local option was formerly secured by a remonstrance. The statute under which this is accomplished provides that: "If three days before any regular session of the board of commissioners of any county, a remonstrance in writing, signed by a majority of the legal voters of any township or ward in any city situated in said county, shall be filed with the auditor of the county against the granting of a license to any applicant or against such granting to all applicants for the sale of spirituous, vinous, malt or other intoxicating liquors, under the law of the State of Indiana with the privilege of allowing the same to be drunk on the premises where sold within the limits of said township, or city or ward, it shall be unlawful thereafter for such board of commissioners to grant license to any such applicant therefor during the period of two years from the date of filing such remonstrance; or if such remonstrance shall be against all applicants, then it shall be unlawful for said

<sup>62</sup> Yick Wo v. Hopkins, 118 U. S. 356; 6 Sup. Ct. 1069; Purdy v. Suiton, 56 Cal. 133; *Ex parte* Christensen, 85 Cal. 208; 24 Pac. 747; State v. Brown, 19 Fla. 563; Groesch v. State, 42 Ind. 547; Rohrbacher v. Jackson, 51 Miss. 735; Crowley v. Christensen, 137 U. S. 86; 11 Sup. Ct. 13; Swift v. People, 162 Ill. 534; 44 N. E.

528; 33 L. R. A. 470; reversing 60 Ill. App. 395; *In re* Hoover, 30 Fed. Rep. 51; States v. Ronan, 37 Fed. 117; Kohn v. Melcher, 29 Fed. 433; DeGrazier v. Stephens (Tex.), 105 S. W. 992; State v. Settles, 34 Mont. 448; 87 Pac. 445; see People v. Haug, 68 Mich. 549; 37 N. W. 21.



commissioners to grant a license to any applicant therefor during a period of two years from the date of filing such remonstrance against all applicants.”<sup>63</sup> It has been held that this statute is not unconstitutional because it confers upon the people the power to suspend the operation of the laws, and that the result of the remonstrance therein provided serves as a restriction upon the jurisdiction of the board to grant a license. In so deciding the court said: “This provision was not enacted with the view of absolutely prohibiting the sale of liquors but only as a restriction to the granting of a license, and thereby better restraining the traffic in intoxicating liquors. All laws which regulate or restrict the sale of such liquors, by imposing burdens or conditions upon the business are in their nature or character to an extent, at least, prohibitory. An absolute prohibitory law deprives all within its reach from engaging in the business; a local option [law] prohibits all within a given locality from selling within that locality; while a license law prohibits all within the State, who have not obtained a license, from engaging in the business of retailing intoxicating liquors. Each of these is a restriction upon the common law right of the individual citizen. Acting upon the just assumption that the restricted sale of intoxicating liquors results in much evil, and that it is detrimental to society, the lawmaking power of each State in the Union has, in the exercise of its police power, assumed to control, regulate or prohibit the business, as seemed to it best.”<sup>64</sup> Also that it is not unconstitutional as being class legislation, since all applicants under the statute are subject to the same condition, and are granted or refused license upon the same terms.<sup>65</sup>

<sup>63</sup> Acts (Ind.) 1905, p. 7.

<sup>64</sup> *Welsh v. State*, 126 Ind. 71; 25 N. E. 883; *State v. Gerhart*, 145 Ind. 439; 44 N. E. 469.

<sup>65</sup> *Hoop v. Affleck*, 162 Ind. 564; 70 N. E. 978; *Cain v. Allen*, 168

Ind. 8; 79 N. E. 201, 896; *Reganz v. Haines*, 168 Ind. 140; 79 N. E. 352; *Boomershine v. Cline*, 159 Ind. 500; 65 N. E. 513. See also *Green v. Smith*, 111 Iowa, 183; 82 N. W. 448.



### Sec. 139. Sales to minors, drunkards, insane persons and Indians.

Under the general police power a State may prohibit sales or gifts to minors;<sup>66</sup> or to an inmate of an orphan's home except upon written permission of the superintendent of the home;<sup>67</sup> or to students of institutions of learning;<sup>68</sup> or to persons of intemperate habits;<sup>69</sup> or to an insane person without the consent of his parent or guardian;<sup>70</sup> and a statute requiring a bond giving a cause of action upon it for a violation of such statute is valid.<sup>71</sup> A statute may even go so far as to make it an offense to permit a minor to visit or stay in a saloon, upon the ground that it keeps from him the temptation to drink.<sup>72</sup> So Congress may prohibit the sale or gift of liquor to an Indian, on the ground that it is a regulation of commerce with an Indian tribe;<sup>73</sup> and a State statute prohibiting a sale to an Indian whether he has or has not severed his tribal relations, and whether he has or has not become a citizen of the United States by complying with the provisions of the United States "Land and Severalty Act" of 1887, is valid.<sup>74</sup>

<sup>66</sup> *Allen v. State*, 52 Ind. 486; *Altenburg v. Commonwealth*, 126 Pa. St. 602; 17 Atl. 799; *Goldsticker v. Ford*, 69 Tex. 385; *Leisy v. Hardin*, 135 U. S. 100; 10 Sup. Ct. 681; 34 L. Ed. 128; *Commonwealth v. Zelt*, 138 Pa. St. 615; 21 Atl. 7; 27 Wkly. N. C. 131; 11 L. R. A. 602; *Stephens v. State*, 47 Tex. Cr. App. 604; 85 S. W. 797; *Lodano v. State*, 25 Ala. 64.

<sup>67</sup> *State v. Barringer*, 110 N. C. 525; 14 S. E. 781.

<sup>68</sup> *Peacock v. Limburger*, 95 Tex. 258; 67 S. W. 518.

<sup>69</sup> *Leisy v. Hardin*, *supra*; *Commonwealth v. Zelt*, *supra*; *Altenburg v. Commonwealth*, 126 Pa. St. 602; 17 Atl. 799; 24 Wkly. N. C. 145.

<sup>70</sup> *Kelly v. Burke*, 132 Ala. 235; 31 So. 512.

<sup>71</sup> *Giozza v. Tiernan*, 148 U. S. 657; 13 Sup. Ct. 721; 37 L. Ed. 599.

<sup>72</sup> *Goldsticker v. Ford*, 62 Tex. 385.

<sup>73</sup> *United States v. Holliday*, 3 Wall. 407; *United States v. 43 Gallons of Whisky*, 93 U. S. 188. See also *American Fur Co. v. United States*, 2 Pet. 358; *United States v. Shaw Mux*, 2 Sawy. 364; *Nelson v. United States*, 30 Fed. 112.

<sup>74</sup> *State v. Wise*, 70 Minn. 99; 72 N. W. 843.

Under a statute entitled "An act to regulate the sale of intoxicating liquor" may be inserted a pro-

**Sec. 140. Limiting sales to certain purposes.**

The State in limiting the sale of intoxicating liquor to sales made for medicinal, chemical, mechanical or sacramental purposes, does not exceed its powers; and a statute thus limiting sales for such purposes is constitutional, and the power thus exercised is within the scope of the legislative powers.<sup>75</sup> Limiting sales to pure wine for sacramental purposes does not render the statute void.<sup>76</sup>

**Sec. 141. Screens—Validity and enforcement of law requiring.**

Several of the States have adopted what is known as the "Screen" Law which, like that of Indiana, provides that the room in which intoxicating liquors are to be sold at retail under a license issued for that purpose "shall be situated upon the ground floor or basement of the building where the same are sold, and in a room fronting the street or highway upon which the building is situated, and said room shall be so arranged, either with window or glass door,

vision prohibiting sales to minors and drunkards. *Williams v. State*, 48 Ind. 306; *State v. Adamson*, 14 Ind. 296; *Thomasson v. State*, 15 Ind. 449.

<sup>75</sup> *State v. Allmond*, 2 *Houst. (Del.)* 612; *Kidd v. Pearson*, 128 *U. S.* 1; 9 *Sup. Ct.* 6; 32 *L. Ed.* 346; *Mugler v. Kansas*, 123 *U. S.* 623; 8 *Sup. Ct.* 273; 31 *L. Ed.* 205; affirming 29 *Kan.* 252; 44 *Am. Rep.* 634; *Ray v. State*, 47 *Tex. Cr. App.* 407; 83 *S. W.* 1121; *Durein v. State*, 208 *U. S.* 613; 28 *Sup. Ct.* 567; 52 *L. Ed.* —; affirming 70 *Kan.* 1; 78 *Pac.* 152; 80 *Pac.* 987; *Beer Co. v. Massachusetts*, 97 *U. S.* 25; 21 *L. Ed.* 929; *In re Prohibition Amendment Cases*, 24 *Kan.* 700; *State v. Brennen*, 25 *Conn.* 278; *State v. Wheeler*, 25 *Conn.* 290; *State v.*

*Sheasley* (*Kan.*), 78 *Pac.* 997; *Bowman v. State*, 38 *Tex. Cr. App.* 14; 40 *S. W.* 796; 41 *S. W.* 635; *Columbus v. Schaerr*, 5 *Ohio S. & C. P.* 100.

<sup>76</sup> *State v. Allmond*, 2 *Houst. (Del.)* 612; *Bowman v. State*, 38 *Tex. Cr. App.* 14; 40 *S. W.* 796.

An ordinance limiting sales to sacramental, chemical, mechanical or medicinal purposes, to be made by druggists who were required to furnish the city clerk a written statement of the kind and quality thereof, the purchasers' names and date of sale, verified by the oath of every servant in the employ of the druggist, was held to be an invasion of the sanctity of private business and void. *Clinton v. State*, 58 *Ill.* 102.

as that the whole of said room may be in view from the street or highway, and no blinds, screens or obstructions to the view shall be arranged, erected or placed so as to prevent the entire view of said room from the street or highway upon which the same is situated during such days and hours when the sales of such liquors are prohibited by law.”<sup>77</sup> Such a statute is a reasonable exercise of the police power of the State and does not conflict with a constitutional provision securing “the persons, houses, papers and possessions of every person from unreasonable searches and seizures,” nor with the Fourteenth Amendment to the Constitution of the United States, declaring that, “No person shall be deprived of life, liberty or property without due process of law.”<sup>78</sup> Nor will the fact that the law does not define what constitutes an obstruction of the view, invalidate it.<sup>79</sup> Even broader legislation than this has been sustained, for in Massachusetts, a statute which provided that no person licensed to sell spirituous and intoxicating liquors should maintain or permit to be maintained, upon premises used by him under his license during the time for which the license was granted, screens or blinds which would interfere with a view of the business conducted upon the premises, was held valid and prosecutions for its violation sustained.<sup>80</sup> If one may be compelled to thus conduct the sale of intoxicating liquors in open view of the public without violating the provisions hereinbefore named, then no good reason can exist for holding that such provisions would be violated by a statute which compels the seller of such liquors to expose the interior of his building where sales are made at all times when by the law he is forbidden to make them. The purpose of such a statute is to remove the temptation to violate the statute on the forbidden days, and to make it easy for an officer or other person to determine whether a saloon is doing business contrary to law.<sup>81</sup> Such a statute includes

<sup>77</sup> Burns R. S. 1908, § 8327.

<sup>78</sup> Robinson v. Haug, 71 Mich. 38.

<sup>79</sup> State v. Doyle, 15 R. I. 325; 4 Atl. 764.

<sup>80</sup> Commonwealth v. Costello, 133 Mass. 192; Commonwealth v. Casey, 134 Mass. 194.

<sup>81</sup> Robinson v. Haug, 71 Mich. 38; 46 N. E. 941.

vendors of intoxicating liquors acting under licenses granted before as well as those licensed after its passage.<sup>82</sup> The substantive part of the offense under it is the obstruction of the view to all parts of the interior of the room, and an indictment for a violation of its provisions need not allege that the defendant has violated the conditions of his license or that he has sold intoxicating liquors in violation of law.<sup>83</sup> And where the statute provides in addition that the licensee must permanently close all entrances to the licensed premises other than those on the public street upon which they are located, it will be violated if the licensee fails to close a side entrance to the licensed room.<sup>84</sup> And it has been held that if a licensed dealer covers one of several windows to the room in which he is doing business so as materially to interfere with a view of the business conducted therein, or of the interior thereof, it is a violation of the law, although a view of the premises can at the same time be obtained through other windows.<sup>85</sup> And likewise it has been held that such a dealer cannot place or maintain upon the licensed premises a curtain which interferes with a view of any part of the interior of the same, whether such part is used for the sale of liquor or not.<sup>86</sup> The law will not be violated by maintaining a partition between a front and rear room where a license gives authority to sell in both of such rooms,<sup>87</sup> but in such case it will be violated if the entrance from the front to the rear room is by a door and the view of that door is hindered by screens on the windows of the front room.<sup>88</sup> The fact that a place is being conducted under

<sup>82</sup> *Nelson v. State*, 17 Ind. App. 403; 46 N. E. 941; *Commonwealth v. Rourke*, 141 Mass. 321; 6 N. E. 383; *Commonwealth v. Sawtelle*, 150 Mass. 320; 23 N. E. 54.

<sup>83</sup> *Commonwealth v. Costello*, 133 Mass. 192; *Commonwealth v. Auberton*, 133 Mass. 404; *Commonwealth v. Gibbons*, 134 Mass. 197.

<sup>84</sup> *Commonwealth v. Fernden*, 141 Mass. 28; 6 N. E. 239.

<sup>85</sup> *Nelson v. State*, 17 Ind. App. 403; 48 N. E. 941; *Commonwealth v. McDonnough*, 150 Mass. 504; 22 N. E. 112.

<sup>86</sup> *Commonwealth v. Worcester*, 141 Mass. 58; 6 N. E. 700.

<sup>87</sup> *Commonwealth v. Barnes*, 140 Mass. 447; *Shultz v. Cambridge*, 38 Ohio St. 659.

<sup>88</sup> *Commonwealth v. Kane*, 143 Mass. 92.



and by authority of a license from the United States cannot be made a defense to a prosecution for a violation of the "screen" law;<sup>89</sup> nor that the illegal act was done by the liquor seller's servant in his absence;<sup>90</sup> nor that the licensee was not in fact carrying on business at the time of the alleged violation.<sup>91</sup> As has already been said the substantive part of the offense is the obstruction of a view to the interior of the licensed premises.<sup>92</sup>

### Sec. 142. Sunday laws—Municipal ordinances.

The law fixes the day recognized as the Sabbath Day all over Christendom, and that day, by divine injunction, is to be kept holy—"On it thou shalt do no work." It is a civil institution, older than our State governments, and respected as a day of rest by their Constitutions, and the regulation of its observation as a civil institution has always been considered to be, and is, within the power of the State Legislature as much as any other regulation or law which has for its object the preservation of good morals and the peace and good order of society. In this country Christianity is not the legal religion of State as established by law; but this is not inconsistent with the idea that it is in fact and ever has been the religion of the people. This fact is everywhere prominent in all our civil and political history, and has been from the first, recognized and acted upon by the people, as well as by constitutional conventions, by Legislatures, and by courts of justice.<sup>93</sup> The authority to prohibit the sale of

<sup>89</sup> *State v. Mathis*, 18 Ind. App. 608; 48 N. E. 645; *State v. Mathis*, 20 Ind. App. 699; 48 N. E. 1109; *State v. Sleutz*, 27 Ind. App. 557; 61 N. E. 793.

<sup>90</sup> *Commonwealth v. Kelley*, 140 Mass. 441.

<sup>91</sup> *Commonwealth v. Auberton*, 133 Mass. 404; *Commonwealth v. Casey*, 134 Mass. 194.

<sup>92</sup> *Commonwealth v. Moore*, 145 Mass. 244.

A screen ordinance held consti-

tutional. *Washington v. Gallagher*, 7 Ohio N. P. 511; 5 Ohio S. & C. P. Dec. 562. See late case, *Bennett v. Pulaski* (Tenn. Ch. App.), 52 S. W. 913; 47 L. R. A. 278; *Meehan v. Board* (N. J. L.), 70 Atl. 363; 73 N. J. L. 382; 64 Atl. 689.

<sup>93</sup> *Holy Trinity Church v. United States*, 143 U. S. 457; *Frolichstein v. City of Mobile*, 40 Ala. 725; *Shover v. State*, 5 Eng. (Ark.) 529; *Ex parte Andrews*,



intoxicating liquors upon Sunday, or any other day, is not only constitutional but is also found in the general police power of the State.<sup>94</sup> Since the Legislature possesses this constitutional and police power it may properly delegate the same to a municipal corporation, and an ordinance of a city passed pursuant to such power conferred upon it by its charter, requiring that every saloon and restaurant, and the bar of every tavern, inn, and other place where liquors are sold by retail shall be closed during Sunday and that no person shall sell for money or in any manner dispose of any intoxicating liquor within the limits of the city on Sunday and providing that any person guilty of violating any of the provisions of the ordinance, shall, upon conviction thereof, be punished by fine and imprisonment, will not be unconstitutional and may be enforced.<sup>95</sup> Such an ordinance

18 Cal. 679; *State v. McMahon*, 53 Conn. 411; *Hall v. State*, 4 Harr. (Del.) 132; *Karswich v. Atlanta*, 44 Ga. 204; *Sanders v. State*, 74 Ga. 82; *Siebold v. People*, 86 Ill. 33; *Voglesong v. State*, 9 Ind. 113; *Thomasson v. State*, 15 Ind. 449; *Foltz v. State*, 33 Ind. 215; *Johnas v. State*, 78 Ind. 332; *State v. Hogrewer*, 152 Ind. 652; *Megowan v. Commonwealth*, 2 Met. (Ky.) 3; *State v. Judge*, 39 La. Ann. 132; *State v. Fearson*, 2 Md. 310; *Commonwealth v. Moore*, 145 Mass. 244; *People v. Roby*, 52 Mich. 577; *People v. Bellet*, 99 Mich. 151; *Brimhall v. Van Campen*, 8 Minn. 13; *Elken v. State*, 63 Miss. 129; *State v. Ambos*, 20 Mo. 214; *State v. Huffschtmidt*, 47 Mo. 73; *State v. Sinnott*, 15 Neb. 472; *Houtsch v. Jersey City*, 29 N. J. L. (5 Dutch.) 316; *Lindenmiller v. People*, 3 Barb. (N. Y.) 548; *Health Department v. Trinity Church*, 145 N. Y. 32; *State v.*

*Wooll*, 86 N. C. 708; *Commonwealth v. Naylor*, 34 Pa. St. 86; *State v. Scharrer*, 2 Coldw. (Tenn.) 323; *Keller v. State*, 23 Tex. App. 259; *Thon v. Commonwealth*, 31 Gratt. (Va.) 887; *State v. Wecker*, 71 Wis. 577; *Lodano v. State*, 25 Ala. 64.

<sup>94</sup> *Frolichstein v. Mobile*, 40 Ala. 725; *Ex parte Andrews*, 18 Cal. 678; *Ex parte Bird*, 19 Cal. 130; *Kurtz v. People*, 83 Mich. 279; *State v. Ludwig*, 21 Minn. 202; *State v. Ambs*, 20 Mo. 214; *St. Louis v. Cafferata*, 24 Mo. 94; *Lindenmiller v. People*, 3 Barb. (N. Y.) 548; *Bloom v. Richards*, 2 Ohio, 387; *Specht v. Commonwealth*, 8 Penn. St. 312; *Hudson v. Geary*, 4 R. I. 485; *State v. Dolan*, 13 Idaho, 693; 92 Pac. 995; *Ex parte Jacobs*, 13 Idaho, 720; 92 Pac. 1003; *State v. Bott*, 31 La. Ann. 663; 33 Am. Rep. 224.

<sup>95</sup> *Mayor v. Rouse*, 8 Ala. 515; *Mayor v. Allaire*, 14 Ala. 400;

is in no sense an attempt to enforce the observance of that day as a religious institution, and hence is not repugnant to the provisions of the Federal and State Constitutions forbidding the establishment of any religion. The purpose of such an ordinance is to prevent the violation of the laws of the State as well as preserve a public respect for the Lord's Day.<sup>96</sup> The argument that such an ordinance violates the inherent right of the Jew or any other religious denomination to observe his Sabbath, which is the last instead of the first day of the week, is not tenable. He is left the absolute and unrestrained freedom of disposing of Saturday, his Sabbath, as he may deem proper, or to worship God according to the dictates of his own conscience. He is thereby required to observe the Christian Sabbath, and he is not checked in his right to pursue other avocations, but is merely restrained from pursuing, on that day, a traffic which in its results may interfere with the absolute right and the undeniable privilege of others to observe that day in their

Van Buren v. Wells, 53 Ark. 368; Hood v. Von Glahm, 88 Ga. 405; Littlejohn v. Stells, 123 Ga. 427; 51 S. E. 390; Schwuchow v. Chicago, 68 Ill. 444; Wragg v. Penn Township, 94 Ill. 11; Levy v. State, 6 Ind. 281; Ambrose v. State, 6 Ind. 351; Williams v. Warsaw, 60 Ind. 457; Bloomfield v. Trumble, 54 Ia. 399; Rice v. State, 3 Kan. 135; Megowan v. Commonwealth, 2 Met. (Ky.) 3; Kemper v. Commonwealth, 85 Ky. 219; Meriden v. Silverstein, 36 La. Ann. 912; Schafer v. Mumma, 17 Md. 331; People v. Detroit, 82 Mich. 471; State v. Ludwig, 21 Minn. 202; St. Louis v. Bentz, 11 Mo. 61; Brownville v. Cook, 4 Neb. 101; Howe v. Plainfield, 37 N. J. L. 145; Wood v. City, 14 Barb. (N. Y.) 428; Brooklyn v. Toynebee, 31 Barb. (N. Y.) 282; Piqua v. Zimmerlin, 350 St. 507;

Portland v. Schmidt, 13 Ore. 17; Wong v. Astoria, 13 Ore. 538; Charleston v. Benjamin, 2 Strob. (S. C.) 508; State v. Bott, 31 La. Ann. 663; 34 Am. Rep. 224; Greenwood v. State, 6 Baxt. (Tenn.) 409; Gabel v. Houston, 29 Tex. 335; *Ex parte* Douglass, 1 Utah, 108; Logan v. Buck, 3 Utah, 301.

<sup>96</sup> State v. Bott, 31 La. Ann. 663; State v. Ambs, 20 Mo. 214; Bloom v. Richards, 2 Ohio St. 387; McGatrick v. Watson, 3 Ohio St. 566; Cincinnati v. Rice, 15 Ohio, 225; Commonwealth v. Wolf, 3 S. and R. (Pa.) 50; Commonwealth v. Fischer, 17 S. & R. (Pa.) 160; Specht v. Commonwealth, 8 Penn. St. 312; Hudson v. Greary, 4 R. I. 485; Nashville v. Luck, 80 Tenn. 499; Gabel v. Houston, 29 Tex. 335.

own manner, with peace and tranquillity, and without interference from anyone or from any source.<sup>97</sup> The Legislature may make it an offense to keep a saloon open on Sunday, without regard to the transaction of business or making of sales in it;<sup>98</sup> and it may make the keeping open of a barroom for the sale of liquors one offense, and the act of selling another offense, or each sale a separate and distinct offense.<sup>99</sup> So a statute requiring saloons to be closed during certain hours of the night is valid.<sup>1</sup>

### Sec. 143. Women as employes and visitors in saloons.

A statute which prohibits the employment of women as waiters or conversationalists in places where intoxicating liquors are sold is a reasonable exercise of the police powers of the State and is upheld by the courts. Under such a statute it has been held that the proprietor of such a place was liable for a violation of it, where the evidence showed that immediately after the enactment of the statute he discharged his female employes and then entered into a partnership with them to continue the business at the same place, they to render the same kind of service after their discharge as before, the court saying that such an arrangement was an infraction of the spirit of the law. In that case it was held that the indictment was not subject to be quashed because of a misjoinder owing to the fact that it charged the employment of several women and not severally each of them; also that the indictment need not show that neither of such employes was within the proviso as to the wife and daughter of the employer.<sup>2</sup> It has also been held that an ordinance of a municipal corporation which makes it an offense for the proprietor of a place where intoxicating liquors are sold to employ females to serve his customers

<sup>97</sup> *State v. Bott*, 31 La. App. 663; 33 Am. Rep. 224; *Town of Minden v. Solverstein*, 36 La. Ann. 912.

<sup>98</sup> *Ex parte Brown* (Tex. Cr. App.), 61 S. W. 396.

<sup>99</sup> *Commonwealth v. McCann*, (Ky.), 29 Ky. L. Rep. 707; 94 S. W. 645.

<sup>1</sup> *Hedderich v. State*, 101 Ind. 564; 1 N. E. 47; 51 Am. Rep. 768.

<sup>2</sup> *Walter v. Commonwealth*, 88 Pa. St. 157.

with such liquors was valid where the Legislature had delegated to such corporation the power to regulate such places within the jurisdiction of the corporation; and that such an ordinance does not conflict with any provision of the Federal Constitution;<sup>3</sup> and in Montana it has been held that a law prohibiting the sale of liquors in any place where women or minors are employed is constitutional, being a proper exercise of the police power of the State.<sup>4</sup> But in California, where the Constitution provides that no person shall be disqualified by sex from pursuing any lawful vocation, it has been held that an ordinance forbidding proprietors of drinking saloons to permit any female to be employed therein was unconstitutional;<sup>5</sup> and in Idaho it has been held that an ordinance was unconstitutional which provided that it shall be unlawful for any person maintaining any saloon, barroom, or drinking shop, or any apartment thereto attached, to permit any female to enter therein.<sup>6</sup> But a statute prohibiting the issuance of a license to anyone who has employed in the past females as waitresses is not unconstitutional as an *ex post facto* law, not being an unusual law.<sup>7</sup> A statute prohibiting the presence of women in public saloons after midnight is not unconstitutional;<sup>8</sup> and under the provisions of the California Constitution above referred to, it has been held, in a later decision, that an ordinance prohibiting the sale of liquors where female waitresses are employed is valid.<sup>9</sup> Nor is a statute invalid that fixes the license fee at a higher figure for places where females act as bartenders, actresses, dancers, singers, and the like.<sup>10</sup> Nor one for-

<sup>3</sup> Bergman v. Cleveland, 39 O. St. 651; People v. Case, 153 Mich. 98; 116 N. W. 558.

<sup>4</sup> State v. Reynolds, 14 Mont. 383; 36 Pac. 449; *Ex parte* Hays, 98 Cal. 555; 33 Pac. 337.

<sup>5</sup> *In re* Maguire, 57 Cal. 604; 40 Am. Rep. 125.

<sup>6</sup> State v. Nelson (Idaho), 67 L. R. A. 808. *Contra*, Commonwealth v Pine (Ky.), 94 S. W. 32; 29 Ky. L. Rep. 593.

<sup>7</sup> Foster v. San Francisco, 102 Cal. 483; 37 Pac. 763; 41 Am. St. 194; *Ex parte* Hayes, 98 Cal. 555.

<sup>8</sup> *Ex parte* Smith, 38 Cal. 702.

<sup>9</sup> *Ex parte* Hayes, 98 Cal. 555; 33 Pac. 337; 20 L. R. A. 701; *Ex parte* Smith (Cal.), 33 Pac. 338.

<sup>10</sup> *Ex parte* Felchin, 96 Cal. 360; 31 Pac. 224; 31 Am. St. 223.



bidding a female under the age of twenty-one years to remain in or about a saloon, even though it except from the provisions open and public restaurants or dining-rooms, that being a classification which the State, in the exercise of its police power, can make; <sup>11</sup> nor can such a statute be objected to successfully on the ground that a female attains her age at eighteen instead of twenty-one; for the right to enter and remain in a saloon is not one of the equal privileges granted to every citizen.<sup>12</sup> An ordinance prohibiting the keeper of a drinking place to allow infants and females to remain there over five minutes, or to drink therein, has been held valid.<sup>13</sup>

#### Sec. 144. Record of sales.

It has been held that a city ordinance which prohibits the sale of intoxicating liquors, except by druggists selling for chemical, sacramental, mechanical or medical purposes, and requiring them to furnish the city clerk a verified statement in writing showing the kind and quantity sold, when and to whom sold, and also requiring this statement to be verified by the oath of every servant in the druggist's employ, is void, because it invades the sanctity of private busi-

<sup>11</sup>State v. Baker, 50 Ore. 381; 92 Pac. 1076; 13 L. R. A. (N. S.) 1040.

<sup>12</sup>State v. Baker, 50 Ore. 381; 92 Pac. 1076; 13 L. R. A. (N. S.) 1040.

A male litigant cannot object to a statute because it excludes females from the jury. McKinney v. State, 3 Wyo. 719; 30 Pac. 293; 16 L. R. A. 710.

A statute prohibiting the keeping a wine room, to which women resort, in connection with a saloon, is valid. Adams v. Cronin, 29 Colo. 488; 69 Pac. 590; and so is one forbidding the owner of a saloon to sell to fe-

males. People v. Case, 153 Mich. 98; 116 N. W. 553.

<sup>13</sup>Commonwealth v. Price (Ky.), 94 S. W. 32; 29 Ky. L. Rep. 593. But a city has not power to adopt an ordinance of this kind. Joplin v. Jacobs, 119 Mo. App. 134; 96 S. W. 219; Peacock v. Limburger (Tex. Civ. App.), 67 S. W. 518.

So one forbidding a saloon keeper to permit a female under twenty-one years of age to remain in or about a saloon, independent of the purpose of her visit, is valid. State v. Baker, 50 Ore. 381; 92 Pac. 1076; 13 L. R. A. (N. S.) 1040.



ness.<sup>14</sup> No doubt the same court would have held the ordinance void if it had been a statute. And in Hawaii it was held that a statute requiring a saloon keeper to keep books of account of his business was unconstitutional.<sup>15</sup>

**Sec. 145. Registration of internal revenue license or receipts—Exposure of license.**

A State may require all persons taking out United States internal revenue licenses to sell liquors to have them recorded in a public office of the State, and it is no valid objection that such a statute will tend to diminish the number of licenses that will be taken out, thereby diminishing the receipts of the Federal Government of the amount of fees it would have received if no such State law had been enacted. Such a statute brings into action a legitimate exercise of the police powers and tends to aid in the enforcement of the law against unlawful traffic in intoxicating liquors.<sup>16</sup> So a statute requiring a

<sup>14</sup> *Clinton v. Phillips*, 58 Ill. 102.

<sup>15</sup> *Lau Kiu v. Lau*, 7 Hawaii, 489.

In Iowa statutes requiring reports seem to be upheld. *State v. Chamberlain*, 74 Iowa, 266; 37 N. W. 326; and in Michigan it has been held that a statute requiring druggists in prohibition districts to report all the sales to the prosecuting attorney of the county, did not violate that provision of the constitution prohibiting unreasonable searches and seizures, nor of another provision providing that no person shall be compelled to incriminate himself, nor be deprived of life, liberty or property without due process of law. It was said to be a legitimate exercise of the police power respecting the sale of intoxicat-

ing liquors. *People v. Henwood*, 123 Mich. 317; 82 N. W. 70. See *Seattle v. Foster*, 47 Wash. 22; 91 Pac. 642.

A statute requiring all liquors shipped into "dry" territory to be carried by regular carriers, in packages plainly marked with the consignor's and consignee's name and address plainly marked thereon, and also with kind and amount of liquor marked in plain letters thereon; and also requiring the carriers to keep a record of all such packages carried, under a forfeiture of the liquor, is constitutional, being a valid exercise of the police power of the State. *Commonwealth v. Intoxicating Liquors*, 172 Mass. 311; 52 N. E. 389.

<sup>16</sup> *State v. Hanson* (N. D.), 113 N. W. 371.

licensee to keep his license posted up in his place of business so the public can see it, is valid.<sup>17</sup>

### **Sec. 146. Minimum quantity that may be sold at one time.**

A city may prohibit sales of a less quantity than a specified amount, as one gallon. Where an ordinance forbade sales of "malt, hop, tea tonic, ginger ale, cider, or any other drink of like nature" in a less quantity than a gallon, the ordinance was held valid.<sup>18</sup> And a statute limiting the sale to ten gallons was held not to be a grant of an exclusive privilege, but the exercise of a power, the policy or expediency of which cannot be questioned by the courts;<sup>19</sup> and so is a statute prohibiting druggists selling less than a quart except upon a physician's prescription.<sup>20</sup> Interdicting sales by small measure is regulation and not prohibition.<sup>21</sup>

### **Sec. 147. Owner of premises—Liability under statutes.**

The State of Kansas has a statute which in express terms makes the real estate of a person convicted of selling intoxicating liquors contrary to law subject to a lien for the amount of the fines and costs adjudged against him, and it also provides that such judgment shall be a lien upon leased premises occupied by the convicted person, and used for the purposes of the alleged traffic, when the owner of the real estate knowingly suffers them to be used and occupied for the illegal sale of such liquors.<sup>22</sup> Under this statute the real estate of the convicted person can be sold to satisfy

<sup>17</sup> *Ex parte* Bell, 24 Tex. App. 428; 6 S. W. 197.

<sup>18</sup> *In re* John, 55 Kan. 694; 41 Pac. 956.

<sup>19</sup> *Stickrod v. Commonwealth*, 5 S. W. 580; 9 Ky. L. Rep. 533.

<sup>20</sup> *Commonwealth v. Fowler*, 96 Ky. 166; 28 S. W. 786; 33 L. R. A. 839.

<sup>21</sup> *Paul v. Gloucester Co.*, 50 N. J. L. 585; 15 Atl. 272; 1 L. R. A. 86.

A person indicted for selling less than five gallons without a license cannot question the validity of the statute or ordinance so far as it applies to sales in quantities of five gallons and upwards, which may be made without a license. *State v. Priestler*, 43 Minn. 373; 45 N. W. 712.

<sup>22</sup> *State v. Pfefferle*, 33 Kan. 718; 7 Pac. Rep. 597.

the fine and costs in the usual manner of enforcing judgments, but the lien against the owner can only be enforced by a civil action. The lien is a statutory one which attaches to the leased premises at the time the judgment of conviction is rendered against the lessee.<sup>23</sup> The statute has been held to be constitutional, and that full force and effect must be given to it,<sup>24</sup> and that all conveyances of the leased premises made after the date of the lessee's conviction are made subject to the lien created by it.<sup>25</sup> In an action to enforce such a lien and establish the ownership of the property against which the lien is sought to be enforced, a deed purporting to convey the property to the defendant is admissible in evidence, where the description therein given of the property, taken in connection with well-known facts that are in evidence, fairly designates the property described in the petition. In such an action the landlord can only be made liable when he has knowingly permitted the occupant to use the premises for the unlawful sale of such liquors; but knowledge sufficient to excite the suspicions of a prudent man, and to put him upon inquiry, is equivalent to knowledge of the ultimate fact. In such an action if the title to the real estate is in the name of the wife, it is proper to join the husband as a party defendant.<sup>26</sup> In Ohio, under the "Dow Law," the State was given a lien upon the realty upon which the saloon was located for the amount of the license fees; and this act was held constitutional, even though the licensee was only a tenant of the licensed premises.<sup>27</sup> And in Iowa, a law making a judgment secured by reason of a violation of the liquor law a lien on the property of a third person who consents to its use for the unlawful sale and manufacture of liquors, was held constitutional, not being a taking of private property for public use without compensation.<sup>28</sup>

<sup>23</sup> *Snyder v. State*, 40 Kan. 543;  
20 Pac. Rep. 123.

<sup>24</sup> *State v. Snyder*, 34 Kan. 425;  
6 Pac. Rep. 425.

<sup>25</sup> *Snyder v. State*, 40 Kan. 543;  
20 Pac. Rep. 123.

<sup>26</sup> *Cordes v. State*, 37 Kan. 48;  
14 Pac. Rep. 493.

<sup>27</sup> *Anderson v. Brewster*, 44  
Ohio St. 576; 9 N. E. 683.

<sup>28</sup> *Polk County v. Hierb*, 37  
Iowa 361; see also *Newton v. Mc-*

**Sec. 148. Civil damages.**

Statutes are in force perhaps in every State giving to designated persons a right of damages for sales of liquor made to habitual drunkards or intoxicated persons which result in the death of such persons, or where such persons by reason of their intoxicated state cause damages or injuries to others. These statutes have been universally upheld as a valid exercise of the power of the State.<sup>29</sup> It is no defense, as these cases hold, that the person of whom complaint is made had a license to sell, issued by the State, for the license does not authorize anyone to transgress the laws of the State. Nor is it a valid objection to the statute which makes the defendant liable for the full damage done by the intoxicated person when the liquor he sold or gave the intoxicated person was only a part of the liquor that made him drunk. "The business of the defendant," said the court, "as conducted by him, being in open violation of the statute, a provision that holds him responsible for an injury to which his unlawful conduct contributes, cannot be said to be in conflict with any right guaranteed by the Constitution. \* \* \* By causing, in conjunction with others, the injury for which the action is brought, by an act in clear violation of the statute, he becomes a joint tortfeasor, and, as at common law, is liable for the entire damages resulting from such injury."<sup>30</sup> A statute may be drafted broad enough to make the liquor seller's lessor liable, where the liquor is sold on or in connection with leased premises, and when the lessor knew the purposes for which the premises were to be used, or had good reasons to know.<sup>31</sup> And a

Kay (Iowa), 102 N. W. 827; Bolton v. McKay (Iowa), 102 N. W. 1131.

<sup>29</sup> Moran v. Goodman, 130 Mass. 158; 39 Am. Rep. 443; Baker v. Pope, 2 Hun 556; Franklin v. Schermerhorn, 8 Hun 112; Horning v. Wendell, 57 Ind. 171; Sibila v. Bahney, 34 Ohio St. 399; Werner v. Edmiston, 24 Kan. 147; Kreiter v. Nichols, 28 Mich. 496; State v. Ludington,

33 Wis. 107; Bedore v. Newton, 54 N. H. 117; Stanton v. Simpson, 48 Vt. 628; State v. Ludington, 33 Wis. 107; Howes v. Maxwell, 157 Mass. 333; 32 N. E. 152; Kennedy v. Garrigan (S. D.), 121 N. W. 783.

<sup>30</sup> Sibila v. Bahney, 34 Ohio St. 399.

<sup>31</sup> Bertholf v. O'Reilly, 74 N. Y. 509; 30 Am. Rep. 323.



statute is valid which makes the liquor dealer liable for a sale to a husband after notice by his wife given him not to sell to her husband,<sup>32</sup> or to a minor;<sup>33</sup> or liable for injuries inflicted by an assault made by the person who was made drunk by his selling liquor to him in violation of law.<sup>34</sup> The fact that the defendant may be punished criminally for the same act is immaterial.<sup>35</sup> Even as applied to an agent of a town appointed to sell liquors the statute is valid, if he goes beyond his authority and makes an unlawful sale.<sup>36</sup>

### **Sec. 149. Requiring licensee to give bond.**

A licensee may be required to give a bond with sureties to keep the law, and making him liable thereon for all penalties assessed against him, and providing he will not sell in any other place than the place designated in his license, or will not do so without giving notice and executing a new bond.<sup>37</sup> So a statute making the licensee and his sureties civilly liable for damages occasioned by an illegal sale is valid.<sup>38</sup>

### **Sec. 150. Inspection of liquors—Ingredients.**

A State has full power to require that malt liquors shall be manufactured of certain kinds of cereals and absolutely prohibit their sale if they are not, and the fact that manufacturers, before its enactment, had the privilege to manufacture malt liquors from other cereals, is no argument against the validity of such a statute. The State may also

<sup>32</sup> Bell v. State, 28 Tex. App. 96; 12 S. W. 410; McGuire v. Glass (Tex.), 15 S. W. 127.

<sup>33</sup> Cramer v. Danielson, 99 Mich. 531; 58 N. W. 476.

<sup>34</sup> Kreiter v. Nichols, 28 Mich. 496; Sibila v. Bahney, 34 Ohio St. 399.

<sup>35</sup> Bedore v. Newton, 54 N. H. 117.

<sup>36</sup> Stanton v. Simpson, 48 Vt. 628.

The Pennsylvania statute empowering the judge to assess the damages is valid, and not invalid because it violates the right of trial by jury. Mardorf v. Hemp (Pa.), 6 Atl. 754.

<sup>37</sup> People v. Brown, 85 Mich. 119; 48 N. W. 158; Bell v. State, 28 Tex. App. 96; 12 S. W. 410; McGuire v. Glass (Tex.), 15 S. W. 127.

<sup>38</sup> Bell v. State, *supra*.



require all such liquors to be inspected, and a charge exacted therefor. This is upon the ground that the manufacture and sale of malt liquors is detrimental to the public health and morals of the citizens of the State; and the statute is a valid exercise of the State's police power. And it is no objection that other liquors are not subject to like rules and regulations, as the State might so subject them if it saw fit, since the State may absolutely prohibit the sale or manufacture of liquors, and such a statute is only a regulation of their sale or manufacture.<sup>39</sup> So a statute requiring a foreign manufacturer of beer bringing it within the State for sale to make an affidavit showing that only certain ingredients were used in it is valid, for the State's agents cannot go abroad to inspect such beer.<sup>40</sup>

### Sec. 151. "Blind Pig" or "Blind Tiger" laws.

In several instances the so-called "Blind Pig" or "Blind Tiger" laws have been held constitutional. They involve no particular constitutional questions. Usually they contain more drastic provisions than other liquor laws.<sup>41</sup>

### Sec. 152. *Ex post facto* law—Change of remedy.

The right to a particular mode of procedure is not a vested one which the State cannot change or abolish. The general rule is that a change in the remedy is not within the inhibition of the Constitution against the enactment of an *ex post facto* law.<sup>42</sup> And this is true in criminal as well as

<sup>39</sup> State v. Bixman, 162 Mo. 1; 62 S. W. 828; Pabst Brewing Co. v. Cranshaw, 198 U. S. 17; 25 Sup. Ct. 552; 49 L. Ed. 925; affirming 120 Fed. 144. See State v. Bengsch, 170 Mo. 81; 70 S. W. 710.

<sup>40</sup> Pabst Brewing Co. v. Cranshaw, 120 Fed. 144.

<sup>41</sup> State v. Stoffels, 89 Minn. 205; 94 N. W. 675; Schwulst v. State, 52 Tex. Cr. App. 331; 108 S. W. 698; Smith v. State, 42 Tex. Cr. App. 414; 57 S. W. 815.

<sup>42</sup> South v. State, 86 Ala. 617; 6 So. 52; Perry v. State, 87 Ala. 30; 6 So. 425; Robinson v. State, 84 Ind. 452; Sage v. State, 127 Ind. 15; 26 N. E. 667; Sullivan v. City of Oneida, 61 Ill. 242; Wormley v. Hamberg, 40 Ia. 22; Tilton v. Swift, 40 Ia. 78; County of Kossuth v. Wallace, 60 Ia. 508; 15 N. W. 305; Drake v. Jordan, 73 Ia. 707; 36 N. W. 653; State v. Ah Jum, 9 Mont. 167; 23 Pac. 76; Lazare v. State, 19

in civil cases.<sup>43</sup> Remedies must always be under the control of the Legislature, and it would create endless confusion in legal proceedings if every case was to be conducted only in accordance with the rules of practice, and heard only by the courts, in existence when its facts arose. The Legislature may abolish courts and create new ones, and it may prescribe altogether different modes of procedure in its discretion, though it cannot, in doing so, dispense with any of those substantial protections with which the existing law surrounds a person accused of crime.<sup>44</sup> Upon this theory it has been held that a statute passed after an action was instituted to abate a nuisance under a prohibitory liquor law, which provided for the closing for one year of the building in which a nuisance was kept and for the taxing of an attorney's fee to the defendant was not unconstitutional, the court holding that the statute related to the remedy only and that the attorney's fee provided for was a part of the costs and not a part of the penalty fixed for violating the law.<sup>45</sup> Nor is a statute violative of such a constitutional provision which provides that a judgment rendered against anyone for the violation of an act for the suppression of intemperance, shall be a lien upon the property of a third person, occupied and used with his knowledge and consent, for the unlawful sale or manufacture of intoxicating liquor.<sup>46</sup> Nor is an ordinance passed and promulgated subsequent to the issuance of a license to a retailer of intoxicating liquor which provides a penalty for its violation by a person who shall keep his saloon open after ten o'clock at night, subject to the objection that it is an *ex post facto* or retroactive law, unless the act sought to be punished was committed antecedent to the passage of the ordinance.<sup>47</sup>

Ohio St. 43; State v. Cooler, 30 S. C. 105; State v. Manning, 14 Tex. 402.

<sup>43</sup> Drake v. Jordan, 73 Ia. 707; 36 N. W. 653; Marion v. State, 20 Neb. 233; 29 N. W. 918.

<sup>44</sup> Cooley's Const. Lim., 4th ed., p. 331; Robinson v. State, 84 Ind. 452.

<sup>45</sup> Drake v. Jordan, 73 Ia. 707; 36 N. W. 653; Campbell v. Manderscheid, 74 Ia. 708; 39 N. W. 92.

<sup>46</sup> Polk Co. v. Hierb, 37 Ia. 31; Harten v. State, 32 Kan. 637; 5 Pac. 212; State v. Snyder, 34 Kan. 425; 8 Pac. 860.

<sup>47</sup> State v. Isabel, 40 La. Ann. 340.

**Sec. 153. Local option—Its two phases.**

The securing of a local option is brought about in two ways: the one is for the Legislature to absolutely prohibit the sale of liquor, unless, at an election duly called, the electors of a particular district—a city, a town, a township, a county, or a designated part of a county—shall by a majority vote declare in favor of the sale of liquor under a license law there enforced; the other is that the sale of liquor is permitted under a license law<sup>48</sup> until the electors of the district, at an election duly called, by a like vote declare that it shall not be sold. In the decisions no distinction is drawn between these two methods when the validity of the statutes providing for a local option law is drawn in question. If the one method is valid, the other is. As the Legislature may adopt a prohibitory law, so much of the statute forbidding the sale of liquors is valid; and only that part of the statute which permits a sale if the electors shall declare in favor of it, has been seriously contested.<sup>49</sup>

**Sec. 154. Local option not special legislation.**

In the Constitutions of many of the States there are clauses to the effect that "in all cases where a general law can be made applicable no special law shall be enacted," and the courts of the States, as a rule, have held that it is for the Legislature alone to judge whether a law on any given subject can be made applicable to the whole State; or, in other words, that such clauses leave a discretion with the Legislature to determine in what instances a special law should be passed, and that having so determined the question cannot be reviewed by the courts.<sup>50</sup> In harmony with

<sup>48</sup> No State in the Union permits the unrestricted retail sale of intoxicating liquors.

<sup>49</sup> *State v. Fountain* (Del.), 69 Atl. 926.

<sup>50</sup> *Bourland v. Hildreth*, 26 Cal. 162; *Brooks v. Hyde*, 37 Cal. 366;

*Johnson v. Railroad Co.*, 23 Ill. 202; *People v. Wallace*, 70 Ill. 680; *Gentile v. State*, 29 Ind. 499; *State v. Tucker*, 46 Ind. 355; *Wiley v. Bluffton*, 111 Ind. 152; 12 N. E. 165; *Pennsylvania Co. v. State*, 142 Ind. 498; 41

this rule of statutory construction it has been held that a law, which provides that if a majority of the legal voters in a county shall vote against the sale of intoxicating liquors no license shall be granted within the county for the sale thereof, does not contravene a constitutional provision that "the Legislature shall not pass private, local or special laws regulating the internal affairs of towns and counties." Such an inhibition is not intended to secure uniformity in the exercise of delegated police powers, but to forbid the passing of a law vesting in one town or county a power of local government not granted to another.<sup>51</sup> The question of license or no license, and whether the sale of particular kinds of liquors within the limits of a municipal corporation shall be permitted, is properly one of local police power and may be left to the municipal authorities of towns, cities, townships and counties, or the qualified voters thereof.<sup>52</sup> This subject, although not embraced within the power to make By-Laws and ordinances, is one that falls within the class of police regulations which may be entrusted by the Legislature to municipal authority.<sup>53</sup>

N. E. 942; *Ex parte* Pritz, 9 Ia. 30; *State v. Squires*, 26 Ia. 340; *State v. Hitchcock*, — Kan. 178; *Darling v. Rogers*, 7 Kan. 592; *Boyd v. Bryant*, 35 Kan. 69; *State v. County Court, etc.*, 50 Mo. 317; *State v. Robbins*, 51 Mo. 82; *Hall v. Bray*, 51 Mo. 288; *St. Louis v. Shields*, 62 Mo. 247; *State v. Pond*, 93 Mo. 606; *Ex parte* Swann, 96 Mo. 44; *Hull v. Miller*, 4 Neb. 503; *State v. Parkinson*, 5 Nev. 15; *Welker v. Potter*, 18 Ohio (N. S.), 85; *Walker v. Cincinnati*, 21 Ohio (N. S.), 14.

<sup>51</sup> *Paul v. Gloucester*, 50 N. J. L. 585; *Ex parte* McGuire (Tex. Cr. App.), 123 S. W. 425.

<sup>52</sup> *Anderson v. Commonwealth*, 77 Ky. (13 Bush) 485; *Common-*

*wealth v. Bennett*, 108 Mass. 27; *Commonwealth v. Martin*, 108 Mass. 29.

<sup>53</sup> *Erlinger v. Bonean*, 51 Ill. 94; *Commonwealth v. Turner*, 1 Cush. 493; *State v. Cook*, 24 Minn. 247; *State v. Simmons*, 3 Mo. 414; *State v. Noyes*, 10 Fos. (N. H.) 279; *Tanner v. Trustees, etc.*, 5 Hill (N. Y.), 121; *Locker's Appeal*, 72 Pa. St. 491; *Bancroft v. Dumas*, 21 Vt. 456; *Savage v. Commonwealth*, 84 Va. 619; *Slinger v. Henneman*, 38 Wis. 504; *Fouts v. Hood River*, 46 Ore. 492; 81 Pac. 370; *Gober v. State* (Tex. Cr. App.), 123 S. W. 427.

In a number of instances local option laws enacted for particular districts of a State have been declared unconstitutional, because



### Sec. 155. Local option laws—Delegated power.

The principle is well established that the power to make laws conferred by the Constitution on a Legislature, cannot

special legislation. *Arroyo v. State* (Tex. Cr. App.), 69 S. W. 503; *Griffin v. Eaves*, 114 Ga. 65; 39 S. E. 913; *Harris v. State*, 114 Ga. 436; 40 S. E. 315; *People v. Cooper* 83 Ill. 585; *Berry v. Cramer*, 58 N. J. L. 278; 33 Atl. 201; *Maize v. State*, 4 Ind. 342; *Meshmeier v. State*, 11 Ind. 482.

A statute fixing a minimum license fee in respect of population, but authorizing the fixing of a greater fee by popular vote in towns, townships, boroughs, and in cities wherein licenses are required, which latter license the court of common pleas grant, is a special law and void. *Berry v. Cramer*, 58 N. J. L. 278; 33 Atl. 201.

Where a statute authorized the electors of a certain county to determine whether the provisions of an act prohibiting the sale of liquors should be put in force, but also provided that the act should not interfere with certain option laws in different parts of the county then in force, it was held that the act, intending to apply only in the event there should be a vote in favor of the sale of liquors, was constitutional, the act operating uniformly throughout the county. *Commonwealth v. Nieson* (Ky.), 50 S. W. 66; 20 Ky. L. Rep. 1825.

A statute authorizing cities having a population of 2,500 to prohibit the sale of liquors does

not contravene a provision of the constitution dividing cities into classes by making a new class. *Ex parte Handler*, 176 Mo. 383; 75 S. W. 920.

The fact that in the districts adopting local option, where the electors vote "no license," different penalties for violations of the act are imposed in such districts than would be imposed in other districts for offenses of the same character in the event of the passage of subsequent acts for such other districts, does not render the act invalid, where the Legislature has the power to provide different laws and different penalties touching the same character of offenses in the various subdivisions of the State. Such a law, however, must operate uniformly on all citizens of the subdivision to which it applies, or on the class of citizens to be affected by it, and must make a reasonable classification of those persons within the limits of its operation. *State v. Fountain* (Del.), 69 Atl. 926; *Ex parte Handler*, 176 Mo. 383; 75 S. W. 920.

The Legislature cannot delegate the authority to a city to set aside, vacate, suspend or repeal the general laws of a State, even by a direct provision, and therefore a provision that if any ordinance of the city adopted pursuant to the provisions of the city charter, if in conflict with a



be delegated by the Legislature to the people of the State, or any portion of them. When a Legislature passes a law,

State law, should supersede it, is void. *Arrayo v. State* (Tex.), 69 S. W. 503.

Excepting from the provisions of a local option law sales of liquors for sacramental or medicinal purposes does not render the act void. *Ray v. State*, 47 Tex. Cr. App. 407; 83 S. W. 1121; nor is the act void if it excepts from the operation domestic wines. *Hancock v. State*, 114 Ga. 439; 40 S. E. 317; *Roberts v. State*, 114 Ga. 541; 40 S. E. 750; *August Busch & Co. v. Webb*, 122 Fed. 655.

A local option statute is not void simply because it applies only to municipalities. *Lloyd v. Dollison*, 23 Ohio Cir. Ct. Rep. 571.

Where a general statute permitted the sale in any county of the State of domestic wines in quantities of one quart or more by the manufacturers, a subsequent statute prohibiting "the sale and furnishing of spirituous, malt or intoxicating liquors" within a certain county was held void, because special legislation. *O'Brien v. State*, 109 Ga. 51; 35 S. E. 112; *Embry v. State*, 110 Ga. 311; 35 S. E. 116.

A statute providing for local option is not void because it defines what are intoxicating liquors. *People v. McBride*, 234 Ill. 146; 84 N. E. 865; nor is it void because it fixes no date for holding an election, nor because the board of supervisors cannot act until a petition for an election is

filed with them. *Thalheimer v. Board* (Ariz.), 94 Pac. 1129.

A clause in a statute providing that it shall not take effect in March, 1903, unless a majority vote cast on the question of local option shall be negative, when it shall go into effect in December, 1906; and other provisions as to elections shall take effect at once, is valid. *State v. Scampini*, 77 Vt. 92; 59 Atl. 201. A statute repealing a liquor law, but providing that it should not go into effect unless a majority vote was in favor of the repeal, is valid. *In re McGonnell's Appeal*, 209 Pa. St. 327; 58 Atl. 615; reversing 24 Sup. Ct. Rep. 642.

It is no objection to a local option law on the ground that it is class legislation, that it discriminates in favor of those voters who favor prohibition and against those who do not. *Sweeney v. Webb*, 33 Tex. Civ. App. 324; 76 S. W. 766; 77 S. W. 1135.

A statute allowing the voters of a county to determine whether local option shall prevail throughout the county is not void because certain portions of the county, under a previous statute, had already determined that local option should prevail in such portions. *Gayle v. Owen County Court*, 83 Ky. 61; 6 Ky. L. Rep. 789.

Under a constitutional provision that all license fees shall go to the school fund of the State, it cannot be insisted that a law

it must pass entirely upon the question of its expediency; and it cannot say that a law shall be deemed expedient provided that the people afterwards, by a popular vote, or otherwise, declare it to be expedient. A statute to take effect upon a subsequent event must, when it comes from the hands of the Legislature, be a law *in presenti* to take effect *in futuro*. On the question of the expediency of the law the Legislature must exercise its own judgment, definitely and finally. This well established principle has been "the bone of contention" in the courts in many of the different States of the Union in passing upon the constitutionality of what are known as "local option laws." Some of the earlier decisions held that such laws were unconstitutional because their operation was made to depend upon the contingency of a popular vote. The leading case upon this point was decided in 1847.<sup>54</sup> That case was followed by the courts of California, Delaware, Indiana, Iowa, Michigan, New York, and some others.<sup>55</sup> It was, however, after an able argument and examination of the course of judicial decision upon the subject, overruled.<sup>56</sup> The great weight of judicial decision now is to the effect that such laws, when

permitting the voters of the county to prohibit the sale of liquor in such county is unconstitutional. *Lemon v. Peyton*, 64 Miss. 161; 8 So. 235; *Portwood v. Baskett*, 64 Miss. 213; 1 So. 105.

A local option statute prohibiting the contesting of the validity of a local option election in a prosecution for the violation of the law is constitutional. *Ex parte McGuire* (Tex. Cr. App.), 123 S. W. 425.

<sup>54</sup> *Parker v. Commonwealth*, 6 Barr. (Penn.) 507.

<sup>55</sup> *Houghton v. Austin*, 47 Cal. 646; *Ex parte Wall*, 48 Cal. 279; *Rice v. Foster*, 4 Harr. (Del.) 479; *Maizer v. State*, 4 Ind. 342;

*Meshmeier*, 11 Ind. 482; *Sauto v. State*, 2 Ia. 105; 63 Am. Dec. 487; *Geebric v. State*, 5 Ia. 491; *State v. Beneke*, 9 Iowa, 203; *State v. Weir*, 33 Ia. 134; 11 Am. Rep. 115; *Weir v. Cram*, 37 Iowa, 649; *People v. Collins*, 3 Mich. 343; *Barto v. Himrod*, 4 Sel. (N. Y.) 483; *Lessman v. Territory*, 3 Wash. Ter. 453; *Thornton v. Territory*, 3 Wash. Ter. 482; *Stallworth v. State*, 16 Tex. App. 345; *Turner v. Saxon* (Wash. Ter.), 20 Pac. Rep. 685. See *In re Municipal Suffrage to Women*, 160 Mass. 586; 36 N. E. 488; 23 L. R. A. 113.

<sup>56</sup> *Locke's Appeal*, 72 Pa. St. 491.

general in their application, do not violate the constitutional provision that the power to make laws is vested in the Legislature. The constitutional objection to such a law is met, if the act, when it came from the Legislature, received the governor's approval, was properly published, and was, of itself, a complete and perfect enactment. In such case the popular will is expressed under and by virtue of a law that is in force and effect, and the people neither make nor repeal it. By this vote, petition or remonstrance, as the case may be, they only determine whether a certain thing shall be done under the law, and not whether the law shall take effect. The law has full and absolute vitality when it passes the Legislature; and the people, under the rule of action therein given for their government, proceed to act. The same rule—the same law—is given to all the people of the State, to all parts of it; the same method for obtaining the expression of the people maintains throughout the State. As a result a different regulation, of a police nature, may, under such a law, exist in one town, city or county from that which exists in another.<sup>57</sup> In such case the maxim

<sup>57</sup> *Weil v. Calhoun*, 25 Fed. Rep. 865; *Ex parte Cowert*, 92 Ala. 94; 9 So. 225; *Boyd v. Bryant*, 35 Ark. 69; 37 Am. Rep. 6; *State v. Wilcox*, 42 Conn. 364; *Caldwell v. Barrett*, 73 Ga. 604; *Menken v. City of Atlanta*, 78 Ga. 668; *Groesch v. State*, 42 Ind. 547; *Ginz v. State*, 42 Ind. 218; *State v. Gerhardt*, 145 Ind. 439; 44 N. E. 469; *State v. Forkner*, 94 Ia. 1; 62 N. W. 683; *Anderson v. Commonwealth*, 13 Bush, 485; *Commonwealth v. Weller*, 77 Ky. (14 Bush) 218; 29 Am. Rep. 407; *Garrett v. Aby*, 47 La. Ann. 618; *Lowry v. Commonwealth (Ky.)*, 36 S. W. 1117; 18 Ky. L. Rep. 481; *Howard v. Haines*, 25 Md. 541; *Fell v. State*, 42 Md. 71; *Commonwealth v. Bennett*, 108 Mass. 27; *Commonwealth v. Dean*, 110 Mass. 357; *State v. Cook*, 24 Minn. 247; *Schulherr v. Bordeaux*, 64 Miss. 59; *State v. Kline*, 50 Ore. 426; 93 Pac. 237; *In re O'Brien*, 29 Mont. 530; 75 Pac. 196; *Lemon v. Peyton*, 64 Miss. 161; *State v. Pond*, 93 Mo. 606; 6 S. W. 469; *Everse v. Hudson*, 36 Mont. 135; 92 Pac. 462; *Ex parte Swarm*, 96 Miss. 44; *State v. Gloucester*, 50 N. J. L. 585; *Sandford v. Court*, 7 Vroom 72; 13 Am. Rep. 422; *Gloversville v. Howell*, 70 N. Y. 287; *Gordon v. State*, 46 Ohio St. 607; 23 N. E. 63; 6 L. R. A. 749; *Ex parte Lynn*, 19 Tex. App. 293; *Steele v. State*, 19 Tex. App. 425; *State v. Swisher*, 17 Tex. 441; *Ex parte Kennedy*, 23 Tex. App.

*delegata potestas non potest delegari* has no application.<sup>58</sup>

77; *Evans v. State*, — (Tex.), 117 S. W. 167; *Bancroft v. Dumas*, 21 Vt. 456; *State v. Parker*, 26 Vt. 357.

<sup>58</sup> *People v. Collins*, 3 Mich. 343; *Paul v. Gloucester County*, 50 N. J. L. (21 Vroom) 583; *Feek v. Bloomingdale Tp.*, 82 Mich. 393; 47 N. W. 37; 10 L. R. A. 69; *Friesner v. Common Council*, 91 Mich. 504; 52 N. W. 18; *State v. Pond*, 93 Mo. 606; 6 S. W. 469; *Ex parte Swan*, 96 Mo. 44; 9 S. W. 10; *State v. Moore*, 107 Mo. 78; 16 S. W. 937; *State v. Watts*, 111 Mo. 553; 20 S. W. 237; *State v. Dugan*, 110 Mo. 138; 19 S. W. 195; *State v. Rouch*, 47 Ohio St. 478; 25 N. E. 59; *Van Wert v. Brown*, 47 Ohio St. 477; 25 N. E. 59 (reversing 4 Ohio Cir. Ct. 407); *Commonwealth v. Locke*, 29 Leg. Int. 172; affirmed 72 Pa. St. 491; *Leger v. Rice*, Fed. Cas. No. 8210; *Hobart v. Butte Co.*, 17 Cal. 23; *Robinson v. Bidwell*, 23 Cal. 379; *Guild v. Chicago*, 82 Ill. 472; *Erlinger v. Boneau*, 51 Ill. 94; *People v. Salomon*, 51 Ill. 37; *Lytle v. May*, 49 Iowa, 224; *Clark v. Rogers*, 81 Ky. 43; *Wales v. Belcher*, 3 Pick. 508; *State v. Noyes*, 10 Fost. 279; *Morgan v. Monmouth Plank Road Co.*, 2 Dutch. 99; *Warner v. Hoagland*, 22 Vroom 62; 16 Atl. 166; *Noonan v. Hudson County*, 22 Vroom 454; 18 Atl. 117; 23 Vroom 398; 23 Atl. 255; *Johnson v. Rich*, 10 N. Y. Leg. Obs. 33; *Grant v. Couter*, 24 Barb. 232; *Clarke v. Rochester*, 5 Abb. Prac. 107; *Smith v. Mc-*

*Carthy*, 56 Pa. St. 359; *State v. Copland*, 3 R. I. 33; *Louisville*, etc., R. Co. v. *Davidson*, 1 Sneed, 637; 62 Am. Dec. 424; *Rutter v. Sullivan*, 25 W. Va. 427; *State v. O'Neill*, 24 Wis. 149; *Smith v. Janesville*, 26 Wis. 291; *King v. Walsh*, 6 Can. Cr. Cas. 452; *Randall v. Tillis*, 43 Fla. 43; 29 So. 540; *Fouts v. Hood River*, 46 Ore. 492; 81 Pac. 370; *State v. Handler*, 178 Mo. 38; 76 S. W. 984; *Hoover v. Thomas*, 35 Tex. Civ. App. 535; 80 S. W. 859; *In re McGonnell's License*, 209 Pa. St. 327; 58 Atl. 615; reversing 24 Pa. Super. Ct. 642; *August Busch & Co. v. Webb*, 122 Fed. 655; *Territory v. O'Connor*, 5 Dak. 397; 41 N. W. 746; *Minneha County v. Champ-tion*, 5 Dak. 43; 41 N. W. 754; *Thalheimer v. Board (Ariz.)*, 94 Pac. 1129; *People v. McBride*, 234 Ill. 146; 84 N. E. 865; *State v. Peckham*, 3 R. I. 289; *State v. Stevens*, 8 Ohio Dec. 6; 5 Ohio N. P. 354; *Stevens v. State*, 61 Ohio, 597; 56 N. E. 478; *State v. Barber (S. D.)*, 101 N. W. 1078; *Ray v. State*, 46 Tex. Cr. App. 176; 83 S. W. 1121; *Commonwealth v. Neason (Ky.)*, 50 S. W. 66; 20 Ky. L. Rep. 1825; *Ex parte Handler*, 176 Mo. 383; 75 S. W. 920; *Childers v. Shepherd (Ala.)*, 39 So. 235; *Lowry v. Commonwealth (Ky.)*, 36 S. W. 1117; 18 Ky. L. Rep. 481; *Savage v. Commonwealth*, 84 Va. 619; 5 S. E. 565; *People v. Kemmis*, 153 Mich. 117; 116 N. W. 554; *People v. McBride*, 234 Ill.



### Sec. 156. Local option laws, constitutionality.

At the expense of a repetition it may be stated that the great weight of authority now is to the effect that a local option law, if it is a complete enactment in itself, requiring nothing further to give it vitality and depending upon popular vote for nothing but a determination of the territorial limits of its operation, is a valid and constitutional exercise of legislative power. That a statute may be conditional, and its taking effect made to depend upon subsequent events, is now well settled.<sup>59</sup> The question of license or no license is one properly of local police and may be constitutionally left to the decision and discretion of the lawfully created agencies representing and acting for the local public, which are immediately affected by the retail liquor traffic, such as county courts, and the municipal authorities of towns and cities. Likewise, a Legislature may create other agencies to determine such local question even to the referring of it to the qualified voters of the town, city, or civil district in which the necessary steps may be taken to test the sense of such voters on the subject of such retail traffic.<sup>60</sup> In other words, a Legislature has the constitutional power to confer upon the qualified voters of a local

146; 84 N. E. 865; *State v. Johnson*, 86 Minn. 121; 90 N. W. 161; *State v. Harp* (Mo.), 109 S. W. 578; *In re O'Brien*, 29 Mont. 530; 75 Pac. 196; *Sweeney v. Webb*, 97 Tex. 250; 76 S. W. 766; 77 S. W. 1135; *State v. Skeggs*, 154 Ala. 249; 46 So. 268; *Kennedy v. Warner*, 100 N. Y. Supp. 616; 51 N. Y. Misc. 362; *State v. Peckham*, 3 R. I. 289; *Ray v. State*, 47 Tex. Cr. App. 407; 83 S. W. 1121; *State v. Fountain* (Del.), 69 Atl. 926; *Adams v. Kelley* (Tex. Civ. App.), 45 S. W. 859; *Stephens v. State*, 47 Tex. Cr. App. 604; 85 S. W. 797; *State v. Richardson*, 48 Ore. 309; 85 Pac. 225; *Oak*

*Cliff v. State* (Tex. Civ. App.), 77 S. W. 24; affirmed 67 Tex. 391; 79 S. W. 1; *Ex parte Heyman*, 45 Tex. Cr. App. 532; 78 S. W. 349; *State v. MacElrath*, 49 Ore. 294; 89 Pac. 803; *Feek v. Township Board*, 82 Mich. 393; 47 N. W. 37; 10 L. R. A. 69; *Commonwealth v. Bottoms* (Ky.), 22 Ky. L. Rep. 410; 57 S. W. 493.

<sup>59</sup> *Commonwealth v. Weller*, 14 Bush (Ky.), 218; 29 Am. Rep. 407.

<sup>60</sup> *Anderson v. Commonwealth*, 13 Bush (Ky.), 485; *Commonwealth v. Hoke*, 14 Bush (Ky.), 485.



community the power to decide whether the retail traffic in intoxicating liquors shall be permitted to be licensed in such town, city or community or not.<sup>61</sup>

### Sec. 157. Local option laws, when not unconstitutional.

As a rule, the Legislatures of the various States have exercised the power to prohibit the retail traffic in liquors by any other than persons specially licensed for the purpose, and have delegated to designated local agencies, such as county courts, and the authorities of incorporated towns and cities, the discretion to grant or refuse licenses, as they should deem most conducive to the well-being of the local public. A local option law, where the right to sell liquor under a license is provided for, does not differ in principle from the legislation restraining the liquor traffic by requiring the obtaining of a license to carry on the traffic. It merely extends the restriction by adding another agency, with power to refuse to permit a license to be granted. The voters may, by exercising the power given them in such a

<sup>61</sup> *Weil v. Calhoun*, 25 Fed. Rep. 865; *Boyd v. Bryant*, 35 Ark. 69; 37 Am. Rep. 6; *State v. Wilcox*, 42 Conn. 364; 19 Am. Rep. 536; *Territory v. O'Connor*, 5 Dak. 397; 41 N. W. 746; *Caldwell v. Barrett*, 73 Ga. 604; *Hammond v. Hanes*, 25 Md. 541; 90 Am. Dec. 77; *Fell v. State*, 42 Md. 71; 20 Am. Rep. 83; *Slymer v. State*, 62 Md. 240; *Commonwealth v. Bennett*, 108 Mass. 27; 11 Am. Rep. 304; *Commonwealth v. Dean*, 110 Mass. 357; *Feek v. Bloomingdale*, 82 Mich. 393; 47 N. W. 37; *State v. Cooke*, 24 Minn. 247; 31 Am. Rep. 344; *Schuler v. Bordeaux*, 64 Miss. 59; 8 So. 201; *Lemon v. Peyton*, 64 Miss. 161; 8 So. 235; *State v. Pond*, 93 Mo. 606; 6 S. W. 469; *State v. Morris County*, 36 N.

J. L. 72; 13 Am. Rep. 422; *State v. Circuit Court*, 52 N. J. L. 585; 15 Atl. 272; *Gloversville v. Howell*, 70 N. Y. 287; *Gordon v. State*, 46 Ohio St. 603; 23 N. E. 63; *Locke's Appeal*, 72 Pa. St. 491; 13 Am. Rep. 716; *Holley v. State*, 14 Tex. App. 505; *Ex parte Lynn*, 19 Tex. App. 293; *State v. Parker*, 26 Vt. 357; *Savage v. Commonwealth*, 84 Va. 619; 5 S. E. 565; *Denton v. Vann*, 8 Cal. App. 677; 97 Pac. 675; *Baxter v. State*, 49 Ore. 353; 88 Pac. 677; 89 Pac. 369; *People v. Bashford* (N. Y.), 112 N. Y. Supp. 582; affirmed, 128 N. Y. App. Div. 351; 112 N. Y. Supp. 1143; *Hall v. Dunn* (Ore.), 97 Pac. 811. See *Ruhland v. Waterman* (R. I.), 71 Atl. 1.

local option law, render the granting of licenses unlawful. But in doing so they do not make law. They do no more than county courts and municipal authorities have always done—they exercise a police power conferred upon them by Legislature. If they vote against it, the traffic is not thereby made unlawful. That was so before, unless the dealer had a license. The voters under a local option law have the power to say no license shall be issued. This is no new power. It has always existed in some agency of the law, and a local option law merely transfers the power, or a part of it, to another depository. But it leaves a residuum in the county courts and municipal authorities. They may still exercise the power as formerly until the voters have exercised the power vested in them to prohibit the traffic. And when the voters refuse to exercise their power to prohibit, the county courts and municipal authorities, having the power to grant licenses, still have a right to refuse to grant them, just as they did before the local option law was adopted. In other words, a local option law is a permanent and continuing law in all parts of the State which adopts it. It is not adopted, suspended or repealed by the vote of the people, if any city, town or civil district vote against the sale of intoxicating liquor. The vote determines the question of local police as to whether the sale of liquors shall be licensed or not.<sup>62</sup>

**Sec. 158. Local option laws, when not unconstitutional—Continued.**

A local option law will not violate a constitutional provision which vests the legislative authority of a State in a general assembly composed of a senate and house of representatives, nor a constitutional provision which vests the administrative affairs of the State in certain designated officers, by committing either of such powers to the people.<sup>63</sup>

<sup>62</sup> Wall. Cases, 48 Cal. 279; Commonwealth v. Hoke, 14 Bush (Ky.) 668; State v. Cooke, 24 Minn. 247; 31 Am. Rep. 344; Paul v. Gloucester County, 50 N.

J. L. (21 Vroom) 583; State v. Fountain (Del.), 69 Atl. 926.

<sup>63</sup> Groesch v. State, 42 Ind. 547.

And it makes no difference with the constitutionality of such a law whether the action of those operating under it is called an exercise of legislative or administrative power. In either case such action is had by authority of the Legislature, conferred by the Constitution, and when by such action an order has been made it is the law that prohibits and not the action of the authorities.<sup>64</sup> Nor will it violate a constitutional provision which prohibits the enactment of laws local in their nature, nor one which provides that all laws of a general nature shall have a uniform operation throughout the State.<sup>65</sup> A special act or statute is one which at common law the courts will not notice unless it is pleaded and proved like any other fact.<sup>66</sup> A law which applies generally to a particular class of cases is not a local or special law.<sup>67</sup> It is only in a qualified sense that any law can be said to be of uniform operation throughout the State. A law for the punishment of crime, the provisions of which are alike applicable to all parts of the State, must necessarily lack uniformity in one sense in its operation, not only as to persons but also as to localities. It operates in those places where its provisions are violated and upon those persons who transgress them. Under the same circumstances and conditions its operation is uniform. The law which affords civil remedies is uniform in its provisions, and under the like circumstances is uniform in its operation throughout the State. It is not required that every man shall resort to that remedy, or that in each locality there shall be the same number or any number of persons who shall resort to the remedy, in order to make the law uniform in its operation in the sense in which the terms are used in the Constitution. Such is the case under all circumstances when one or more persons are by law required to do some act or acts, upon or in consequence of which the law is to operate.<sup>68</sup>

<sup>64</sup> Feek v. Township Board, 82 Mich. 393; 47 N. W. 37.

<sup>65</sup> Groesch v. State, 42 Ind. 547; *Ex parte* Swann, 96 Mo. 44; State v. Circuit Court, 50 N. J. L. 585; Gordon v. State, 46 Ohio St. 607; 23 N. E. 63.

<sup>66</sup> Hingle v. State, 24 Ind. 28; Toledo, etc. R. Co. v. Nordyke, 27 Ind. 95.

<sup>67</sup> Consumers etc. Co. v. Harless, 131 Ind. 446; 29 N. E. 1062.

<sup>68</sup> Groesch v. State, 42 Ind. 547.

Such an inhibition is not intended to secure uniformity in the exercise of delegated police powers, but to forbid laws vesting in one town, city, township or county a power of local government not granted to another.<sup>69</sup> In Michigan, it has been held that in the absence of such a constitutional restraint, there is the underlying principle of natural right and justice which prevents the Legislature from enacting laws for a particular locality different from those applicable to other portions of the State or from suspending the operation of general laws as to any particular locality, and that a local option law was valid because it was in furtherance of the right of local self-government.<sup>70</sup> The constitutional provision that the operation of laws throughout a State shall be uniform applies only in the sense that their operation shall be the same in all parts of the State under the same circumstances.<sup>71</sup> Uniformity in the operation of a law is not destroyed because the electors in one or more towns, cities, townships or counties of a State may not see fit to avail themselves of the provisions of a local option law.<sup>72</sup>

#### **Sec. 159. Local option, not in violation of Fourteenth Amendment.**

A local option law will not contravene Section 1, Article XIV, of the United States Constitution, which declares that, "No State shall deny to any person within its limits the equal protection of the law." Such a law applies within the territory or locality where it is adopted, without discrimination in favor of or against persons or classes of persons within such territory or locality.<sup>73</sup> Under this amendment a Chinaman, a negro, a Hottentot, or a white man has the

<sup>69</sup> *State v. Circuit Court*, 50 N. J. L. 585; 15 Atl. 272.

<sup>70</sup> *Feek v. Bloomington*, 82 Mich. 393; 47 N. W. 37.

<sup>71</sup> *Groesch v. State*, 42 Ind. 547; *City of Indianapolis v. Nevin*, 151 Ind. 139; 47 N. E. 525; 50 N. E. 80; *Ex parte Swann*, 96 Mo. 44; 9 S. W. 10.

<sup>72</sup> *State v. Circuit Court*, 50 N. J. L. 585; 15 Atl. 272.

<sup>73</sup> *State of Missouri v. Lewis*, 101 U. S. 30; *Hayes v. State of Missouri*, 120 U. S. 68; 7 Sup. Ct. 350; *Ex parte Swann*, 96 Mo. 44.



right to the protection of the United States within the limits of its jurisdiction, in any occupation which he has the right to carry on. He may not be deprived of life or liberty, nor can his property be taken without just compensation or due process of law. He may have equal protection in his enjoyment of his personal or civil rights; he may pursue happiness in his own way; have equal access to the courts and be subjected to no greater liability or punishment than is imposed on others for similar crimes. These are instances of the rights which may not be abridged, and of the privileges and immunities in the enjoyment of which he is entitled to the equal protection of the laws. But when the political power of a State, for the safety of its people, takes the responsibility of saying that certain occupations are hurtful and will not be permitted in its boundaries, unless that declaration is so unreasonable as to violate and outrage natural justice it is a purely political responsibility, and there is an end of the matter. *Salus populi suprema lex* and the only appeal is to the force of public opinion or its expression in the ballot box. The occupation so stigmatized is no longer a right, privilege or immunity.<sup>74</sup> Is the sale of intoxicating liquors an occupation of that sort? Let the Supreme Court of the United States answer: "The right to sell intoxicating liquors is not one of the privileges and immunities of citizens of the United States which, by the Fourteenth Amendment, the States are forbidden to abridge." "The weight of authority is overwhelming that no such immunity heretofore existed as would prevent State Legislatures from regulating or even prohibiting the traffic in intoxicating liquors."<sup>75</sup> In the case last cited, Mr. Justice Bradley said: "No one has ever doubted that a Legislature may prohibit the vending of articles deemed injurious to the safety of society, provided it does not interfere with vested rights of property. When such rights stand in the way of public good they can be removed by awarding compensation

<sup>74</sup> *In re Hoover*, 30 Fed. Rep.      <sup>75</sup> *License Cases*, 5 How. (U. S.) 573.  
<sup>51</sup>; *Barbier v. Connolly*, 112 U. S. 27.



to the owner. When they are not in question the claim of a right to sell a prohibited article can never be deemed one of the privileges and immunities of the citizen." It is apparent from the cases cited that the extent to which the laws of a State may regulate or prohibit the sale of intoxicating liquors is a matter resting almost entirely within the discretion of the Legislature, that discretion being limited only by the provisions of the State Constitution. Accordingly, it has been held that where there is no express constitutional provision against it a Legislature may pass what is known as a local option law. It is not necessary for the sake of justifying such a law to array the appalling statistics of the misery, pauperism and crime which have their origin in the use or abuse of ardent spirits. The police power, which in this instance belongs exclusively to the States, in regard to this matter is sufficient alone and may be relied upon to correct these great evils by such measures of restraint or prohibition as may be necessary to affect that purpose.<sup>76</sup> True enough, there are some cases which are against this conclusion. But the great weight of authority and the better reasons are in favor of the constitutionality of such laws.<sup>77</sup>

<sup>76</sup> *Ex parte* Wall, 48 Cal. 279; *Rice v. Foster*, 4 Harr. (Del.) 479; *Maize v. State*, 4 Ind. 342; *State v. Weir*, 33 Iowa 134; *Lammert v. Lidwell*, 62 Mo. 188; *Parker v. Commonwealth*, 6 Pa. St. 507; *State v. Swisher*, 17 Tex. 441; *Ex parte* Lynn, 19 Tex. App. 293; *Steele v. State*, 19 Tex. App. 425.

<sup>77</sup> *Boyd v. Bryant*, 36 Ark. 69; *State v. Wilcox*, 42 Conn. 364; *State v. Brennan*, 2 S. Dak. 384; 50 N. W. 625; *Groesch v. State*, 42 Ind. 547; *Anderson v. Commonwealth*, 13 Bush (Ky.) 485; *Commonwealth v. Weller*, 14 Bush

(Ky.) 218; *Fell v. State*, 42 Md. 71; *Commonwealth v. Bennett*, 108 Mass. 27; *Commonwealth v. Dean*, 110 Mass. 357; *State v. Cooke*, 24 Minn. 247; *Rohrbacker v. Jackson*, 51 Miss. 735; *State v. Noyes*, 30 N. H. 279; *State v. Common Pleas, etc.*, 36 N. J. L. 72; *Cincinnati, etc. R. Co. v. Commissioners, etc.*, 1 Ohio St. 77; *Bancroft v. Dumas*, 21 Vt. 456; *State v. Parker*, 26 Vt. 357; *Smith v. Janesville*, 26 Wis. 291; *State v. Fountain* (Del.), 69 Atl. 926; *Lloyd v. Dollisin*, 23 Ohio Cir. Ct. Rep. 571; *Pabst Brewing Co. v. Crenshaw*, 120 Fed. 144.

**Sec. 160. Local option—Alabama Constitution—Notice of enactment of law.**

The Alabama Constitution provides that no local law shall be enacted by the Legislature unless a notice thereof shall first be published in the locality affected, stating the substance of the proposed law. In pursuance of this provision a notice was given wherein it was stated that an application would be made to the Legislature to enact a law preventing the sale of vinous, malt and spirituous liquors, except in cities or towns, within five miles of the insane hospitals situated at T. and M. It was held that the notice given was a sufficient compliance with this constitutional provision.<sup>78</sup> But a notice of an intention to introduce an act to prohibit the sale of liquor "outside of incorporated towns" in a certain county, and also providing that liquors should not be sold in an incorporated town except pursuant to an election held to determine the question of sale or no sale, is not sufficient to authorize the enactment of a law for such county to regulate the license and sale of liquor and providing for the issuance of a license in any part of the county on a petition signed by a majority of the qualified voters in the precinct.<sup>78\*</sup> Yet a notice of an intention to introduce a bill "to establish a dispensary in the city of T. for the sale of spirituous liquors and other intoxicating liquors" is sufficient to authorize the enactment of a law establishing a liquor dispensary in the city, authorizing the city to operate it, invest money therein, select a salaried dispenser, conduct the business there under prescribed regulations, prohibit others from engaging in the sale of liquors in the city, and giving the city the exclusive right to sell liquors therein.<sup>79</sup> Under the provision of this Constitution the Legislature cannot enact a local law where the notice of an intention to apply therefor shows that the proposed act would be unconstitutional when enacted.<sup>80</sup> A notice that

<sup>78</sup> State v. Williams, 143 Ala. 501; 39 So. 276.

<sup>78\*</sup> Hudgins v. State, 145 Ala. 499; 39 So. 717; Elba v. Rhodes, 142 Ala. 689; 38 So. 807.

<sup>79</sup> Uniontown v. State (Ala.), 39 So. 814; State v. Williams (Ala.), 39 So. 816.

<sup>80</sup> Alford v. Hicks (Ala.), 38 So. 752.

an application would be made "to repeal the prohibition law of L. beat" was held to authorize the enactment of a law repealing the law named (which forbade the sale of liquors "at or within eight miles of the court house of the town of L.") only so far as it applied to the "corporate limits of the town of L."<sup>81</sup>

### **Sec. 161. Local option law in territories.**

A statute providing for the prohibition of the sale of intoxicating liquors in the several counties of a territory by local option cannot be defeated because it deprives a citizen of his property without due process of law; nor because it conflicts with the Organic Act of the territory; nor that it conflicts with the revenue laws of the United States granting license to sell intoxicating liquors; nor that it conflicts with the act of Congress prohibiting the Legislature from passing any law "impairing the rights of private property;" nor that it conflicts with the act of Congress prohibiting local or special legislation; nor that it conflicts with the act of Congress in delegating legislative power. Such a statute is of a police nature and a rightful subject of legislation within the power conferred upon a territory by its Organic Act, and being local in its character may be left to each county of the territory to determine when it shall be enforced therein.<sup>82</sup>

### **Sec. 162. Local option not destructive of property rights.**

A local option law does not violate the constitutional provision that "no man's property shall be taken by law without just compensation." Such a law rests in no degree upon the power of eminent domain. It does not contemplate either the taking or the damaging of anything. It is an exercise of the police powers of a State, pure and simple. The incidental effect upon the value of property does not result from any interference with the property, but solely

<sup>81</sup> *Brenner v. State*, (Ala.), 38 So. 1031.

<sup>82</sup> *Territory v. O'Connor*, 5 Da. Ter. 397; *Thalheimer v. Board* (Ariz.), 94 Pac. 1129.

from the owners of property to adjust their old business to the new law. These effects, if they can be called damage at all, are *damnum absque injuria*. The law does not take or damage the property of the owners for the public use, but only prevents them, to a certain limited extent, from taking or damaging the public for their use. This is their real grievance, and for that they have no remedy. Where business and law conflict, it is the business that must give way, not the law. The owner of property acquires and holds his property subject to the right of the Legislature, under the police power to control it whenever the public peace, the public morals, or the public health is involved. Nor will such a law be invalid because of the abridgement of the rights of the dealers in intoxicating liquors. No one has a right to deal in such liquors save as a privilege from the State.<sup>83</sup>

### Sec. 163. Special legislation for villages.

A statute which provides that all incorporated villages within a State, having within their limits a college or university, shall have power to provide by ordinance against the evils resulting from the sale of intoxicating liquors within the limits of the corporation cannot be defeated on the ground that it is special legislation.<sup>84</sup> A law framed in general terms, restricted to no locality and operating equally upon all of a group of objects, which, having regard to the purposes of the legislation, are distinguished by characteristics sufficiently marked and important to make them a class by themselves, is not a special or local law, but a general law.<sup>85</sup> Under such a law enacted under a title providing that such incorporated villages may regulate the sale

<sup>83</sup> Menken v. City of Atlanta, 78 Ga. 668; Burnside v. Lincoln County Court, 86 Ky. 423; 6 S. W. 276; *Ex parte* Lynn, 19 Tex. App. 293; Steele v. State, 19 Tex. App. 425; *Ex parte* Kennedy, 23 Tex. App. 77; Savage v. Commonwealth, 84 Va. 619; 5 S. E. 565.

<sup>84</sup> Bronson v. Oberlin, 41 Ohio St. 476.

<sup>85</sup> Groesch v. State, 42 Ind. 547; Consumer's Co. v. Harless, 131 Ind. 446; 29 N. E. 1062; State v. Parsons, 40 N. J. L. 123; McGee v. State, 30 Ohio St. 54; State v. Powers, 38 Ohio St. 54.



of intoxicating liquors therein, a village council will exceed its power if it passes an ordinance which prohibits the sale of intoxicating liquors to all persons and for all purposes except mechanical and medicinal. Construing the words of such a statute, together with its title, the conclusion must be that the power conferred by the statute is that of regulating the sale and not of prohibiting the sale of intoxicating liquor. Regulation and prohibition are essentially and irreconcilably different things.<sup>86</sup>

### Sec. 164. Local option constitutional provisions.

In some of the States express provisions of their Constitutions provide for the adoption of a local option law. Such is the case in Delaware. The Constitution of that State empowers the Legislature to submit to a popular vote the question of license or no license, and requires it to provide laws to carry out and enforce such power, enact laws concerning the manufacture of liquors under the limitations of the Constitution, and provide necessary penalties. The Legislature adopted a law for the submission of the question, and provided therein penalties and processes for the enforcement of the act in case a popular vote in a district should adopt its provisions; and it was held that this was a valid statute and not invalid on the ground that such penalties and processes would be enforceable only in the event a majority of the electors of any district voted for "no license;" for the casting of a majority vote for "no license" was only a contingency upon which the Legislature had provided that the penalties should become operative.<sup>87</sup> The Constitution of Texas provides that each county shall be divided into four commissioners' precincts, and from each precinct shall be elected one commissioner. It also provides that the Legislature shall enact a law whereby the qualified

<sup>86</sup> *Miller v. Jones*, 80 Ala. 89; *Sweet v. City of Wabash*, 41 Ind. 7; *Cantrell v. Sainer*, 59 Iowa 26; 12 N. W. 753; *People v. Gadway*, 61 Mich. 285; 28 N. W. 101; *In re Hauck*, 70 Mich. 396; 38 N.

W. 269; *Bronson v. Oberlin*, 41 Ohio St. 476; *Heise v. Common Council*, 6 Rich. Law (S. C.), 404.

<sup>87</sup> *State v. Fountain* (Del.), 69 Atl. 926.



voters of any county, justice's precinct, or town, or such subdivision of a county as may be designated by the commissioner's court, may, from time to time, determine whether the sale of liquors shall be prohibited within its limits. It was held that the statute could not be successfully attacked on the ground that it failed to vest in the commissioner's court the full measure of discretion concerning the subdivisions in which elections might be held which the Constitution authorized the Legislature to grant, because the constitutional power to grant such full discretion included the lesser power to grant the limited discretion conferred by statute. It was also held that the statute was not invalid because of a failure to allow the voters of cities and towns to repeal prohibition as to them, where it had been carried as to the county as an entirety.<sup>88</sup> But an act attempting to authorize the commissioners' court to designate a portion of a county composed of seven justices' precincts for holding a local option election is void.<sup>89</sup> Under this provision it is held that the Legislature may provide for a vote to determine whether all sales, except for sacramental and medicinal purposes, shall be prohibited.<sup>90</sup> But an act is unconstitutional, under this provision, which undertakes to provide that C. O. D. contracts of sale and shipment of liquor into local option territory shall be deemed to have been made where the goods are delivered and paid for.<sup>91</sup> This provision of the Constitution does not prohibit the establishment of saloon limits within a city;<sup>92</sup> but it prohibits the Legis-

<sup>88</sup> *Sweeney v. Webb*, 45 Tex. Cr. App. 170; 76 S. W. 766 *Ex parte Heyman* (Tex. Cr. App.), 78 S. W. 349.

<sup>89</sup> *Ex parte Wells*, 45 Tex. Cr. App. 170; 78 S. W. 928; *Ex parte Hedman* (Tex. Cr. App.), 78 S. W. 349; the validity of such a statute was conceded in argument.

<sup>90</sup> *Bowman v. State*, 38 Tex. Cr. App. 14; 40 S. W. 796; 41 S. W. 635.

<sup>91</sup> *Keller v. State* (Tex.), 87 S. W. 669.

<sup>92</sup> *Williams v. State*, 52 Tex. Cr. App. 371; 107 S. W. 1121; *Ex parte King*, 52 Tex. Cr. App. 383; 107 S. W. 549.

Under the provisions a commissioner's precinct is a "political subdivision of the county" within the Constitution for holding an election. *Cofield v. Britton* (Tex. Civ. App.), 109 S. W. 493.

lature empowering a commissioners' court to create new subdivisions.<sup>93</sup> The Constitution of Delaware provides that the Legislature, from time to time, may enact a law for submission to a vote of the electors of the several districts of the State the question whether the sale of liquors shall be licensed or prohibited therein. The second sentence of the same section provides that whenever a majority of the members of each house in any district shall request the submission of the question of license or no license to the electors of the district which they represent, the Legislature must provide for the submission of the question in the district at the next general election. It was held that the second sentence did not limit nor qualify the first sentence; but under the first sentence the question of license or prohibition could be submitted at a special election; and under the second sentence it must be at a general election.<sup>94</sup>

<sup>93</sup> *Ex parte Heyman* (Tex.), 78 S. W. 439.

In Maryland the Constitution provides that no bill shall become a law unless passed in the Senate and House of Representatives of the State by a majority of the members elected, and under this it is held that a statute relating to local option in a certain county wherein reference is made to an earlier and existing statute, providing that in a certain event "said act shall apply therein as heretofore," was valid, not violating this provision of the Constitution, but being merely a recognition of the existing policy of the county, and not being an attempt to re-enact the former law. *Temnick v. Owings*, 70 Md. 246; 16 Atl. 719.

The provisions of the Texas Constitution are not self-executing. A statute authorizing it is necessary to secure an election.

*Adams v. Kelley*, 17 Tex. Civ. App. 479; 45 S. W. 859.

<sup>94</sup> *State v. Fountain* (Del.), 69 Atl. 926.

The local option of Texas in excepting from its provisions sales of liquors for sacramental and medicinal purposes does not come in conflict with the provisions of the Constitution of that State requiring the Legislature to enact laws whereby the electors of a district may determine whether the sale of liquors shall be prohibited. *Ray v. State* (Tex.), 83 S. W. 1121.

The statute of South Carolina giving the Legislature the exclusive right to license the sale of liquors, and prohibiting it to delegate the power to cities, does not prevent it from authorizing cities to forbid the sale of liquors therein. *Florence v. Brown*, 49 S. C. 332; 26 S. E. 880; 27 S. E. 273.

### Sec. 165. Local prohibitory laws, when constitutional.

A Legislature has the power to enact local prohibitory laws forbidding the manufacture and sale of intoxicating liquors within certain described localities. This power has been exercised in the protection of educational institutions,<sup>95</sup> churches and religious assemblies,<sup>96</sup> fairs and places of amusement,<sup>97</sup> public or State buildings and institutions,<sup>98</sup> manufacturing,<sup>99</sup> and railroads during construction.<sup>1</sup> Such a law

The Constitution of Kansas forbidding the sale of intoxicating liquors except for medicinal, sanitary and mechanical purposes, does not prevent the Legislature enacting a law to further restrain or prohibit the liquor traffic nor prevent it imposing conditions on the conduct of its manufacture or sale for medical, sanitary and mechanical purposes, short of prohibition. *State v. Durein* (Kan.), 80 Pac. 987, affirming 70 Kan. 1; 78 Pac. 152; *State v. Sheesley*, 71 Kan. 857; 78 Pac. 997.

Although a Constitution requires the Legislature to adopt a local option law, it may adopt a law prohibiting the keeping of a disorderly house where intoxicating liquors are sold or kept for sale without a license. *Joliff v. State* (Tex.), 109 S. W. 176; *Webber v. State* (Tex.), 109 S. W. 182.

<sup>95</sup> *Love v. Porter*, 93 Ala. 384; 9 So. 585; *DeBois v. State*, 34 Ark. 381; *Boyd v. Bryant*, 35 Ark. 69; *Wilson v. State*, 35 Ark. 414; *Blackwell v. State*, 36 Ark. 178; *Trammell v. Bradley*, 27 Ark. 374; *Commonwealth v. Whelan*, 134 Mass. 206; *Commonwealth v. Jenkins*, 137 Mass. 572; *Commonwealth v. Everson*, 140 Mass.

432; 5 N. E. 155; *Commonwealth v. Jones*, 142 Mass. 573; 8 N. E. 603; *In re Liquor Locations*, 13 R. I. 733; *State v. Ranscher*, 69 Tenn. (1 Lea) 96; *Brewer v. State*, 75 Tenn. (7 Lea) 682; *Harney v. State*, 76 Tenn. (8 Lea) 113; *Murphy v. State*, 77 Tenn. (9 Lea) 373; *Tillery v. State*, 78 Tenn. (10 Lea) 35; *Lea v. State*, 78 Tenn. (10 Lea) 35; *State v. Tarver*, 79 Tenn. (11 Lea) 658; *Halcher v. State*, 80 Tenn. (12 Lea) 368; *Boyd v. State*, 80 Tenn. (12 Lea) 687.

<sup>96</sup> *Carlisle v. State*, 91 Ala. 1; *Boyd v. Bryant*, 35 Ark. 69; *Gowell v. State*, 41 Ark. 355; *State v. Midgett*, 85 N. C. 538; *Fetter v. Wilt*, 46 Pa. St. 457.

<sup>97</sup> *State v. Cappy*, 50 Ind. 291; *Heck v. State*, 44 Ohio St. 536; 9 N. E. 305; *Commonwealth v. Cavanaugh*, 2 Pa. Co. Ct. 344; *State v. White*, 7 Baxt. 158.

<sup>98</sup> *Brinson v. State*, 89 Ala. 105; 8 So. 527; *Ex parte McClain*, 61 Cal. 436; 44 Am. Rep. 554; *State v. Barringer*, 110 N. C. 525; 14 S. E. 781.

<sup>99</sup> *Ashurst v. State*, 79 Ala. 176; *McArthur v. State*, 69 Ga. 444; *State v. Joyner*, 81 N. C. 534.

<sup>1</sup> *State v. Hampton*, 77 N. C. 526.

does not contravene a constitutional provision that the general assembly shall not pass any local or special law where a general law can be made applicable.<sup>2</sup> In such a case it is for the Legislature alone to judge whether a law on any given subject can be made applicable to the whole State.<sup>3</sup> It has been held that an exemption from the penalties of such a statute of persons who at the time of enacting it already had established places of business within the prescribed limits would not deprive the statute of its character as a general law;<sup>4</sup> and also, that a statute making it unlawful to sell intoxicating liquors within given distance of any incorporated institution of learning will not deprive it of the character of a general law by a section providing that it shall not apply to the sale of such liquors within the limits of an incorporated town.<sup>5</sup> A law of this character which authorizes a county court to make an order prohibiting the sale or giving away of intoxicating liquors within a given distance of any church or schoolhouse, upon the petition of a majority of the residents in such limits, has been held not to violate the rule that the Legislature cannot delegate the power to make laws, the court holding that a Legislature has the power in enacting a law to delegate the power to determine the facts or state of things upon which it intends to make its own action depend in enacting such a law.<sup>6</sup> It has also been held that the prohibiting of the manufacture of intoxicating liquors within three miles of an orphan's home without the written permission of the superintendent of the home was a constitutional exercise of the police powers of the State and operated on those, who, at and before the time of its enactment, were engaged in the manufacture of intoxicating liquors within the prescribed

<sup>2</sup> *Boyd v. Bryant*, 35 Ark. 69; *Heck v. State*, 44 Ohio St. 536; 9 N. E. 305.

<sup>3</sup> *Cooley Const. Law*, 4th ed., p. 105; *Gentile v. State*, 29 Ind. 409; *Marks v. Trustees, etc.*, 37 Ind. 163; *State v. Tucker*, 46 Ind. 355; *State v. County Court*,

*etc.*, 50 Mo. 415; *State v. Robbins*, 51 Mo. 82.

<sup>4</sup> *Meyer v. Baker*, 120 Ill. 567; 12 N. E. 79; *Kramer v. Marks*, 64 Pa. St. 151.

<sup>5</sup> *State v. Ranscher*, 69 Tenn. (1 Lea) 96.

<sup>6</sup> *Boyd v. Bryant*, 35 Ark. 69.



territory, and the fact that upon the destruction of a portion of the buildings connected with the home the inmates were removed temporarily to another place while the buildings were reconstructed did not have the effect to suspend the operation of the statute.<sup>7</sup>

### Sec. 166. Special legislation.

Statutes regarding the regulation or prohibition of the sale of intoxicating liquors must be of a general character; they cannot be of a local character if the Constitution forbid the passage of local laws. But in many of the States the Legislature may enact a law for a single county; and when it may do so the only restraint upon it is that the law enacted must bear alike on all persons within the county.<sup>8</sup> And a statute authorizing the submission of the question of local option to a vote, which excepts wine used in sacramental and medicinal purposes, cannot be regarded as a special law by reason of such exception.<sup>9</sup> So a statute forbidding sales in a private room, but which excepts hotels from its provisions, is not a law granting special privileges

<sup>7</sup> State v. Barringer, 110 N. C. 525; 14 S. E. 781.

A local option statute is not unconstitutional because it makes the election returns conclusive evidence of the result of the election and the regulating of the proceedings, unless appealed from and set aside. *Steckard v. Reade*, (Tex.), 121 S. W. 1114; *Evans v. State* (Tex.), 117 S. W. 167; *Saylor v. Duel*, 236 Ill. 429; 86 N. E. 119.

A statute regulating the storage of liquors in districts adopting local option is valid. *Ex parte Massey* (Tex.), 92 S. W. 1083.

<sup>8</sup> *Guy v. Commissioners*, 122 N. C. 471; 29 S. E. 771; *Sasser v. Martin* (Ga.), 29 S. E. 278; *Ed-*

*wards v. State*, 123 Ga. 542; 51 S. E. 630; *Denning v. State*, 123 Ga. 546; 51 S. E. 632; *Bagley v. State*, 103 Ga. 388; 29 S. E. 123; *Caldwell v. State* (Ga.), 29 S. E. 263.

<sup>9</sup> *Sparks v. State* (Tex. Cr. App.), 45 S. W. 493; *Wilson v. Hines*, 99 Ky. 221; 35 S. W. 627; 37 S. W. 148; *McLain v. State*, 43 Tex. Cr. App. 213; 64 S. W. 865; *State v. Barber* (S. D.), 101 N. W. 1078; *Ray v. State*, 46 Tex. Cr. App. 511; 83 S. W. 1121; *August Busch & Co. v. Webb*, 122 Fed. 655; *Sweeney v. Webb*, 36 Tex. Civ. App. 324; 76 S. W. 766; *Creekmore v. Commonwealth* (Ky.), 12 S. W. 628; 11 Ky. L. Rep. 566.



which do not belong to all the citizens.<sup>10</sup> Likewise a statute is not special legislation which excepts from its provisions druggists, manufacturers, persons giving away liquors in private dwelling houses and railway companies selling liquors in their dining and buffet cars under a license.<sup>11</sup> Where a section of a statute pointed out a method for obtaining a license, but excepting from its provisions incorporated cities and towns having by their charters the right to issue a license, and in another section fixed the county license at a certain amount, and the Constitution prohibited the enactment of a special law where "provision has been made by an existing law," it was held that a special law prescribing the manner in which a license should be granted in a given county and imposing conditions not contained in the first section, and fixing the license fee at another amount, was valid, not being in violation of the constitutional provision quoted.<sup>12</sup> But where a statute provided that there should be paid for the right to manufacture for sale distilled liquors and to sell distilled and vinous liquors brought into the State, "a special license tax of ten cents for every gallon," and an emergency clause declaring there was "a deficiency in the revenue of the State," and the actions of the State's officers indicated it was a revenue measure, and a section gave permission to wine growers in the State to sell their own wine on their own premises, it was held that the statute was a revenue measure and not a statute governing the liquor traffic; and not applying to liquor manufactured for export nor to domestic wines or pure alcohol, it contravened a clause in the Constitution requiring taxes to be uniform on the same class of subjects within the limits of the territory in which the tax was levied.<sup>13</sup>

<sup>10</sup> *Sandys v. Williams*, 80 Pac. 642; *Kruse v. Williams*, 80 Pac. 648.

<sup>11</sup> *Ohio v. Dollison*, 194 U. S. 445; 24 Sup. Ct. 703; 48 L. Ed. 1062; affirming 68 Ohio St. 688; 70 N. E. 1131.

<sup>12</sup> *Sasser v. Martin* (Ga.), 29 S. E. 278.

<sup>13</sup> *State v. Bengsch*, 170 Mo. 81; 70 S. W. 710. So far as domestic and foreign liquors shipped into the State were considered, it was held that the statute was not void for want of uniformity, both being taxed the same amount; it was also held that as the Constitution expressly pro-

### Sec. 167. Proceedings in rem.

A statute which prohibits the retail sale of intoxicating liquors and which authorizes proceedings *in rem* against rum shops is not unconstitutional. The legislative right to pass laws to protect the health, the morals, the property and the lives of the people is not only the prevailing object with all

vided what property should be exempt from taxation, the attempt of the Legislature to exempt domestic wines rendered the whole act void. *Bowman v. State*, 38 Tex. Cr. App. 14; 40 S. W. 796; 41 S. W. 635.

An ordinance excepting from its operation a particular lot in the city on which is a dramshop is void, on the ground that it discriminates in favor of the lot. *Moore v. Danville*, 232 Ill. 307; 83 N. E. 845.

A State prohibition law providing that it shall become operative in counties where local option prevails on January 1, 1908, and in all other counties on January 1, 1909, is a general and not a local law. *State v. Skeggs* (Ala.), 46 So. 268.

An act of Georgia giving local option to Douglass County, not undertaking to effect therein the domestic wine act, was not a law violating the provisions of the Constitution forbidding special legislation in a case provided for by an existing general law. *Hancock v. State*, 114 Ga. 439; 40 S. E. 317; *Roberts v. State*, 114 Ga. 541; 40 S. E. 750.

The Texas statute of April 5, 1907 (Acts 1907, p. 156, c. 77), prohibiting the storing of liquor for sale in local option districts, nor the local option law, is neither

a local or special law. *Ex parte Dupree* (Tex.), 105 S. W. 493; *Ex parte Byrd* (Tex.), 105 S. W. 496.

A statute amending the general dispensary law of South Carolina and levying a small tax on counties voting out the dispensary with the exception of two counties which never had dispensaries, is not a special law, but is a general law with special provisions. *Murphy v. London*, 76 S. C. 21; 56 S. E. 850.

A sale by an incorporated social club without license to its members, being a violation of the general State law, a subsequent statute confirming the incorporation of a club under the general law and enlarging its powers so as to enable it to sell to its members, without a license therefor, is a special law and void. *Beauvoir Club v. State*, 148 Ala. 643; 42 So. 1040.

The Act of Minnesota, Acts 1895, c. 259, prohibiting sale of liquors in a town after the electors had by a majority vote declared for prohibition, is constitutional. *State v. Johnson*, 86 Minn. 121; 90 N. W. 161.

The Alabama prohibition law (Sp. Acts 1907, p. 71) is a general and not a local law. *State v. Pitts* (Ala.), 49 So. 441.

civilized institutions, but it is also the very foundation upon which our social system rests, and he who violates these laws may not only forfeit property and personal liberty, but also life itself. It is a fundamental principle of protection to society that the majesty of the law must be enforced against offending members and against offending property. If property becomes a nuisance, if prejudicial to the health or morals of the public, it may be abated or destroyed by legal sanction. This power is in harmony with self-preservation and is essential to every organized community. Under our Federal, as well as under our State Constitutions, it is not uncommon to pass laws declaring articles to be forfeited when they are used for illegal or criminal purposes. This is the case under the laws prohibiting counterfeiting, smuggling and piracy; so also with obscene books and pictures.<sup>14</sup> That proceedings *in rem*, against property used for unlawful purposes, may be sanctioned by laws without doing violence to the Constitution, is conclusively settled by the highest judicial tribunal in our country.<sup>15</sup> In a leading case upon this point, Judge Story said: "The thing is here primarily considered as the offender, or rather the offense is attached primarily to the thing, and this, whether the offense be *malum prohibitum* or *malum in se*. The same principle applied to proceedings *in rem*, or seizures in admiralty. Many cases exist where the forfeiture for acts done attach solely *in rem*, and there is no accompanying penalty *in personam*. Many cases exist where there is both forfeiture *in rem* and a *personal* penalty. But in neither class of cases has it ever been decided that the prosecutions were dependent upon each other. But the practice has been.

<sup>14</sup> Our House No. 2 v. State, 4 Greene (Iowa) 172.

<sup>15</sup> Paulina's Cargo v. United State, 7 Cranch (U. S.) 52; Cargo of Aurora v. United States, 7 Cranch (U. S.) 382; The Venus, 8 Cranch. (U. S.) 253; United States v. 1,960 Bags of Coffee, 8 Cranch (U. S.) 398; 30 hhds. Su-

gar v. Boyle, 9 Cranch, 191; United States v. 6 Packages of Goods, 6 Wheat. (U. S.) 520; United States v. 350 Chests of Tea, 12 Wheat. (U. S.) 486; United State v. 422 Casks of Wine, 1 Pet. (U. S.) 547; United State v. 84 Boxes Sugar, 7 Pet. (U. S.) 453.

and so this court understands the law to be, that a proceeding *in rem* stands independent of, and wholly unaffected by, any criminal proceeding *in personam*.”<sup>16</sup>

### Sec. 168. Search and seizure of liquors illegally kept.

The Legislature may declare that intoxicating liquors kept in violation of a statute are contraband goods and authorize their seizure and destruction under the processes of the courts. “Certain articles which are treated as property while used for lawful purposes,” said the Supreme Court of Maine, “may be subjects of forfeiture and destruction, under proper statutory provisions, if their use is deemed pernicious to the best interests of the community. And when such articles are attempted to be used for unlawful purposes, or in an unlawful manner, and the attempts are so concealed that ordinary diligence fails to make such discovery as to enable the law to declare the forfeiture, statutes authorizing searches and seizures have been held legitimate. The exercise of this power must be properly guarded, that abuses may be prevented, and that a citizen shall not be deprived of his property without having an accusation against him setting out the nature and charge thereof, and but by the judgment of his peers or the law of the land; and he shall be secure in his person, houses, papers and possessions from unreasonable searches and seizures. It is not perceived that the statute under which the suit in this case is attempted to be defended violates any of the provisions of the Constitution which have been adverted to.”<sup>17</sup> But the law must give the owner of the

<sup>16</sup> The *Palmyra*, 12 Wheat. (U. S.) 1.

<sup>17</sup> *Gray v. Kimball*, 42 Me. 299, 307; *State v. Kapinsky* (Me.), 73 Atl. 830; *Santo v. State*, 2 Iowa 165; 63 Am. Dec. 487; *State v. Miller*, 48 Me. 576; *Lincoln v. Smith*, 27 Vt. 328; *Gill v. Parker*, 31 Vt. 610; *State v. Wheeler*, 25 Conn. 290; *Allen v. Staples*, 6 Gray 491; *Oviatt v. Pond*, 29 Conn. 479; *State v. Fitzpatrick*,

16 R. 154; 11 Atl. 773; *State v. Snow*, 3 R. I. 64; *In re Liquors of Horgan*, 16 R. I. 542; 18 Atl. 279; *In re Liquors of McSorley*, 15 R. I. 608; 10 Atl. 659; *State v. Dowdell*, 98 Me. 460; 57 Atl. 846; *State v. American Express Co.*, 118 Iowa, 447; 92 N. W. 66; *Sothman v. State*, 66 Neb. 302; 92 N. W. 303; *Dupree v. State* (Tex.), 119 S. W. 301; 107 S. W. 926.



property an opportunity to defend it, and give him notice of its seizure; and if it does not it is invalid.<sup>18</sup> Yet a statute may authorize the seizure without a warrant of liquors unlawfully kept, or even in process of an unlawful sale or transportation,<sup>19</sup> although a statute authorizing an officer to close a saloon unlawfully kept open and to arrest the keeper without warrant has been held unconstitutional on the ground that it is an undue interference with persons or property without due process of law, and prohibits the issuance of warrants unsupported by oath.<sup>20</sup> A statute giving a court of chancery power to abate a liquor nuisance is constitutional, the proceedings of a court of chancery being "due process of law" within the meaning of the constitutional guaranty.<sup>21</sup> So a statute authorizing the issuance of

<sup>18</sup> *Fisher v. McGirr*, 1 Gray 1; 61 Am. Dec. 381; *State v. Snow*, 3 R. I. 64; *Hibbard v. People*, 4 Mich. 125; *State v. Snow*, 3 R. I. 64; *Greene v. James*, 2 Curtis C. C. 187; *People v. Haug*, 68 Mich. 549; 37 N. W. 21; *Ex parte Dupree* (Tex.), 105 S. W. 493; *Ex parte Byrd* (Tex.), 105 S. W. 496.

<sup>19</sup> *State v. O'Neil*, 58 Vt. 140; 2 Atl. 586; *Jones v. Root*, 6 Gray 435; *Mason v. Lothrop*, 7 Gray, 354; *State v. LeClair*, 86 Me. 522; 30 Atl. 7.

<sup>20</sup> *People v. Haug*, 68 Mich. 549; 37 N. W. 21; *Bessemeir v. Edge* (Ala.), 50 So. 270.

The Nebraska Bill of Rights, declaring that the right to be heard in all civil cases in the court of last resort, by appeal, error or otherwise, shall not be denied, does not apply to a prosecution for the seizure and destruction of contraband liquors. *Sothman v. State*, 66 Neb. 302; 92 N. W. 303.

Where an officer secretly entered, on Sunday, the stairway of the defendant, removed some bricks from the wall, and through this aperture saw defendant sell liquors in violation of law, it was held that his evidence was admissible and was not obtained in violation of the constitutional provisions against unreasonable searches and seizures, those provisions not applying to unauthorized acts of private persons or petty officers. *Cohn v. State* (Tenn.), 109 S. W. 1149.

A statute providing for a search of premises and seizure of property under a search warrant, but making no provisions for a disposition of the property seized, is unconstitutional, because it deprives the owner of his property without due process of law. *Beavers v. Godwin* (Tex. Civ. App.), 90 S. W. 930.

<sup>21</sup> *State v. Jordan*, 72 Iowa 377; 34 N. W. 285.



a warrant to seize liquors upon an affidavit made upon information and belief is valid.<sup>22</sup> But a statute which fails to require the indictment, information, complaint or affidavit to describe the place to be searched as required by a bill of rights is invalid; and so is one which provides for the replevin of goods seized on giving bond, but makes the value put upon the property seized uncontrovertible in an action brought on such bond to recover its value.<sup>23</sup>

### Sec. 169. Destruction of intoxicating liquors.

The Legislature may provide that liquors kept *in violation of law* may be destroyed under a judgment of the court; and the act is not a taking of private property for public use without just compensation.<sup>24</sup> The destruction of the property is a part of the punishment inflicted for a violation of the law, and is no more a taking of property without compensation than is the infliction of a fine for the same criminal act. "So, in the case under consideration, the law imposes the forfeiture of the liquors, not for the benefit of the town, but as a punishment for keeping them for an unlawful purpose. Forfeitures have frequently been imposed by laws of Congress, as well as by the laws of this State, none of which have ever been adjudged unconstitutional."<sup>25</sup> While most

<sup>22</sup> *Rose v. State*, 171 Ind. 662; 87 N. E. 103.

<sup>23</sup> *Dupree v. State* (Tex.), 119 S. W. 301, answering (Tex.) 107 S. W. 926.

<sup>24</sup> *State v. Snow*, 3 R. I. 64; *Commonwealth v. Intoxicating Liquors*, 107 Mass. 396; *Fisher v. McGirr*, 1 Gray 1; 61 Am. Dec. 381; *In re Intoxicating Liquors*, 15 R. I. 608; 10 Atl. 659; *State v. Brennan*, 25 Conn. 278; *State v. Wheeler*, 25 Conn. 290; *Craig v. Werthmueller*, 78 Iowa 598; 43 N. W. 606; *Oviatt v. Pond*, 29 Conn. 479; *Lincoln v. Smith*, 27 Vt. 328. See some doubting

cases in *People v. Toynbee*, 2 Parker C. C. 329; 2 Park. C. C. 490; 1 Kern. (N. Y.) 378; *People v. Wynehamer*, 2 Park. C. C. 377; 2 Park. C. C. 421; 3 Kern. (N. Y.) 378, and *Miller v. State*, 3 Ohio St. 475; *King v. Gardner*, 25 Nova Scotia 48; *McManus v. State*, 65 Kan. 720; 70 Pac. 700.

<sup>25</sup> *State v. Brennan*, 25 Conn. 278.

This method of inflicting punishment for a violation of liquor laws is very old, dating back to the first English statute on the subject of regulating tippling

of the statutes require a conviction and judgment authorizing the destruction of the liquors before they can be destroyed;<sup>26</sup> yet a statute may authorize their destruction upon seizure where absolute prohibition prevails and before the conviction of the owner.<sup>27</sup> A statute authorizing the seizure and destruction of liquors seized, under process issued and by authority of a judgment rendered by a police court, but providing no appeal from such judgment, is not for that reason unconstitutional.<sup>28</sup>

### Sec. 170. Nuisance—Abatement.

Not only has the State the power to regulate or prohibit the sale of intoxicating liquors, but it has the power to declare that the keeping of them—even though not for sale, it would seem—and the buildings wherein they are kept, shall be deemed a nuisance.<sup>29</sup> In Iowa, a statute provided, if

houses Stat. 12 Edw. II, c. 6, A. D. 1318.

It may be said that by the judgment of conviction the ownership of the property vests in the State, and the State then destroys its own property. *Gray v. Kimball*, 42 Me. 299; *McCoy v. Zane*, 65 Mo. 1.

In Iowa it has been held that goods shipped into the State "C. O. D." may be seized while in the hands of the carrier. *State v. American Express Co.*, 118 Iowa 447; 92 N. W. 66; while in Maine it is held that they cannot, unless intended for unlawful sale. *State v. Intoxicating Liquors*, 98 Me. 464; 57 Atl. 798.

<sup>26</sup> *State v. McMaster*, 13 N. D. 58; 99 N. W. 58.

<sup>27</sup> *McManus*, 65 Kan. 720; 70 Pac. 700.

<sup>28</sup> *Stahl v. Lee* (Kan.), 80 Pac. 983. The statute involved in this decision authorized cities

to seize and destroy contraband liquors.

If a jury trial can be obtained by an appeal, the statute is not void because the owner of the property cannot obtain a jury trial in the lower court. *State v. Fitzpatrick*, 16 R. I. 54; 11 Atl. 767.

An ordinance cannot authorize the seizure and carrying away of liquors before the question is judicially determined. *Darst v. People*, 51 Ill. 286; 2 Am. Rep. 301.

<sup>29</sup> *Mugler v. State*, 123 U. S. 623; 8 Sup. Ct. 273; *State v. Crawford*, 28 Kan. 276; *Littleton v. Fritz*, 65 Iowa 488; 22 N. W. 641; 54 Am. St. 19; *McLane v. Leicht*, 69 Iowa 401; 29 N. W. 327; *Our House v. State*, 4 Greene (Iowa) 172; *McLaughlin v. State*, 45 Ind. 338; *Zumhoff v. State*, 4 Greene (Iowa) 526; *Streeter v. People*, 69 Ill. 595;

in either a civil or criminal case, the existence of a nuisance be established where intoxicating liquors was involved, the court should enter a judgment abating the nuisance and direct a seizure and destruction of the liquor and a removal and sale of the fixtures and furniture used on the premises for either the manufacture or sale of the liquor. This was held to be a valid statute. "The appellees," said the court, "contend that though they did create and maintain nuisances as alleged, no decree should be entered against them for the seizure and destruction of their liquors, nor for the removal and sale of furniture and fixtures, because the law authorizing the same is in conflict with Amendments IV and XIV to the Constitution of the United States, and Sections 8 and 9, Bill of Rights, and Article III, Constitution of Iowa. Their contention is that property of an individual cannot be confiscated or forfeited by legislative enactment, but only by the judgment of a court, in accordance with due process of law, and that by said laws the Legislature forfeits the property in question and does not leave such forfeiture to the court; that property cannot be forfeited by an action against the person, but must be by action against the thing, and that in a criminal case for nuisance the property is not involved, and that the defendant is entitled to his day in court upon the question of forfeiture of his property. We understand the law to be that property of individuals cannot be forfeited by legislative enactment; that such forfeitures can only be by the judgment of a court of competent jurisdiction, in a proper case, after due notice. This statute does not forfeit property by legislative enactment, but, as in many other instances, authorizes and requires the courts, in cases where it has been established upon judicial investigation that property is such, or has been so used, as to constitute a nuisance, to abate the nuisance by destroying and selling the property. It is only by the judgment of a court that any person may rightfully destroy liquors found upon

Commonwealth v. Howe, 13 Gray E. 389; McManus v. State, 65  
26; Commonwealth v. Intoxicat- Kan. 720; 70 Pac. 700.  
ing Liquors, 172 Mass. 311; 52 N.

the defendant's premises described, or remove therefrom and sell the furniture, fixtures, etc., therein. In actions, either criminal or equitable, wherein the existence of a nuisance is established under the law in question, the action is against the thing in the place, as well as against the persons. In either case the question is whether the place was a nuisance, and, if so, then whether the person was engaged in keeping it. Such actions are against the thing, as well as the persons, and the person has due notice, and his day in court, in which to defend against the forfeiture of his property as well as the punishment of himself."<sup>30</sup> The abatement may be authorized by proceedings in chancery.<sup>31</sup> The Legislature may even authorize a municipality to declare the keeping of liquors to be a nuisance.<sup>32</sup>

### Sec. 171. Enjoining the maintenance of liquor establishments.

Statutes have been enacted prohibiting the sale, keeping and manufacture of liquors and authorizing the courts to enforce their provisions by injunctions, and to punish those violating such injunctions for contempt of court. These statutes are held to be within the constitutional power of

<sup>30</sup> *Craig v. Werthmueller*, 78 Iowa 598; 43 N. W. 606.

<sup>31</sup> *State v. Jordan*, 72 Iowa 377; 34 N. W. 285; *Carleton v. Regg*, 149 Mass. 550; 22 N. E. 55.

In such instance no Federal question is involved. *Schmidt v. Cobb*, 119 U. S. 286; 7 Sup. Ct. 1373.

<sup>32</sup> *Goddard v. Jacksonville*, 15 Ill. 588; 60 Am. Dec. 773; *Topeka v. Raynor*, 60 Kan. 860; 58 Pac. 557; 61 Kan. 10; 55 Pac. 509 (citing *Franklin v. Westfall*, 27 Kan. 614; *City of Topeka v. Myers*, 34 Kan. 500; 8 P. 726; *Same v. Zufall*, 40 Kan. 47, 19 P. 359; *Junction City v. Keffe*, 40 Kan. 275; 19 P. 735; *Same v.*

*Webb*, 44 Kan. 71, 23 P. 1073; *Monroe v. City of Lawrence*, 44 Kan. 607; 24 P. 1113); *Stahl v. Lee* (Kan.), 80 Pac. 983.

In New Hampshire, upon demand of the defendant, a jury must be called to determine the fact of the nuisance before a judgment of abatement can be entered. But that is a practice peculiar to that State. *State v. Currier* (N. H.), 19 Atl. 1000.

A private individual may destroy liquors which the State makes a nuisance, if he can do so without committing a breach of the peace. *State v. Paul*, 5 R. I. 185.



the Legislature to enact them.<sup>33</sup> A statute empowering any citizen of the State, although he may not have suffered any special damage, to maintain an action to abate a liquor nuisance is constitutional.<sup>34</sup>

### Sec. 172. Amount of penalty—Unusual punishment.

A statute providing a fine on second conviction of \$300, or in lieu thereof three years' imprisonment, is not unconstitutional.<sup>35</sup> And a statute providing for a fine of not less than \$100 nor more than \$500, or imprisonment of not less than six months, or both such fine and imprisonment, in the discretion of the court, is not an excessive fine nor the infliction of cruel and unusual punishment.<sup>36</sup> A statute may authorize a revocation of his license on conviction of the defendant of having violated the law under which it was issued.<sup>37</sup> So long as a city keeps within the limitations of a statute authorizing it to regulate the sale of liquors and im-

<sup>33</sup> State v. Thomas, 74 Kan. 360; 86 Pac. 499.

An action will not lie to restrain the enforcement of a constitutional statute. Plumb v. Christie, 103 Ga. 686; 30 S. E. 759; 42 L. R. A. 181; Deal v. Singletary (Ga.), 30 S. E. 765. See Christian Moer. Brewing Co. v. Hill, 166 Fed. 1140.

A statute imposing a heavy fine and also imprisonment for violation of an injunction restraining a violation of the liquor laws is not unconstitutional, and does not violate the provisions of a Constitution that excessive fines shall not be imposed, nor cruel or unusual punishment inflicted. *Ex parte* Keeler, 45 S. C. 537; 23 S. E. 865; McLane v. Granger, 74 Iowa 152; 37 N. W. 123.

<sup>34</sup> Littleton v. Fritz, 65 Iowa 488; 22 N. W. 641; 54 Am. Rep. 19; Pontius v. Winebrenner, 65

Iowa 591; 22 N. W. 646; Pontius v. Bowman, 66 Iowa 88; 23 N. W. 277; Martin v. Blattner, 68 Iowa 286; 25 N. W. 131; McLane v. Granger, 74 Iowa 152; 37 N. W. 123. See State v. Paul, 5 R. I. 185.

<sup>35</sup> State v. Hodgson, 66 Vt. 134; 28 Atl. 1089.

<sup>36</sup> Cardillo v. People, 26 Colo. 355; 58 Pac. 678. See McDonald v. Commonwealth, 173 Mass. 322; 53 N. E. 814; State v. Phillips, 73 Minn. 77; and State v. Durnam, 73 Minn. 150; 75 N. W. 1127; People v. Crotty, 22 N. Y. App. Div. 77; 47 N. Y. Supp. 845; *Ex parte* Bates, 37 Tex. Cr. Rep. 548; 40 S. W. 269. See State v. Edwards, 109 La. 236; 33 So. 209.

<sup>37</sup> Krueger v. Colville, 49 Wash. 295; 95 Pac. 81; Commonwealth v. Brothers, 158 Mass. 200; 33 N. E. 386.



posing a fine for the violation of the ordinance regulating such sale, it cannot be held that the amount of the fine is excessive because it is high.<sup>38</sup> Where the Constitution provided that "no municipal ordinance shall fix a penalty for the violation thereof at less than that imposed by statute for the same offense," and a statute provided a penalty for an unlawful sale of liquor at "not less than \$50 nor more than \$100, or be confined in the county jail for not less than ten days nor more than forty days, or both so fined and imprisoned in the discretion of the court or jury," it was held that an ordinance providing for the same offense a fine of "not less than \$60 nor more than \$100" was void, because it violated the provision of the Constitution quoted above.<sup>39</sup> A statute which fixes no maximum penalty, leaving the amount to the discretion of the court, is valid.<sup>40</sup>

### **Sec. 173. *Ex post facto* law defined—Heavier subsequent punishment.**

The phrase *ex post facto* is technical, and has relation only to criminal laws; it does not embrace statutes respecting private rights or civil remedies.<sup>41</sup> The words have a definite, technical signification. The plain and obvious meaning of a constitutional provision that no *ex post facto* law shall be passed is, that the Legislature shall not pass any law, after an act done by any citizen, which shall have relation to that act, so as to punish that which was inno-

<sup>38</sup> *Areola v. Wilkinson*, 233 Ill. 250; 84 N. E. 264.

<sup>39</sup> *Kehr v. Commonwealth* (Ky.), 26 Ky. L. Rep. 1234; 83 S. W. 633.

A State authorizing the reduction of costs does not deprive the party against whom they are reduced of the equal protection of the laws, it applying to all cases coming within the prescribed class. *Green v. Sklara*, 188 Mass. 363; 74 N. E. 595.

<sup>40</sup> *State v. Kight*, 103 Minn. 371; 119 N. W. 56.

A statute providing that all

persons then under indictment for violating the liquor laws shall be released on payment of all costs and a fee to the prosecuting attorney directing the court to dismiss the case is unconstitutional, as an interference with the judicial department of the government. *State v. Sloss*, 25 Mo. 291; 69 Am. Dec. 467. See also *State v. Hodgson*, 66 Vt. 134; 28 Atl. 1089.

<sup>41</sup> *Andrews v. Russell*, 7 Blackf. (Ind.) 474; *Polk Co. v. Hierb*, 37 Iowa 361.

cent when done; or add to the punishment of that which was criminal; or to increase the malignity of a crime; or to retrench the rules of evidence, so as to make conviction more easy.<sup>42</sup> Accordingly it has been held that a statute, regulating the traffic in intoxicating liquors, which provides that one who has been convicted of a violation of its provisions, who shall again commit the same offense, is to be punished with an increased penalty, is not *ex post facto*, within the meaning of the Federal Constitution, even when applied to one who committed the first offense prior to the taking effect of the statute.<sup>43</sup> The true principle in this respect is well expressed by Judge Cooley, as follows: "And a law is not objectionable as *ex post facto* which, in providing for the punishment of future offenses, authorizes the offender's conduct in the past to be taken into account, and the punishment to be graduated accordingly. Heavier penalties are often provided by law for a second or any subsequent offense than for the first, and it has not been deemed objectionable that in providing for such heavier penalties the prior conviction authorized to be taken into account may have taken place before the law was passed. In such cases it is the second or subsequent offense that is punished, not the first."<sup>44</sup> In such case the offender is punished, not for what he had done before the statute took effect, but for his subsequent violation of the law with the increased penalty before his eyes.<sup>45</sup> The true construction of such a statute is, that the second offense must be committed after the first in order to warrant the enhanced penalty. It is not enough that there be two successive offenses by the same person, which are severally and successively prosecuted to conviction; though the second indict-

<sup>42</sup> *Calder v. Bull*, 3 Dall. (U. S.) 386; *Fletcher v. Peck*, 6 Cranch (U. S.) 87; *Ogden v. Saunders*, 12 Wheat. (U. S.) 213; *Society, etc. v. Wheeler*, 2 Gall. (U. S.) 105; *Strong v. State*, 1 Blackf. (Ind.) 193.

<sup>43</sup> *Ross's Case*, 2 Pick. (Mass.) 165.

<sup>44</sup> *Cooley's Const. Lim.*, 4th ed., p. 331; *Ex parte Ginterrez*, 45 Cal. 429; *People v. Butler*, 3 Cow. (N. Y. 347; *Hyser v. Commonwealth*, 116 Ky. 410; 25 Ky. L. Rep. 608; 76 S. W. 174.

<sup>45</sup> *State v. Woods*, 68 Me. 409; *State v. Hodgson*, 66 Vt. 134; 28 Atl. 1089.

ment charge the first conviction as a part of the crime. The reasonable construction of such a statute is that "when a statute makes a second offense belong, or subject to a heavier punishment than the first, it is always implied that such second offense ought to be committed after a conviction for the first; for the gentler method shall first be tried, which, perhaps, may prove effectual."<sup>46</sup> The doctrine that when a statute imposes a greater punishment upon second and subsequent convictions of an offense, that the former conviction must be alleged in the indictment and proved at the trial, or the same can only be punished as a first offense, is sustained by the great weight of the authorities.<sup>47</sup>

### Sec. 174. British North American Act.

The British North American Act on the subject of regulating intoxicating liquors overrides all provincial acts when they conflict with it.<sup>48</sup> If the local act conflicts with such statute, it is said to be unconstitutional.<sup>49</sup>

<sup>46</sup> *People v. Butler*, 3 Cow. 347.

<sup>47</sup> Wharton's *Crim. Plead. and Prac.* (9th ed.), § 935; 1 Bishop's *Crim. Law*, §§ 959-964; Clark's *Crim. Proc.*, pp. 203, 204; *Evans v. State*, 150 Ind. 651; 50 N. E. 820; *State v. Gorham*, 65 Me. 270; *Maguire v. State*, 47 Md. 485; *Plumbly v. Commonwealth*, 43 Mass. (2 Met.) 413; *Tuttle v. Commonwealth*, 68 Mass. (2 Gray) 506; *Commonwealth v. Holley*, 69 Mass. (3 Gray) 458; *Garvey v. Commonwealth*, 74 Mass. (8 Gray) 382; *Commonwealth v. Miller*, 74 Mass. (3 Gray) 484; *Commonwealth v. Harrington*, 130 Mass. 35; *State v. Adams*, 64 N. H. 440; 13 Atl. 785; *Ranch v. Commonwealth*, 78 Pa. St. 490; *State v. Edwards*, 109 Lea 236; 37 So. 209.

A statute doubling the penalty for a refusal to furnish the assessor information of the presence

of intoxicating liquor, after demand made by him, for taxation, is valid. *Adler v. Whitbeck*, 44 Ohio St. 539; 9 N. E. 672.

A statute requiring the defendant, on a second conviction for violating the liquor law, to execute a bond for his "good behavior" for twelve months, is constitutional. *Hyser v. Commonwealth*, 116 Ky. 410; 25 Ky. L. Rep. 608; 76 S. W. 174.

<sup>48</sup> *Regina v. Justices*, 2 Pug. (N. B.) 535; *License Commissioners v. Prince Edward County*, 26 Grant (Ont.), 432; *License Commissioners v. Norfolk*, 14 Ont. 749.

Thus a brewer having a license under it may sell without having a local license. *Regina v. Young*, 8 Ont. 476; *Regina v. Guittard*, 30 Ont. 283.

<sup>49</sup> *Queen v. McDougall*, 22 Nova Scotia, 442.

### Sec. 175. Closing saloons.

A statute requiring saloons to be closed on Sunday (and holidays) is constitutional.<sup>50</sup> So a statute empowering the Board of Police Commissioners of a city to order all drinking saloons to be closed "temporarily" whenever in their judgment public peace required it, and inflicting a penalty for disobedience of the order "during such period" as they shall forbid, is valid; but an order closing such places "until further notice" is invalid, because indefinite. The power thus given is one enabling the board to only close the saloons temporarily and for a definite interval.<sup>51</sup> So statutes requiring saloons to be closed at night during such hours as are not usually devoted to business—as from 9 P. M. to 5 or 6 A. M.—are valid.<sup>52</sup> So a statute forbidding anyone except the proprietor or his employes to enter his saloons between 9 o'clock P. M. and 5 o'clock A. M. or at any time on Sunday (or holidays) is valid.<sup>53</sup>

### Sec. 176. Evidence, statutes regulating

Many of the States have statutes declaring what shall constitute *prima facie* evidence of the existence of certain facts enumerated in them. For instance, in Maine, the fact that

The Nova Scotia act was held constitutional. *Brown v. Moore*, 32 S. C. C. (N. S.) 93; *Attorney-General v. Manitoba License Holders' Assn.* [1902], App. Cas. 73; *Queen v. Ronnan*, 23 Nova Scotia, 421; *Queen v. McKenzie*, 23 Nova Scotia, 6; *Queen v. King*, 25 Nova Scotia, 488.

For Quebec Act, see *Ex parte O'Neil*, 9 Can. Cr. Cas. 141.

<sup>50</sup> *State v. Grossman*, 214 Mo. 233; 113 S. W. 1074; *Commonwealth v. McCann* (Ky.), 94 S. W. 645; 29 Ky. L. Rep. 707. So in British Columbia. *Sauer v. Walker*, 2 B. C. 93.

<sup>51</sup> *State v. Strauss*, 49 Md. 288.

Power to close saloons on Sunday could not be delegated to police juries. *State v. Baun*, 33 La. Ann. 981; overruling *State v. Bott*, 31 La. Ann. 663; 33 Am. Rep. 224.

<sup>52</sup> *Decker v. Sargeant*, 125 Ind. 404; 25 N. E. 458; *State v. Washington*, 14 N. J. L. 605; 45 N. J. L. 318; 43 Am. Rep. 402; *Ex parte Wolf*, 14 Neb. 24; 14 N. W. 660; *Morris v. Rome*, 10 Ga. 532; *Smith v. Knoxville*, 3 Head. 245; *Word v. Greenville*, 8 Baxt. 228; *Gilham v. Wells*, 64 Ga. 192.

<sup>53</sup> *Thomas v. Sanders* (Fla.), 47 So. 796.



a person has paid the Federal tax on liquor-sellers, and in Massachusetts the fact that he keeps posted on his premises a United States tax receipt as a dealer in liquors, is made by statute *prima facie* evidence that such a person is engaged in the business of selling liquor.<sup>54</sup> Such statutes have often been assailed as unconstitutional, on the ground that they violate the guarantee of due process of law and a trial by jury; and that they deprive an accused of the presumption of innocence, but without, perhaps, an exception, they have been sustained as constitutional.<sup>55</sup> In New York a statute provided that whenever any person was seen to drink in a shop, etc., spirituous liquors which were forbidden to be drunk therein, it should be *prima facie* evidence that such liquors were sold by the occupant of the premises or his agent with the intent that the same should be drunk therein. A defendant was an occupant of prem-

<sup>54</sup> Public Laws Me. [1887], c. 140; Acts Mass. [1887], c. 414.

<sup>55</sup> State v. Dowdy, 145 N. C. 432; 58 S. E. 1002; State v. Toler (N. C.), 58 S. E. 1005; Rice on Ev., §§ 807, 808; Wharton on Crim. Ev., § 715a; Robertson v. People, 20 Colo. 279; State v. Cunningham, 25 Conn. 195; Clopton v. Commonwealth (Va.), 63 S. E. 1022; State v. Thomas, 47 Conn. 546; 36 Am. Rep. 98; Gage v. Cavalier, 125 Ill. 447; 17 N. E. 777; Chicago, etc., R. Co. v. Jones, 149 Ill. 361; 37 N. E. 247; American, etc., Bank v. Gueder, 150 Ill. 336; 37 N. E. 227; Morgan v. State, 117 Ind. 569; 19 N. E. 154; Voght v. State, 124 Ind. 358; 24 N. E. 680; State v. Gerhardt, 145 Ind. 439; 44 N. E. 469; State v. Beach, 147 Ind. 74; 46 N. E. 174; Santo v. State, 2 Ia. 165; 63 Am. Dec. 487; Allen v. Armstrong, 16 Ia.

508; State v. Harley, 54 Me. 562; Fisher v. McGirr, Gray 1; Commonwealth v. Williams, 6 Gray (Mass.), 1; Commonwealth v. Rome, 14 Gray (Mass.), 47; Holmes v. Hunt, 122 Mass. 505; 23 Am. Rep. 381; Wright v. Dunham, 13 Mich. 414; Ess v. Bonton, 64 Mo. 105; State v. Kingsley, 108 Mo. 135; 18 S. W. 994; State v. Buck, 120 Mo. 479; 25 S. W. 573; State v. Sattley, 131 Mo. 464; 33 S. W. 41; Hand v. Ballon, 12 N. Y. 541; Howard v. Moot, 64 N. Y. 262; Board, etc., v. Merchant, 103 N. Y. 143; 8 N. E. 484; People v. Cannon, 139 N. Y. 32; 34 N. E. 759; Duncan v. Clement, 119 N. Y. Supp. 375 (conclusive evidence); State v. Higgins, 13 R. I. 330; 43 Am. Rep. 26; State v. Waldron, 16 R. I. 191; 14 Atl. 847; Delaplame v. Cook, 7 Wis. 43; People v. McBride, 234 Ill. 146; 84 N. E. 865.



ises where liquor could not be sold to be drunk thereon, and was prosecuted for selling the same in violation of the statute. The only evidence of a sale by the accused occupant was the fact that a person was seen to drink upon the premises. The defendant was convicted. It was claimed for him that the act was unconstitutional on the ground that it violated the constitutional guaranties of due process of law and trial by jury. The claim was not sustained, the court holding that the general power of the Legislature to prescribe rules of evidence and methods of proof was undoubted, and had not been illegally exercised in that case.<sup>56</sup> In Massachusetts it was held in a criminal prosecution for a violation of an excise law, that a statute which provided that the delivery of any spirituous and intoxicating liquors in or from any building or place other than a dwelling house, "shall be deemed *prima facie* evidence of a sale," was constitutional and valid.<sup>57</sup> In Maine it was held that an act which provided that "whenever an unlawful sale of intoxicating liquor is alleged and a delivery proved it shall not be necessary to prove payment, but such delivery shall be sufficient evidence of sale" was constitutional.<sup>58</sup> In Connecticut a statute for the suppression of intemperance provided that on the trial of a complaint for keeping spirituous liquors in violation of the statute, proof of finding of such liquor in the possession of the accused, under certain specified circumstances, should be received and acted upon by the court as presumptive evidence that the liquor was kept or held for sale contrary to the provisions of the statute, was held constitutional and valid;<sup>59</sup> and a like ruling has been made in Iowa;<sup>60</sup> and a like one in Rhode Island.<sup>61</sup> It has

<sup>56</sup> Board, etc., v. Merchant, 103 N. Y. 143; 8 N. E. 484; People v. Cannon, 139 N. Y. 32; 34 N. E. 759.

<sup>57</sup> Commonwealth v. Williams, 6 Gray (Mass.) 1; Commonwealth v. Wallace, 7 Gray (Mass.) 222; Commonwealth v. Rowe, 14 Gray (Mass.) 47.

<sup>58</sup> State v. Day, 37 Me. 244; State v. Hurley, 54 Me. 562.

<sup>59</sup> State v. Cunningham, 25 Conn. 195; State v. Thomas, 47 Conn. 546. So in Kansas. State v. Sheppard, 64 Kan. 451; 67 Pac. 870.

<sup>60</sup> Santo v. State, 2 Ia. 165; 63 Am. Dec. 487. So in North Carolina. State v. Barrett, 138 N. C. 630; 50 S. E. 506.

<sup>61</sup> State v. Higgins, 13 R. I. 330; 43 Am. Rep. 26.

also been held in Rhode Island that under a statute which provides that "it shall not be necessary to prove an actual sale of intoxicating liquors in any building, place or tenement, in order to establish the character of such premises as a common nuisance, but the notorious *character* of any such premises shall be evidence \* \* \* that such premises are nuisances," that the word *character* as used in the statute was synonymous with "reputation," and as thus construed the statute was constitutional.<sup>62</sup> Such a statute does not violate a constitutional provision that "in all criminal prosecutions the accused shall enjoy the right \* \* \* to be confronted with the witnesses against him."<sup>63</sup> The power of giving greater effect to evidence than it possessed at common law has been frequently exercised by Legislatures. Thus, in the case of a seizure under a law in which it was provided that, if a property be claimed by any person in any such case, the *onus probandi* should be upon the claimant, where proper cause was shown on the part of the prosecution, it was holden that the statute might allow less evidence than would otherwise justify a condemnation, and the probable cause shown for the prosecution was sufficient to refute the presumption of innocence and throw the burden of proof upon the claimant.<sup>64</sup> In another case before the Supreme Court of the United States it appeared that a district judge had instructed the jury that proof that an Indian trader had carried ardent spirits into an Indian country and had them with his other goods, was *prima facie* evidence of their having been carried there in violation of a law of Congress, and threw the burden of proof upon the trader, although the judge, at the same time, told the jury that he might lawfully carry them there for some purpose, as for medicinal use. And this ruling was said by Judge Washington, who delivered the opinion of the Supreme Court, to meet their entire approval.<sup>65</sup> If such evidence at the common law is *prima*

<sup>62</sup> State v. Wilson, 15 R. I. 180; 1 Atl. 415.

<sup>63</sup> State v. Waldron, 16 R. I. 191; 14 Atl. 847.

<sup>64</sup> The Summary, 8 Wheat. (U. S.) 407.

<sup>65</sup> American Fur Co. v. United States, 2 Peters, 358.

*facie* evidence of an unlawful intent so as to throw the burden of proof upon an accused, there is no reason why the Legislature may not well say that proof of certain facts mentioned in a statute shall be deemed affirmative evidence of a like intent. In most States there are no common law offenses. In such States only such offenses as are defined by some statute are punishable as crimes or misdemeanors. As incident to the power of defining crimes and misdemeanors and of declaring what shall constitute a criminal offense a Legislature may assume to determine what shall in certain cases be deemed sufficient evidence of the commission of an offense, or of some criminal act necessary to be proven in a criminal prosecution. Such bodies have assumed to determine what shall be sufficient evidence in cases of rape, seduction, receiving stolen goods, keeping places for the purpose of gaming, obstructing the highways, and in many other cases which might be enumerated.<sup>66</sup> The power to enact such provisions is founded upon the jurisdiction of the Legislature over rules of evidence both in civil and criminal cases. A statute of this character, however, that alters the legal rules of evidence and receives less or different testimony than the law required at the time of the commission of the offense, in order to convict the offender, is *ex post facto* and invalid.<sup>67</sup> If a statute provided that certain facts are conclusive proof of guilt, it would be unconstitutional, as also would one which makes an act *prima facie* evidence of crime which has no relation to a criminal intent, and no tendency whatever to establish a criminal act.<sup>68</sup> If, however, a Legislature in prescribing rules of evidence in any class of cases, leaves a party fair opportunity to establish his case or defense and give in evidence to the court or jury all the facts legitimately bearing on

<sup>66</sup> *Morgan v. State*, 117 Ind. 569; 19 N. E. 154; *Commonwealth v. Minor*, 88 Ky. 422; 11 S. W. 472; 10 Ky. L. Rep. 1008; but see *Duncan v. Clement*, 119 N. Y. Supp. 375.

<sup>67</sup> *Calder v. Bull*, 3 Dall. 390.

<sup>68</sup> *State v. Beswick*, 13 R. I. 211; *State v. Kantz*, 13 R. I. 528. But see *Duncan v. Clement*, 119 N. Y. Supp. 375.

the issues of the case to be considered and weighed by the tribunal trying it, such acts of the Legislature are not unconstitutional.<sup>69</sup> Such a statute must not make it obligatory on the jury to find a defendant guilty upon such evidence whether they believe him to be so or not. Properly construed such statutes mean that such evidence is competent and sufficient to justify a jury in finding a defendant guilty.<sup>70</sup>

<sup>69</sup> State v. Beach, 147 Ind. 74; 46 N. E. 174.

<sup>70</sup> State v. Intoxicating Liquors, 80 Me. 57; 12 Atl. 794.

A statute declaring that the place of delivery shall be the place of sale, and that any place to which liquor is shipped for the purpose of delivering it to the purchaser shall be held to be the place of sale, is constitutional. State v. Patterson, 134 N. C. 612; 47 S. E. 808.

The Legislature may provide that a licensee transgressing certain restrictions shall be found guilty of selling without a license. Crabb v. State, 47 Fla. 24; 36 So. 169.

So a statute may provide in a prosecution for its violation, the State may give in evidence any one or more offenses of the same character committed prior to the date charged in the indictment and not barred by the statute of limitations; but such a statute cannot be considered on appeal as applicable to trials occurring prior to its enactment. Kittrell v. State, 89 Miss. 666; 42 So. 609.

Where the court, in refusing to direct an acquittal, said the testimony showed the defendant gave another quart of whisky in lieu of one dollar promised, and

that it was a circumstance to be considered by the jury as showing an unlawful use, but subsequently instructed the jury that they should take nothing from him but the law, and that they were the sole judges of the facts, it was held that the constitutional provisions respecting matters of fact had not been violated. State v. Arnold, 80 S. C. 383; 61 S. E. 891.

A statute making the fact that persons were in a saloon on a day when liquors could not be sold, *prima facie* evidence of an unlawful sale, is constitutional. State v. Gerhardt, 145 Ind. 439; 44 N. E. 469; 33 L. R. A. 313. See Piqua v. Zimmerlin, 35 Ohio St. 507.

A statute requiring druggists to sell only on prescriptions, and making his failure to produce them before the grand jury when required as misdemeanors, is constitutional. State v. Davis, 108 Mo. 666; 18 S. W. 894; 32 Am. St. Rep. 640; 117 Mo. 614; 23 S. W. 759.

So a statute casting upon a physician prescribing whisky for a patient the burden to show that the whisky was used as a medicine, is valid; but so much of it as makes him liable where he,



**Sec. 177. Jury trial, when it can be secured by appeal.**

A statute which authorizes a justice of the peace or other inferior court to try and determine whether intoxicating liquors which have been seized shall be forfeited, and provides that liquors against which judgment of forfeiture has been entered by such inferior tribunal shall be "forfeited" or destroyed, unless an appeal be taken, is not violative of a constitutional provision guaranteeing the right of a trial by jury to the defendant in all criminal prosecutions because it gives no time to procure sureties and perfect a recognizance. In such case the Legislature has a discretion which it must be left to exercise, unless it clearly exercises it in an unreasonable and oppressive manner. By the right of appeal the right of a jury trial is preserved if the provisions for it and the conditions imposed are reasonable. The question therefore is largely a question of reasonableness, and upon such a question it is natural, almost inevitable, for men to differ. For this reason it will not do for a court to condemn a provision for an appeal, or the conditions of a recognizance, simply because they are more stringent or more burdensome than the court would have prescribed if it had enjoyed the power and privilege of legislating. Some latitude must be allowed for differences of opinion. "Forthwith," as used in such a statute, does not imply that a reasonable time is not to be allowed, since that, like all other directions to judicial tribunals, is to be judicially carried out with due regard to individual rights. A statute, however, will be unconstitutional as impairing the right to be tried by a jury, if it provides that a person claiming an appeal from a judgment rendered against him by a court of inferior jurisdiction for a violation of the liquor laws, before his appeal is allowed, shall give a bond with sufficient sureties, conditioned that he will not, during the pendency of the appeal, violate any of the provisions of the statute under which he has been convicted, it being held that such a condition was "foreign to the purposes for which an ap-

acting in good faith, made a mistake in fact, is invalid. Common-

wealth v. Minor, 88 Ky. 422; 11 S. W. 472; 10 Ky. L. Rep. 1008.



peal bond could be properly required." The right to appeal in such cases must not be burdened with unreasonable restrictions and conditions.<sup>71</sup>

### Sec. 178. Double punishment—State and municipalities.

There has been much diversity in the decisions of the courts as to whether the constitutional provision that "no person shall be put in jeopardy twice for the same offense," and like provisions in the Constitutions of different States prohibit the enactment of a law authorizing municipal corporations to pass an ordinance punishing an offense which, by the common law or by the State law, is a crime and punishable by the State authorities as such. There are decisions in many States that a Legislature can not constitutionally confer such authority on a municipal corporation. Decisions to this effect may be found which either expressly hold or give great countenance to this view of the law. Such decisions may be found in Arkansas, Georgia, Louisiana, Michigan, Missouri, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee and Texas.<sup>72</sup> On the oth-

<sup>71</sup> *In re Liquors of McSoley*, 15 R. I. 608; 10 Atl. 659; *Voight v. Board*, 59 N. J. L. 358; 36 Atl. 686; *State v. Fitzpatrick*, 16 R. I. 54; 11 Atl. 767; *Hill v. Dalton*, 72 Ga. 314; *Saco v. Wentworth*, 37 Me. 165; *Saco v. Woodsum*, 39 Me. 258; *Beers v. Beers*, 4 Conn. 535; *State v. Brennan's Liquors*, 25 Conn. 278; *Emporia v. Volmer*, 12 Kan. 622; *Jones v. Robbins*, 74 Mass. (8 Gray) 329; *State v. Fitzpatrick*, 16 R. I. 54; 11 Atl. 773. Change of venue. *People v. McBride*, 234 Ill. 146; 84 N. E. 665.

<sup>72</sup> *Ex parte Smith*, 1 Hemstead (9 U. S. C. C.), 201; *Slattery, Ex parte*, 3 Ark. 484; *Rector v. State*, 6 Ark. 187; *Darr v. Howard*, 6 Ark. 641; *Lewis v. State*, 21 Ark. 209; *Savannah v. Hussey*,

21 Ga. 80; *Jenkins v. Thomasville*, 35 Ga. 145; *Vinson v. Augusta*, 38 Ga. 342; *Reich v. State*, 53 Ga. 73; *Municipality, etc., v. Wilson*, 5 La. Ann. 747; *Slaughter v. People*, 2 Doug. (Mich.) 334; *People v. Jackson*, 8 Mich. 110; *Wayne Co. v. Detroit*, 17 Mich. 390; *People v. Detroit*, 18 Mich. 445; *Jefferson City v. Couture*, 9 Mo. 683; *State v. Cowan*, 29 Mo. 330; *State v. Brittain*, 89 N. C. 574; *Barter v. Commonwealth*, 3 P. & W. (Pa.) 253; *State v. Pollard*, 6 R. I. 290; *Zystra v. Charleston*, 1 Bay. (S. C.) 387; *Raleigh v. Dougherty*, 3 Humph. (Tenn.) 11; *Smith v. San Antonio*, 27 Tex. 646; *Hamilton v. State*, 3 Tex. App. 643; see *Campbell v. Thomasville (Ga.)*, 64 S. E. 815.

er hand, decisions may be found in many States that a Legislature has the power to authorize a municipal corporation to punish either any or some offenses which, by the common law or statute law, are crimes punishable by the State courts, and that a person may be twice punished, once by the State for the crime and once by the corporation for the violation of its ordinance, on the ground that each punishment is for a different offense. Decisions which hold thus, or which give much countenance to it are to be found in Alabama, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, Oregon, South Carolina, Tennessee, Texas and Utah.<sup>73</sup> And again decisions may be found in some States which countenance the position that when a State law inflicts a certain penalty for the commission of crime, and an ordinance of a municipal corporation passed by legislative authority also punishes the same crime, if committed in the city, the State authorities and the municipal authorities have concurrent jurisdiction to punish the offender, but he can be punished only once by the State or municipal authorities, whichever first institutes proceedings.<sup>74</sup> It will be at once perceived on reading these cases that they cannot be reconciled. The one class proceeds upon

<sup>73</sup> *McLaughlin v. Stevens*, 2 Cranch. (U. S. C. C.) 148; *Mayor, etc., v. Rouse*, 8 Ala. 515 (liquor case); *Mayor, etc., v. Allane*, 14 Ala. 400; *Hood v. Von Glahn*, 88 Ga. 405; *Wragg v. People*, 94 Ill. 11; *Robbins v. People*, 95 Ill. 175; *Davenport v. Bird*, 34 Ia. 524; *Ambrose v. State*, 6 Ind. 351 (liquor case); *Rice v. State*, 3 Kan. 135; *March v. Commonwealth*, 12 B. Mon. (Ky.) 25; *Shafer v. Miamma*, 17 Md. 336; *People v. Detroit*, 82 Mich. 471; *State v. Charles*, 16 Minn. 478; *State v. Budwig*, 21 Minn. 202; *State v. Lee*, 29 Minn. 445; *St. Louis v. Bentz*, 11 Mo. 62; *St. Louis v. Cafferetta*, 24 Mo. 94;

*Brownville v. Cook*, 4 Neb. 101; *Howe v. Plainfield*, 38 N. J. L. (8 Vroom) 145; *State v. Plunket*, 3 Har. (N. J.) 5; *Rogers v. Jones*, 1 Wend. (N. Y.) 261; *Brooklyn v. Trymble*, 31 Barb. (N. Y.) 283; *State v. Bergman*, 6 Ore. 341; *Wong v. Astoria*, 13 Ore. 538; *State v. Williams*, 11 S. C. 288; *Greenwood v. State*, 6 Baxt. (Tenn.) 567; *Hamilton v. State*, 3 Tex. 647; *Ex parte Douglass*, 1 Utah, 108; *Logan City v. Buck*, 3 Utah. 301.

<sup>74</sup> *Kansas, etc., R. Co. v. State*, 3 Kan. 164; *State v. Gordon*, 10 Mo. 383; *State v. Cowan*, 29 Mo. 330; *State v. Wister*, 62 Mo. 593.

the ground that the Constitution provides that no person shall be tried for a crime except on indictment, and that all such crimes must be tried by jury of twelve men, and that these are deemed as fundamental requirements, the observation of which is necessary for the preservation of our liberties. Yet these fundamental principles are violated when a Legislature authorizes a municipal corporation by ordinance to make any or all crimes committed within a municipal corporation punishable by fine or imprisonment upon summary proceedings before a mayor or police court. If the Legislature has such power, then these fundamental and important principles of the Constitution are made totally inoperative in any town or city in the State. The answer to this reasoning as found in the other class of cases is that the summary conviction before a mayor or police court is not for the crime committed in the city or for the offense against the town or city by violating one of its ordinances, that though the offense be described in the ordinance in the identical words in which the offense is described in the statute, yet the violation of the ordinance is to be regarded only as an offense against the city or town, while the violation of the statute affects the punishment to be inflicted for the crime described as an offense against the State, which is something entirely different, and therefore for an offense described in the statute and in the ordinance in exactly the same words, a person may be twice punished, once by confinement in jail under the summary conviction of a mayor or police court, and once in the penitentiary or in the county jail on conviction of the crime by jury.<sup>75</sup> As has been said, there are cases in Indiana which hold that the double punishment may be inflicted. These cases occurred prior to 1881, when, because of the abuse of such holding, it became necessary for the Legislature of the State to provide by law that "Whenever any act is made a public offense against the State by any statute and the punishment prescribed therefor, such act shall not be made punishable by any ordinance of any incorporated city or town."<sup>76</sup>

<sup>75</sup> *Moundsville v. Fountain*, 27 W. Va. 182.      <sup>76</sup> R. S. 1881, § 1640.

In this connection it is to be observed that where an act is, in its nature, one which constitutes two offenses, one against the State and one against a municipal government, the legislative intention that a double punishment may be inflicted, "ought," as Judge Dillon says, "to be manifest and unmistakable, or the power in the corporation should be held not to exist."<sup>77</sup> Such power may not be inferred from the "general welfare clause" usual in municipal corporations. As was said by Judge Merriman, of North Carolina, "It may be that the Legislature has power to authorize a town to make an offense against the State a separate offense against the town; but this could be done only by an express grant of authority."<sup>78</sup>

### Sec. 179. Double punishment—Conflict of jurisdiction.

Can the same criminal or penal act be punished once under the statute of a State and again under a statute of the United States, and *vice versa*? Or, in other words, can an offender, as it were, be put in jeopardy twice for the same offense? Article V of the Constitution of the United States provides, among other things, that no person shall "be subject for the same offense to be put twice in jeopardy of life or limb." A like provision is found in the Constitution of each of the States. Under these provisions and governed by the dictates of humanity, the question, as it is viewed by some, ought to be answered in the negative, but such has not been the case. In the Supreme Court of the United States the question came up for consideration in 1847.<sup>79</sup> In the case then under consideration, Justice Daniels delivered the opinion of the court, and in it it was held that a person might be punished under the law of a State, although the same act was made punishable under a statute of Congress, and consequently that a conviction and punishment under a State

<sup>77</sup> Dillon's *Munic. Corp.*, 3d Ed., § 368; *Hood v. Von Glahn*, 88 Ga. 405; *Foster v. Brown*, 55 Ia. 686; *City of Louisville v. McKean*, 57 Ky. (18 B. Mon.) 9.

<sup>78</sup> *State v. Brittain*, 89 N. S. 574.

<sup>79</sup> *Fox v. The State of Ohio*, 5 How. 410.



law would be no bar to a prosecution under a law of Congress. In so deciding, Justice Daniels said: "It is almost certain that, in the benignant spirit in which the institutions, both of the State and Federal systems are administered, an offender who should have suffered the penalties denounced by the one would not be subjected a second time to the punishment by the other for acts essentially the same, unless, indeed, this might occur in instances of peculiar enormity, or where the public safety demands extraordinary vigor." It occurs to the writers that this statement can hardly be characterized as an argument in support of the legal proposition involved. Does it not beg the question? In that case Justice McLean wrote a dissenting opinion, in which he says Justice Story concurred when the case was being considered by the court, and in which he also says: "There is no principle better established by the common law, none more fully recognized in the Federal and State Constitutions than that an individual shall not be put in jeopardy twice for the same offense. \* \* \* That the State should punish for that which an act of Congress punishes is contradictory and repugnant. This is clearly the case whether with regard to the nature of the power or infliction of the punishment. There can be no greater mistake than to suppose that the Federal Government in carrying out any of its supreme functions is made dependent on State governments. The Federal is a limited government exercising enumerated powers, but the powers given are supreme and independent. If this were not the case, it could not be called a general government. Nothing can be more repugnant or contradictory than two punishments for the same act. It would bring our system of government into merited contempt." The question was considered by that court again, and the decision from which this quotation is taken was affirmed, Justice McLean again dissenting.<sup>80</sup> In an early case in Indiana, under an indictment for retailing intoxicating liquors without a license, it was held by the Supreme Court, acting upon the authority of the two cases cited, "that the same act may be

<sup>80</sup> Moore v. People of Illinois, 14 How. 13.



an offense against two jurisdictions is no longer an open question.”<sup>81</sup> And in Dakota it has been held that a defendant who violates the laws of a State or Territory and also a municipal ordinance in selling intoxicating liquors, is liable to a prosecution therefor under either or both, on the theory that they are separate and distinct offenses—one against the State or Territory, the other against the municipal corporation.<sup>82</sup> Notwithstanding these decisions and many others of like character that might be cited, there are some persons of authority who believe that the view of this question taken by Justice McLean, is the better one and that which ought to prevail. In this view they are sustained by the Supreme Court of Connecticut, that court having held that if a general statute covers the same ground with a municipal law authorized by a statute, both can not be enforced so as to subject a party to a double penalty.<sup>83</sup>

### Sec. 180. Imprisonment for debt.

Most, if not all the Constitutions of the States provide “that there shall be no imprisonment for debt, except in case of fraud.” Under this provision it has been contended that a defendant could not be imprisoned for a fine and costs assessed in a prosecution by the State or by a municipal corporation for the violation of a statute or ordinance against the sale of intoxicating liquors without having procured a license to do so; but the contention has not been sustained, the courts holding that the immunity from imprisonment contemplated by such constitutional provision must be confined to debts or liabilities growing out of contracts, expressed or implied, and not to liabilities from crimes or torts. In other words, that the liabilities must be a *debt* within the

<sup>81</sup> State v. Moore, 6 Ind. 436; Howe v. Plainfield, 8 Vroom (37 N. J. L.), 145.

<sup>82</sup> City of Elk Point v. Vaughn, 1 Dak. 113; 46 N. W. 577.

<sup>83</sup> State v. Welch, 36 Conn. 215. A statute may make it an of-

fense to sell liquors in an anti-saloon territory and another offense to sell in less quantity than a gallon or in any quantity to be drunk on the premises. People v. McBride, 234 Ill. 146; 84 N. E. 865.

proper and legal meaning of that word.<sup>84</sup> "A debt," according to the Supreme Court of New Jersey, "is a sum of money due by certain and express agreement. It originates in and is founded upon contracts express or implied;"<sup>85</sup> and a like definition has been recognized by other courts.<sup>86</sup> A fine or penalty, when assessed becomes a fixed liability to pay the State or municipality a definite amount of money for the violation of a criminal statute or penal ordinance. In such cases the costs are taxed, and due to the officers and witnesses, and are not within the meaning of the constitutional provision. The fact that the one is payable to the State or municipality, and the other to individuals, furnishes no ground for a distinction.<sup>87</sup> The distinction between tort and contract exists in the nature of things, and cannot be confounded or abolished by law. A Constitution which abolishes imprisonment for debt does not prohibit a Legislature from passing a law to imprison on judgments founded on torts.<sup>88</sup>

### **Sec. 181. Support of penitentiary—Imitation liquor.**

A statute requiring a license of all persons manufacturing, selling or distributing any imitation of or substitute for beer, ale, wine, whisky, or other spirituous or malt liquors, and devoting the fee to the support of the State penitentiary is valid.<sup>89</sup>

### **Sec. 182. Removal of officer for drunkenness.**

A statute may provide for the removal of any officer for voluntary drunkenness during the business hours of his of-

<sup>84</sup> *Caldwell v. State*, 55 Ala. 133; *Flora v. Sachs*, 64 Ind. 155; *Hardenbrook v. Town of Ligonier*, 95 Ind. 70; *Hibbard v. Clark*, 56 N. H. 155; *City of Camden v. Allen*, 26 N. J. L. 398; *Danlap v. Keith*, 1 Leigh (Va.), 430.

<sup>85</sup> *City of Camden v. Allen*, 2 Dutch. (N. J. L.) 398.

<sup>86</sup> *Lane Co. v. Oregon*, 7 Wall. (U. S.) 71; *Perry v. Washburn*, 20 Cal. 350; *Pierce v. City of Boston*, 3 Mete. (Mass.) 520; *Shaw v. Pickett*, 26 Vt. 486.

<sup>87</sup> *McCool v. State*, 23 Ind. 127.

<sup>88</sup> *Turner v. Wilson*, 49 Ind. 581.

<sup>89</sup> *Carroll v. Wright*, 131 Ga. 728; 63 S. E. 260.

fice, or for habitual intoxication. It is neither repugnant to nor in conflict with any provisions of the State or Federal Constitutions, when the State Constitution provides that an officer "shall, for crime, incapacity, or negligence, be liable to be removed from office"; or be "removed from office, in such manner as may be prescribed by law."<sup>90</sup>

### Sec. 183. Drunkenness.

The Legislature may enact a law punishing anyone appearing in a public place while intoxicated,<sup>91</sup> and the statutes may permit him to show that he has not been convicted under the statute within the past year, whereupon the court may discharge him without trial, this not being an interference with the power of the court.<sup>92</sup>

### Sec. 184. Inebriate asylums.

A statute is valid which provides for the care and custody of the person and estate of habitual drunkards; and it cannot be insisted that it is void because it deprives a citizen of the right to enjoy, control and dispose of his property, and to make contracts. The court said that there was no question that the State could enact a valid law for the custody and control of the person and property of infants and persons born idiots or who had become insane; and there was no difference between a person born deficient or who had become after birth deficient by disease or accident.<sup>93</sup> And an extra license fee may be required of all persons selling liquor, to be devoted to the maintenance of an inebriate asylum, under the police powers of the State, it not being an unequal tax.<sup>94</sup>

<sup>90</sup> *McComas v. Krug*, 81 Ind. 327; 42 Am. Rep. 135. The court considered that "incapacity" as used in the constitution was broad enough to cover a case of voluntary drunkenness in an officer during the business hours of his office.

<sup>91</sup> *Commonwealth v. Morrissey*, 157 Mass. 471; 32 N. E. 664.

<sup>92</sup> *Commonwealth v. Morrissey*, *supra*.

<sup>93</sup> *Devin v. Scott*, 34 Ind. 67; see *Ex parte Schwarting*, 76 Neb. 773; 108 N. W. 125.

<sup>94</sup> *State v. Cassidy*, 22 Minn. 312; 21 Am. Rep. 765; *State v. Klein*, 22 Minn. 328.

But the Legislature cannot provide for the treatment of drunkards in private asylums at the public's expense, by imposing a tax on their counties to raise the necessary funds; for such persons are not legitimate objects of public charity.<sup>95</sup> But a drunkard cannot be confined in such an institution without a full hearing, of which due notice has been given."<sup>96</sup>

### Sec. 185. Miscellaneous decisions.

In Louisiana it would seem that a statute requiring *saloons for white and colored people* to be in separate buildings is constitutional.<sup>97</sup> Where local option has been adopted a statute making it a misdemeanor "*to solicit an order for the sale*" of intoxicating liquor in a local option district, is unconstitutional.<sup>98</sup> But a statute making it unlawful to *solicit orders through the mail* is not unconstitutional, not being an infringement of the powers of Congress to establish post-offices and designate what shall be excluded from the mails.<sup>99</sup> A statute empowering a city to exact a license is constitutional.<sup>1</sup> A *bond* may be required of a licensee as security against disorder.<sup>2</sup> A statute forbidding the issuance of a license for premises where a previous license has been cancelled, on the ground that the premises had become disorderly or gambling had been per-

<sup>95</sup> Wisconsin Keeley Institute Co. v. Milwaukee County, 95 Wis. 153; 70 N. W. 68; 36 L. R. A. 55.

<sup>96</sup> People v. St. Saviour's Sanitarium, 34 N. Y. App. Div. 363; 56 N. Y. Supp. 431.

Of course such a statute must be general, and not local or special. Murray v. Board, 81 Minn. 359; 84 N. W. 103; 51 L. R. A. 828.

The Legislature cannot require a judge of a court to manage and control an inebriate asylum. Foreman v. Hennepin Co., 64 Minn. 371; 67 N. W. 207.

<sup>97</sup> State v. Falkenheimer (La.) 49 So. 214.

The business cannot be conducted in one building. Bars separated one from another in one building is not a compliance with the statute. In such an instance the State cannot compel the payment of two license fees. *Ibid.*

<sup>98</sup> *Ex parte Massey* (Tex. Cr. App.), 92 S. W. 1086; *Ex parte Hackney* (Tex. Cr. App.), 92 S. W. 1092.

<sup>99</sup> *Zinn v. State* (Ark.), 114 S. W. 227.

<sup>1</sup> *Kitson v. Ann Arbor*, 26 Mich. 325; *Beasley v. Beckley*, 28 W. Va. 81.

<sup>2</sup> *Kitson v. Ann Arbor*, 26 Mich. 325.



mitted therein, is valid.<sup>3</sup> A statute is valid which enables a city to prohibit the sale of liquor on Sunday.<sup>4</sup> Where a Constitution dispenses with *indictments* in misdemeanor prosecutions, the Legislature may authorize prosecutions by affidavits for violations of liquor statutes.<sup>5</sup> A State may provide that one person shall not keep or be interested in any saloon at *more than one place* at the same time.<sup>6</sup> The *number of saloons* in a block may be limited, as two and a half in the block.<sup>7</sup> A city may be empowered to prescribe *saloon limits*.<sup>8</sup>

**Sec. 186. When courts will not consider constitutional question.**

It is a principle of constitutional law that only those who are prejudiced by an unconstitutional act can be heard to make objection to it. The courts will not listen to an objection made to the constitutionality of an act by a party whose rights it does not affect, and who, therefore, has no interest in defeating it.<sup>9</sup> Accordingly it has been held that a State law which excluded colored persons from jury service deprived them of the equal protection of the law, but that a

<sup>3</sup> *People v. McKee*, 59 N. Y. Misc. Rep. 369; 112 N. Y. Supp. 385.

<sup>4</sup> *State v. Bott*, 31 La. Ann. 663; 33 Am. Rep. 224.

<sup>5</sup> *State v. Summers*, 50 So. 120.

<sup>6</sup> *Swift v. Klein*, 163 Ill. 269; 45 N. E. 219.

<sup>7</sup> *Ex parte Abrams* (Tex.), 120 S. W. 883; *Ex parte Clark* (Tex.), 120 S. W. 892.

This provision was not expressed in the title.

But a statute of this kind applying only to cities of over 50,000 was held invalid, because it did not apply equally to all the cities of the State. *State v. Schrap*, 97 Minn. 62; 106 N. W. 106.

<sup>8</sup> *Andreas v. Beaumont* (Tex. Civ. App.), 113 S. W. 614.

Constitutionality of ordinance making it the duty of the collector of revenue of a city to enforce the liquor ordinance. *State v. Rosenblatt*, 9 Mo. App. 587.

A statute requiring saloons to be located on the ground floor, and so arranged as to allow a view of the interior, is valid as to persons in the liquor business when it is passed, and who are thereby compelled to rearrange their saloons. *Nelson v. State*, 17 Ind. App. 403; 46 N. E. 941.

<sup>9</sup> *Cooley Const. Lim.*, § 164; *State v. Roberts*, 74 N. H. 476; 69 Atl. 722.



white person could not complain of the statutory exclusions.<sup>10</sup> Also, that a white person could not raise the question whether the exclusion of negroes from participation in the benefits of the common school system was not a violation of the State Constitution.<sup>11</sup> Also, that a party who has assented to his property being taken under a statute cannot afterwards object that the statute is in violation of a provision in the Constitution designed for the protection of private property.<sup>12</sup> Also, that a party who seeks to overthrow a statute as impairing the obligation of a contract, must affirmatively establish that the same impairs his contractual rights and is prejudicial thereto.<sup>13</sup> This principle has been applied in cases prosecuted in connection with the liquor traffic. In one instance an objection was made to the validity of an ordinance providing for the issuing of licenses to retail intoxicating liquors, on the ground that it discriminated against women and non-residents. The objection was made by a resident male applicant for a license. The court said: "Since women and non-residents have so far waived any constitutional right they may have in respect to selling intoxicating liquors, we content ourselves for the present with holding that the appellants are confessedly of those who enjoy the monopoly which the ordinance secures, and they must take the privilege with the burdens which attend it. Courts will not listen to those who are not aggrieved by an invalid law."<sup>14</sup> In another case where divers constitutional questions as to the validity of a statute upon the subject of intoxicating liquors were attempted to be raised, and where it was claimed that the statute was unconstitutional and void on the ground of unjust and oppressive provisions in it, the

<sup>10</sup> Commonwealth v. Wright, 79 Ky. 22.

<sup>11</sup> Marshall v. Donavan, 10 Bush (Ky.), 681.

<sup>12</sup> Mobile, etc., R. Co. v. State, 29 Ala. 586; Haskell v. New Bedford, 108 Mass. 208; Embury v. Conner, 3 N. Y. 511; Baker v. Branan, 6 Hill (N. Y.), 47.

<sup>13</sup> Currier v. Elliott, 141 Ind. 394.

<sup>14</sup> Wagner v. Town of Garrett, 118 Ind. 114; 39 N. E. 554; 20 N. E. 706; Daniels v. State, 150 Ind. 348; 50 N. E. 74; Linkenhelt v. Garrett, 118 Ind. 599; 20 N. E. 708.

court said: "It is firmly settled that a party will not be heard by a court to question the validity of a law, or any part thereof, unless he shows that some right of his is impaired or prejudiced thereby. This fact not appearing, the contentions relative to these sections are dismissed without consideration."<sup>15</sup> And a person who has given away liquors in violation of the plain provisions of a statute cannot insist that it is unconstitutional because it in effect prohibits him from giving liquor to a member of his family or to his guest within his house, when the gift made was not to a member of his family nor to his guest.<sup>16</sup> So a person not having paid a tax imposed on the sale of liquors to which he was entitled to a return in part cannot insist that the law is void when he has not paid the tax.<sup>17</sup> Where a statute created State dispensaries and prohibited all private sales, an individual indicted for selling liquor cannot assail those portions of the statute which are distinct from those parts declaring the prohibition.<sup>18</sup> And where, by local option, sales of liquors for drinking purposes were prohibited, but sales for medicinal and religious purposes were permitted, a person applying for a license to sell for drinking purposes only, it was held he could not assail the act on the ground that it forbade sales absolutely.<sup>19</sup> So a vendor of liquors indicted for selling liquor cannot assail the statute because it excepts from its prohibitory provisions the sale of cider or wines.<sup>20</sup> In this same State it was held that one selling without a license could not assail the statute because it provided for the appointment of license committees consisting of three persons

<sup>15</sup> State v. Gerhardt, 145 Ind. 439; 44 N. E. 469.

<sup>16</sup> Parker v. State, 99 Md. 189; 57 Atl. 677.

<sup>17</sup> State v. Roush, 47 Ohio St. 478; 25 N. E. 59; Wert v. Brown, 47 Ohio St. 477; 25 N. E. 59.

Where only a Federal question is involved, a Federal court will not consider the validity of a statute so far as the State Constitu-

tion is concerned. August Busch & Co. v. Webb, 122 Fed. 655.

<sup>18</sup> State v. Potterfield, 47 S. C. 75; 25 S. E. 39.

<sup>19</sup> *Ex parte* Burnside, 86 Ky. 423; 6 S. W. 276.

<sup>20</sup> State v. Barr, 78 Vt. 97; 62 Atl. 43; McLaury v. Watelsky, 39 Tex. Civ. App. 38, 87 S. W. 1045.

taken from the two leading political parties.<sup>21</sup> So one prosecuted under a statute for an illegal sale cannot object to the statute because those parts relating to searches and seizures are illegal, where such parts are susceptible of being disconnected from the part under which he is prosecuted.<sup>22</sup> So, where an ordinance required a person desiring to sell liquors to apply to the City Council for a license, and he has not done so, nor paid the license fee prescribed by it, he cannot raise the question of the validity of the ordinance.<sup>23</sup> But where the offense charged is a sale of liquor upon which no tax has been paid, he may assail the statute imposing a license upon manufacture when the provisions of the statute are so related as to avoid it entirely.<sup>24</sup> But when a person appeared and contested, as claimant, the seizure of liquors under a statute, it was held that he could not question the validity of the statute on the ground that it made no provision for notice.<sup>25</sup> A licensee may contest the validity of a statute in a proceeding to revoke his license, which requires him to file an answer on oath denying the charges set forth in the petition for its revocation, even when the court offers to receive an unverified answer; because he cannot be placed in the position of either having his license revoked—his property lost—or commit perjury to prevent it before entering on the trial.<sup>26</sup>

<sup>21</sup> State v. Scampini, 77 Vt. 92; 59 Atl. 201.

<sup>22</sup> State v. Paige, 78 Vt. 286; 62 Atl. 1017.

<sup>23</sup> Wells v. Torrey, 144 Mich. 689; 108 N. W. 423; 13 Detroit Leg. N. 378.

<sup>24</sup> State v. Bengsch, 170 Mo. 81; 70 S. W. 710; see State v. Seebold, 192 Mo. 720; 91 S. W. 491.

<sup>25</sup> Quinn v. State, 82 Miss. 75; 33 So. 839.

<sup>26</sup> *In re Cullian*, 82 N. Y. App. Div. 445; 81 N. Y. Supp. 567; see Kennedy v. Womer, 51 N. Y. Misc. Rep. 362; 100 N. Y. Supp. 616; Sweeney v. Webb, 33 Tex.

Civ. App. 324; 76 S. W. 766; 77 S. W. 1135.

Where a statute provided that proof of the issuance of an internal revenue special stamp should be *prima facie* evidence of a sale by the person to whom it was issued, it was held that a person indicted for selling liquor within an anti-saloon territory could not object to the validity of such provision where the prosecution did not show that he possessed a United States revenue stamp. *People v. McBride*, 234 Ill. 146; 84 N. E. 865.

A person prosecuted under an

**Sec. 187. Title of statute—Valid statutes.**

Many cases have been decided in which was drawn in question the sufficiency of the title of the act to sustain the validity of the statute involving the usual constitutional provision requiring the subject matter of a statute to be expressed in the title, and prohibiting more than one subject in a statute. It is not necessary to discuss the principles underlying these provisions nor the reasons for their adoption; it will be sufficient to cite the several instances where titles to statutes relating to intoxicating liquors and their regulation have been passed upon by the courts. Where a statute provided that the question whether a license should be issued should be submitted on petition at the next municipal election to the voters of the municipality, it was held that it was not void because the title of the act recited that it was an act for licensing the sale of intoxicating liquors and not for prohibiting, as was contended. The statute provided for an annual election on the question, and if the vote was adverse to issuing the license, the prohibition only lasted a year.<sup>27</sup> And where the title of the act was "to provide for the licensing, restriction and regulation of the business of the \* \* \* sale of \* \* \* intoxicating liquor," it was held sufficiently broad to cover a provision giving a right of action to a married woman to recover damages arising from a sale of intoxicating liquors to her husband.<sup>28</sup> So the title to an act "to provide for the creation by popular vote of anti-saloon territory in which the sale of intoxicating liquors and the licensing of such sale shall be prohibited and for the

ordinance for selling less than five gallons of liquor at a time cannot insist the ordinance is invalid because sales of five gallons and over are lawful. *State v. Priester*, 43 Minn. 373; 45 N. W. 712.

An applicant for a license who has complied with the statute so as to entitle him to a license, may question the validity of an act permitting the location of a dram-shop within five miles of a State

university. *State v. Turner*, 210 Mo. 77; 107 S. W. 1064; see also *State v. Cass Co. Ct. (Mo.)*, 119 S. W. 1010; *Swarthout v. State (Mo.)*, 119 S. W. 1014.

<sup>27</sup> *State v. Barber (S. D.)*, 101 N. W. 1078; *Oglesby v. State*, 121 Ga. 602; 49 S. E. 706.

<sup>28</sup> *Garrigan v. Kennedy*, 19 S. D. 11; 101 N. W. 1081; *Garrigan v. Thompson (S. D.)*, 101 N. W. 1135.



abolition by like means of territory so created," is broad enough to include provisions creating the offense of perjury and forgery arising in connection with the filing of petitions to secure an election upon the subject.<sup>29</sup> The title is also broad enough to cover provisions affecting changes in the charter of municipalities and giving voters outside such municipalities the right to vote under the act, as well as regulating sales by druggists. And it was also further held that the title was not deceptive nor misleading; and an objection that it apparently provided for the abolishment of anti-saloon territory by means like that by which the territory was created, and at the same time, because of changes in the precincts, voters could never again vote on the question, was not well taken, nor that no change in the boundaries of such precincts could be made so as to prevent again the submission of the question to the voters of a particular territory; nor was it open to the objection that the act provided that a majority of the "legal voters" voting on the question should govern, while the title used the words "popular vote."<sup>30</sup> Such a statute is not void on the ground that it provides penalties for its violation, not thereby including two subject-matters in the same act.<sup>31</sup> The title of a statute "to further regulate and prohibit the sale or disposition of spirituous, vinous or malt intoxicating liquors, or the issuing of prescriptions by physicians for the sale or other disposition of such liquors," authorizes the insertion of a clause prohibiting the issuance of such prescriptions by both physicians and "other persons," as well as forbidding their issuance of them on Sunday.<sup>32</sup> So a title to "regulate the opening, closing and operating saloons and giving away or selling" liquors "under a license" "and to punish violators thereof," covers a provision in the statute fixing the hours for opening and closing saloons.<sup>33</sup> So a pro-

<sup>29</sup> *People v. McBride*, 234 Ill. 146; 84 N. E. 865.

<sup>30</sup> *People v. McBride*, 234 Ill. 146; 84 N. E. 865.

<sup>31</sup> *State v. Fountain* (Del.), 69

Atl. 926; *Fourment v. State* (Ala.), 46 So. 266.

<sup>32</sup> *McAllister v. State* (Ala.), 47 So. 161.

<sup>33</sup> *Fourment v. State* (Ala.), 46 So. 266.



hibitory act, so designated in its title, is not invalid, because it contains exceptions and the methods whereby they may be availed of so as not to violate the major part of the statute, and also contains the questions of regulation and prohibition of dealings in intoxicating liquors foreshadowed in the title. In such a case the regulation, in a sense, is accomplished by the act, but it also sets forth a method by which universal prohibition is bereft of its penalties by giving exemption to those who comply with the provisions of the statute.<sup>34</sup> A statute of Idaho provided "for the search and seizure of liquors received, kept or used contrary to law, and the appliances used in connection therewith, to define and punish as misdemeanors all violators thereof, and vesting all magistrates with authority who receive complaints and issue warrants against all persons violating the provisions of" the act. This was held not to blend two subjects in one act, and the fact that the act declared the keeping or associating with others in the maintenance of a place where liquors were kept or received for an unlawful purpose, and the receiving and selling them should constitute a misdemeanor; the maintenance of a place where liquors were sold or given away, or kept for that evident purpose, or where persons were permitted to resort for drinking purposes, should constitute a common nuisance, and empowering a magistrate to issue a search warrant upon complaint and authorizing the officers seizing the liquors and appliances to hold them until the case was disposed of, did not render the statute of such a double aspect as to violate the provisions of the Constitution that a statute should only embrace one subject and matters properly connected therewith.<sup>35</sup> So in an act "to prohibit the sale of liquors on Sunday" may be included a provision making it a penalty to keep open a barroom for the sale of liquors on Sunday.<sup>36</sup> So a title to a statute prohibiting the sale of liquors in a certain county within five miles of a cer-

<sup>34</sup> *State v. Skaggs* (Ala.), 46 So. 268.

<sup>36</sup> *Beauvoir Club v. State*, 148 Ala. 64; 40 So. 1040.

<sup>35</sup> *State v. Moran* (Idaho), 90 Pac. 1044.

tain place and forbidding the clerk of that county to issue a license, under the general law, to any person to sell liquors within this prohibited territory, does not contain two subjects.<sup>37</sup> So the title to an act "to better regulate and restrain the sale of intoxicating liquors and providing for remonstrance against the granting of licenses for its sale," is broad enough to cover a provision for a "blanket remonstrance."<sup>38</sup> A title fixing an annual license fee is broad enough to provide for a license fee for the sale of liquor in any quantity.<sup>39</sup> And a title to an act requiring a license for sale in a particular county is broad enough to cover a provision forbidding sales without a license in incorporated towns of such county.<sup>40</sup> An amendment to a statute extending its provisions is not necessarily void because it renders the act broader than when originally adopted.<sup>41</sup> A statute imposing a property tax on distilled liquors made in the State, requiring vendors of liquors to have a license and, by construction, exempting pure alcohol, domestic wines and liquors made for export from taxation, is covered by a title "providing for a State license tax on distilled liquors, including whisky and distilled spirits of all kinds, wines and all kinds of vinous liquors; to create the office of special license commissioner, and to provide for" his appointment by the Governor.<sup>42</sup> So a statute prohibiting sales of liquors in counties voting against their sale and also prohibiting sales without a license in counties where sales are permitted, may be embraced within a single statute.<sup>43</sup> A statute "in relation to revenue" providing for an annual tax to be paid by persons selling liquors and imposing a penalty for its violation is valid.<sup>44</sup> So the title to

<sup>37</sup> Clark v. Tower, 104 Md. 175;  
65 Atl. 3.

<sup>38</sup> Cain v. Allen, 168 Ind. 8;  
79 N. E. 201; 79 N. E. 896; Reg-  
andez v. Haines, 168 Ind. 140;  
79 N. E. 352.

<sup>39</sup> Glover v. State, 126 Ga. 594;  
55 S. E. 592.

<sup>40</sup> Glover v. State, 126 Ga. 594;  
55 S. E. 592.

<sup>41</sup> State v. Courtney, 27 Mont.  
378; 71 Pac. 308.

<sup>42</sup> State v. Bengsch, 170 Mo. 81;  
70 S. W. 710.

<sup>43</sup> Brass v. State, 45 Fla. 1; 34  
So. 307; Cæsar v. State, 50 Fla.  
1; 39 So. 470.

<sup>44</sup> Parsons v. People, 32 Colo.  
221; 76 Pac. 666.

an act "to regulate the sale of intoxicants" covers a provision preventing a "gift" of such liquors;<sup>45</sup> or of a "barter."<sup>46</sup> So a title of an act preventing a sale of liquors on "the Island of St. Simons" is sufficient to cover a provision preventing a sale "on any river or creek within the boundary of such island."<sup>47</sup> An act prohibiting sales on Sunday under a penalty of a fine, forfeiture of the defendant's license to sell generally on conviction of a second offense within a year, prescribing certain duties of the clerk of the court and judge if a second conviction is had and a penalty for the failure of the judge to perform such duties, is covered by "an act to prohibit the sale of liquors on Sunday."<sup>48</sup> The title to an act prohibiting "the manufacture and sale of intoxicating liquors, except for medical, scientific and mechanical purposes, and to regulate the manufacture thereof for such excepted purposes," is sufficiently broad to cover a provision for the appointment of assistant counsel to the attorney-general of the State to prosecute violations of the statute where the local county attorney fails to do so;<sup>49</sup> and a statute entitled "An act relating to the sale of intoxicating liquors" may cover a provision prohibiting unlawful sale.<sup>50</sup> So an act is valid entitled "An act to set apart Sunday as a day of public rest; to provide for closing of saloons and other places of business on Sunday; to prohibit the selling, giving away or disposing of any spirituous, malt or intoxicating liquors on Sundays; to provide for the closing of places of public amusements and prohibiting horse racing on Sundays; and to provide for the punishment of those guilty of violating the provisions of the act;" and providing for the disposal of all fines assessed for the violation of the act covers but one subject and matters properly connected therewith.<sup>51</sup> So an act

<sup>45</sup> *McLaury v. Watelsky* (Tex. Civ. App.), 87 S. W. 1045.

<sup>46</sup> *James v. State*, 124 Ga. 72; 52 S. E. 295.

<sup>47</sup> *James v. State*, *supra*.

<sup>48</sup> *Borek v. State* (Ala.), 39 So. 580.

This case does not seem to go

beyond reasonable construction of the constitutional provisions.

<sup>49</sup> *State v. Brooks*, 74 Kan. 175; 85 Pac. 1013.

<sup>50</sup> *State v. Kleinfeld*, 72 Kan. 674; 83 Pac. 831.

<sup>51</sup> *State v. Dolan*, 13 Idaho, 693; 92 Pac. 999; *Ex parte Jacobs*, 13 Idaho, 720; 92 Pac. 1003.

amending a section of an act entitled "An act to regulate the license and sale of intoxicating liquors, and prescribing penalties for its violation," the amendment making any person keeping a place where such liquors are illegally sold guilty of a misdemeanor is germane to the original act and not void.<sup>52</sup> An act both prohibiting the manufacture and sale of liquors does not embrace two separate subjects.<sup>53</sup> A statute prohibiting the granting in a certain county, under a penalty, of a license to sell liquors without the applicant first filing the written consent of two-thirds of the city's freeholders, but providing that it shall not be so construed as to prevent the authorities of an incorporated village from putting additional restraints on the sale of liquors, does not contain two subject-matters, and is valid.<sup>54</sup> A statute defining what shall constitute a disorderly house so as to include any house in which liquors are sold without a license, and containing a section defining the offense of procurer is valid, the latter part of the statute being separable from the former part.<sup>55</sup> So an act "to establish a dispensary in F, and a branch thereof in E F, and to provide for the issuance of liquor license in such city and county until this act goes into effect" clearly enough expresses the object of the act, and does not embrace two subjects;<sup>56</sup> and a like act is not obnoxious because its effect is to revoke the right of such city to grant licenses.<sup>57</sup> The title of "an act relating to the sale of intoxicating liquors and the suppression of places where such liquors are sold, or used, or kept for sale, or used contrary to law" permits the insertion of provisions in the act authorizing cities to pass an ordinance to prohibit unlawful sales, define what shall be a nuisance in connection with such sales and their suppression, and to provide for the

<sup>52</sup> *Donavan v. State*, 170 Ind. 123; 83 N. E. 744.

<sup>53</sup> *Channey v. State*, 146 Ala. 136; 41 So. 172; *State v. Thomas*, 74 Kan. 360; 86 Pac. 499.

<sup>54</sup> *Kemp v. State*, 120 Ga. 157; 47 S. E. 548; *Smith v. People*, 32 Colo. 251; 75 Pac. 914.

<sup>55</sup> *Joliff v. State*, 53 Tex. Cr. App. 61; 109 S. W. 176; *Webber v. State* (Tex. Cr. App.), 109 S. W. 182.

<sup>56</sup> *Mitchell v. State*, 133 Ala. 65; 33 So. 687.

<sup>57</sup> *Chamlee v. Davis*, 115 Ga. 266; 41 S. E. 691.



search of all premises where such nuisances are alleged to exist, as well as the seizure of liquors, glasses, bars and bottles used in their maintenance.<sup>58</sup> So a statute requiring the doors to be kept closed on Sunday, prohibiting music, dancing and singing in the saloon room, and also prohibiting the business of running a lunch counter and restaurant in connection with or in the saloon, and the payment of a fixed sum by retail dealers, is covered by a title, "A statute regulating and licensing liquor dealers" within a certain named territory.<sup>59</sup> In the same State it was held that a title regulating the hours when liquor may be sold, providing for Sunday closing and for a penalty for sales during prohibited hours, is broad enough to contain provisions requiring saloons to be closed between 12 o'clock midnight and 6 o'clock in the morning, from 12 o'clock Saturday night until 6 o'clock the following Monday morning, and prohibiting the owner from allowing any one, except his family and himself, entering the saloon during the prohibited hours.<sup>60</sup> A similar statute was held valid, where the statute was entitled "Sale of intoxicating liquors."<sup>61</sup> So under a statute entitled "An act to regulate the sale of intoxicating liquors," a sale by the glass or small measure may be prohibited,<sup>62</sup> or the duties of police officers in relation to liquors and to liquor measures and repealing local laws may be prescribed.<sup>63</sup> Under a title relating to the "sale of liquors" may be included a clause prohibiting a gift to a minor or intoxicated person.<sup>64</sup> Under a title "to prohibit the sale" may be inserted provisions for a local option;<sup>65</sup> for local option is but another way of

<sup>58</sup> *Wilson v. Herink*, 64 Kan. 607; 68 Pac. 72.

<sup>59</sup> *St. Anthony v. Brandon*, 10 Idaho, 205; 77 Pac. 322.

<sup>60</sup> *State v. Calloway*, 11 Idaho, 719; 84 Pac. 27.

<sup>61</sup> *Duluth v. Abrahamson* (Minn.), 104 N. W. 682.

<sup>62</sup> *State v. Circuit Court*, 50 N. J. L. 585; 15 Atl. 272.

<sup>63</sup> *Commonwealth v. Sellers*, 130 Pa. St. 32; 18 Atl. 541.

<sup>64</sup> *Parkinson v. State*, 14 Md. 184; 74 Am. Dec. 522; *Stickrod v. Commonwealth*, 86 Ky. 285; 5 S. W. 580; *Thomasson v. State*, 15 Ind. 449; *State v. Adamson*, 14 Ind. 296. *Contra*, *Holley v. State*, 14 Tex. App. 505.

<sup>65</sup> *Neighbors v. Commonwealth* (Ky.), 9 S. W. 718; *McGruder v. State*, 83 Ga. 616; 10 S. E. 281; *Hilverstine v. Yantes*, 88 Ky. 695; 21 S. W. 811.



determining whether prohibition shall prevail in the local community. Under the title, "An act to provide a remedy against persons selling liquors to husbands and children," may be inserted provisions prohibiting sales to minors, intoxicated persons, habitual drunkards, and giving a right of action against the seller who violates these provisions.<sup>66</sup> Where a provision of a Constitution required every act levying a tax to distinctly specify the purpose for which the tax is levied, and another provision provided that the general assembly may provide for the payment of license fees on the various trades, occupations and provisions, and may delegate the power to municipalities to impose similar fees, it was held that an act imposing license taxes on compound, rectified and distilled spirits was not unconstitutional on the ground that the title failed to specify the purpose for which the tax was levied.<sup>67</sup> Where a provision of a Constitution provided that no bill should be so amended on its passage through the Legislature as to change its original purpose, and a bill was introduced entitled, "To further regulate opening, closing, keeping and selling or giving away spirituous liquors under a license operating saloons, and to punish the violation thereof," and in its passage the title of a substitute which became a law was, "To further regulate the opening, closing and operating saloons and giving away or selling spirituous liquors under a license, and to punish violations thereof," it was held the latter title was but an extension of the title of the original bill, and it was not such a departure as violated

A statute entitled, "An act to better regulate, restrict and control the sale of intoxicating liquors and providing for local option elections" is broad enough to cover provisions for the adoption of local option which will totally prohibit the sales of liquors in the district adopting it. *McPherson v. State* (Ind.), 90 N. E. 610.

<sup>66</sup> *Montgomery v. State*, 88 Ala. 141; 7 So. 51; *Thomasson v. State*, 15 Ind. 449.

<sup>67</sup> Long continued usage had much to do with bringing about this result. *Brown-Foreman Co. v. Commonwealth*, 125 Ky. 402; 101 S. W. 321; 30 Ky. L. Rep. 793; *Mt. Sterling v. King* (Ky.), 104 S. W. 322; 31 Ky. L. Rep. 919.

the provision of the Constitution to which reference has been made.<sup>68</sup>

### Sec. 188. Title of statutes—Invalid statutes.

Since "prohibition" is more than "regulation," therefore, under a title to regulate the sale of intoxicating liquors their sale cannot be prohibited, nor provision be made to submit the question of sale or no sale to a local option vote.<sup>69</sup> And it has been held that, "An act to prohibit the sale of spirituous, malt or vinous liquors near public and grading camps of canals and railroads and other kindred enterprises," was not broad enough to include a provision for the sale of liquors and regulating their sale.<sup>70</sup> So an act to "regulate" the manufacture and sale of liquor cannot contain a provision fixing a penalty for being found drunk in a public place, without any reference how the liquor was

<sup>68</sup> *Fourment v. State* (Ala.), 46 So. 266.

Other cases on the subject are as follows: *Smith v. People*, 32 Colo. 251; 75 Pac. 914; *Albrecht v. State*, 8 Tex. App. 216; *Ex parte Burnside*, 86 Ky. 423; 6 S. W. 276; *McArthur v. State*, 69 Ga. 444; *Gandy v. State*, 86 Ala. 20; 5 So. 420; *Gayle v. Owen Co.*, 83 Ky. 61; *Ramagnano v. Cook*, 85 Ala. 226; 3 So. 845; *In re Pollard*, 27 Pa. St. 507; 17 Atl. 1087; *Hatfield v. Commonwealth*, 120 Pa. St. 395; 14 Atl. 151; *Commonwealth v. Hill*, 127 Pa. St. 540; 19 Atl. 141; *Matter of DeVaucene*, 31 How. Pr. 289, 337; *State v. Braun*, 96 Minn. 521; 105 N. W. 975; *Schiller v. State* (S. C.), 38 So. 706; *State v. Hooker* (Okla.), 98 Pac. 964; *Dinuzo v. State* (Neb.), 123 Pac. 310; *Ex parte Ellis*, 76 Kan. 368; 91 Pac. 81; *Rose v. State* (Ind.), 87 N. E. 103; *State v.*

*Breaux*, 122 La. 514; 47 So. 876; *Theo. Hamm Brewing Co. v. Foss* (S. D.), 91 N. W. 584; *Ex parte Abrams* (Tex.), 120 S. W. 883; *Ex parte Clark* (Tex.), 120 S. W. 892.

<sup>69</sup> *In re Hauck*, 70 Mich. 396; 38 N. W. 269; *Sweet v. Wabash*, 41 Ind. 7; *People v. Gadway*, 61 Mich. 285; 28 N. W. 101; *Miller v. Jones*, 80 Ala. 89; *Cantrill v. Sainer*, 59 Iowa, 26; 12 N. W. 753; *Bronson v. Oberlin*, 41 Ohio St. 478; *Watson v. State*, 140 Ala. 134; 37 So. 225; *State v. Richardson* (Ore.), 85 Pac. 225; *Crabb v. State*, 88 Ga. 584; *Emporia v. Volmer*, 12 Kan. 622; *Yahn v. Merritt*, 117 Ala. 485; 23 So. 71; *In Matter of Hauck*, 70 Mich. 396, 404; 38 N. W. 296; *Heise v. Council*, 6 Rich. L. 415; *State v. Mott*, 61 Md. 297. *Contra*, *McPherson v. State*, 90 N. E. 610.

<sup>70</sup> *Gurding v. Board*, 13 Idaho, 444; 90 Pac. 357.

obtained.<sup>71</sup> Under a title "to constitute the town of B. and vicinity, in B. County, a separate school district," cannot be inserted a provision prohibiting the sale of liquor within the town.<sup>72</sup> So a statute prohibiting the sale of liquors cannot contain a provision for the refunding of the amount paid on licenses for the current year and appropriate money for that purpose.<sup>73</sup> Under an act having the title, "An act to prohibit the sale of spirituous, vinous and malt liquors in Dallas County, outside of the corporate limits and police jurisdiction of Selma," was inserted the provision that "any person who sells, gives away, or otherwise disposes of vinous, spirituous or malt liquors, or intoxicating beverages or drinks, or fruit preserved in alcohol, or alcoholic drinks in Dallas County, outside the corporate limits and police jurisdiction of the city of Selma, shall be guilty of a misdemeanor." It was held that the act was void so far as it prohibited the giving away of liquor or any other disposition of them than by sale, and it was also void so far as it tended to prohibit the sale of liquors neither vinous, spirituous nor malt.<sup>74</sup> Under a title to prevent the sale or gift of liquors to minors cannot be inserted a provision prohibiting a sale or gift to an adult.<sup>75</sup> An act was entitled, "An act to establish an excise department in cities of this State." It also provided that a board of excise commissioners should be elected at the next charter elections on the general ticket. A supplementary statute to this act provided that the governing board of any city or town, except cities of the first class, might provide for a board of excise commissioners to be appointed by a court of the county. It was held that the supplementary act was not covered by the title to the original act because its object was to regulate the excise and to divide municipalities embraced in such scheme into two classes.<sup>76</sup> So, "An act to regulate and

<sup>71</sup> *People v. Beadle*, 60 Mich. 22; 26 N. W. 800.

<sup>72</sup> *Montgomery v. State*, 88 Ala. 141; 7 So. 51.

<sup>73</sup> *State v. Davis*, 130 Ala. 148; 30 So. 344.

<sup>74</sup> *State v. Davis*, 130 Ala. 148; 30 So. 344.

<sup>75</sup> *Hyman v. State*, 87 Tenn. 109; 9 S. W. 272.

<sup>76</sup> *Hann v. Bedell*, 61 N. J. L. 148; 50 Atl. 564.

license the sale of spirituous, vinous, malt, and other intoxicating liquors," cannot be so amended as to apply to wholesalers or persons selling less than five gallons at any one time, for the original act only applies to retailers.<sup>77</sup> Under a title concerning the "sale" of intoxicating liquor cannot be inserted a provision forbidding a "gift" of liquor by a private person as a mere act of courtesy or hospitality, disconnected with any business transaction.<sup>78</sup> Under "An act to prohibit the sale of spirituous, malt or vinous liquors near public works and grading camps of canals and railroads and other kindred enterprises," a provision providing for a *regulation* of the sale of liquors is unconstitutional.<sup>79</sup>

### Sec. 189. Statute or ordinance only in part valid.

It is a well settled principle of constitutional law that when a part of a statute is unconstitutional, if by striking from the act all that part which is void, that which is left is complete in itself, sensible, capable of being executed and wholly independent of that which is rejected, the courts will reject that which is unconstitutional and enforce the remainder. It is equally well settled that where a part of a statute is unconstitutional, if such part is so connected with the other parts as that they mutually depend upon each other as conditions, considerations or compensations for each other, so as to warrant the belief that the Legislature intended them as a whole, and if they could not be carried into effect the Legislature would not have passed the residue independently of that which is void, then the whole act must fail. Such constitutional and unconstitutional provisions may even be contained in the same section and yet be perfectly distinct and separable, so that the first may stand though the last fall. The point is not whether they are contained in the same section—for the distribution into sections is purely artificial—but whether they are essentially

<sup>77</sup> State v. Bock, 167 Ind. 559;  
79 N. E. 493.

<sup>78</sup> State v. Fulks, 207 Mo. 26;  
105 S. W. 733.

<sup>79</sup> Gerding v. Board, 15 Idaho,

444; 99 Pac. 826. For other cases see Brumbaugh v. State (Tex.), 120 S. W. 423; Christian Moline Brewing Co. v. Hill, 166

Fed. 140.



and inseparably connected in substance.<sup>80</sup> The same rule of construction applies to a By-Law or an ordinance of a municipal corporation, and if it has distinct and independent parts, although one or more of them may be void, the rest are equally valid, as though the void clauses had been omitted; but if it be entire, each part having a general influence over the rest, and one part of it be void, the entire By-Law or ordinance is void.<sup>81</sup> This rule of construction has been applied to statutes and ordinances relating to intoxicating liquors.<sup>82</sup>

<sup>80</sup> Cooley's Const. Lim. (6th Ed.) 211; *State v. Bengsch*, 170 Mo. 81; 70 S. W. 710; *Bank v. Dudley*, 2 Pet. (U. S.) 526; *Mobile, etc., R. Co. v. State*, 29 Ala. 507; *People v. Hill*, 7 Cal. 97; *Rood v. McCargar*, 49 Cal. 117; *State v. Wheeler*, 25 Conn. 290; *Robinson v. Bank, etc.*, 18 Ga. 65; *Supervisors, etc., v. Davis*, 63 Ill. 405; *Myers v. People*, 67 Ill. 503; *Clark v. Ellis*, 2 Blackf. (Ind.) 248; *State v. Elend*, 121 Ind. 514; *Santo v. State*, 165; *Town of Eldora v. Barlingame*, 62 Ia. 32; 17 N. W. 148; *Eli v. Thompson*, 3 A. K. Marsh. (Ky.) 70; *Williams v. Pagson*, 14 La. Ann. 7; *Davis v. State*, 7 Md. 151; *Berry v. Baltimore, etc., R. Co.*, 41 Md. 446; *Commonwealth v. Hitchings*, 5 Gray (Mass.), 482; *Wellington, Petitioner*, 16 Pick. (Mass.) 95; *Commonwealth v. Kimball*, 24 Pick. (Mass.) 259; *Thomson v. Grand Gulf R. Co.*, 3 How. (Miss.) 240; *Campbell v. Union Bank*, 6 How. (Miss.) 625; *State v. Clark*, 54 Mo. 17; *People v. Lawrence*, 36 Barb. (N. Y.) 199; *Exchange Bank v. Hines*, 3 Ohio, 1; *State v. Copeland*, 3 R. I. 33; *State v. Snow*, 3 R. I. 64; *State v. Amery*,

12 R. I. 64; *State v. Clark*, 15 R. I. 383; 5 Atl. 635.

<sup>81</sup> *Dillon Munic. Corp.*, § 354; *Rex v. The Company, etc.*, 8 Tenn. R. 356; *Colchester v. Godwin*, Carter, 121; *Elwood v. Bullock*, 6 Q. B. 386; *Clark v. Tuckett*, 2 Vent. 182; *Rex v. Atwood*, 4 B. and Ad. 481; *Shelton v. Mayor, etc.*, 30 Ala. 540; *Municipality v. Morgan*, 1 La. Ann. 111; *Commonwealth v. Dow*, 10 Met. (Mass.) 506; *Amesbury Insurance Co.*, 6 Gray (Mass.), 596; *State v. Clark*, 54 Mo. 17; *Thomas v. Mount*, 9 Ohio, 219.

<sup>82</sup> *McCreary v. State*, 73 Ala. 480; *Indianapolis*, 138 Ind. 30; 36 N. E. 857; *Piqua v. Zimmerlin*, 35 Ohio St. 507; *State v. Becker*, 3 S. D. 29; 51 N. W. 1018; *State v. Amery*, 12 R. I. 64; *State v. Clark*, 15 R. I. 383; 5 Atl. 635; *State v. Bengsch*, 170 Mo. 81; 70 S. W. 710; *State v. Davis*, 130 Ala. 148; 30 So. 344.

If the part of the statute under which the defendant is prosecuted is separable from the part he claims is unconstitutional, the validity of the latter part will not be considered by the court, and he is not entitled to raise any ques-



### Sec. 190. Construction of statutes.

In accomplishing the purposes of their enactment liquor laws should be liberally construed.<sup>83</sup> This is true of all those statutes, or parts of statutes, relating to the control of the sale and manufacture of intoxicating liquors—to regulations concerning their sale and manufacture—to local option laws. But concerning penal statutes, or those portions of the liquor laws inflicting penalties, they are strictly construed under the well-known rule that penal statutes must be strictly construed. In a New York case, however, it was said that “while a statute of this character should not be enlarged, it should be interpreted, where the language is clear and explicit, according to its true intent and meaning, having in view the evil to be remedied and the object to be obtained. The evident object was to suppress the sale and use of intoxicating liquors, and to punish those who, in any form, furnished means of intoxication, by making them liable for damages which might arise, which were caused by the parties who furnished such means.”<sup>84</sup> With relation to

tion concerning its validity. *State v. Paige*, 78 Vt. 286; 62 Atl. 1017. See *Ferguson v. Josey*, 70 Ark. 94; 66 S. W. 345; *State v. Davis*, 130 Ala. 148; 30 So. 344; *Meehan v. Board*, 75 N. J. L. 557; 70 Atl. 363; affirming 73 N. J. L. 382; 64 Atl. 689; *Ex parte Dupree* (Tex.), 105 S. W. 493.

So much of the statute as is not covered by the title may be rejected and the remainder stand. *Hancock v. State*, 114 Ga. 439; 40 So. 317. But an act depending upon another act that is invalid cannot be enforced. *Mitchell v. State*, 133 Ala. 65; 32 So. 687; *Sweney v. Webb*, 33 Tex. Cr. App. 324; 76 S. W. 766; 77 S. W. 1135; *August Busch & Co. v. Webb*, 122 Fed. 655; *Brumbaugh v. State*, (Tex.), 120 S. W. 423.

An ordinance forbidding all

sales on Sunday is void where a statute permits sales for medicinal and mechanical purposes. *Columbus v. Schaerr*, 5 Ohio S. & C. P. 100.

In Vermont it was held that so much of a statute as related to sales in the original packages was void; but that fact did not invalidate the remaining portions. *State v. Kibling*, 63 Vt. 636; 22 Atl. 613.

<sup>83</sup> *In re Finley*, 58 N. Y. Misc. 639; 110 N. Y. Supp. 71; *Roberts v. State*, 4 Ga. App. 207; 60 S. E. 1082; see *Seattle v. Foster*, 47 Wash. 172; 91 Pac. 642; *Cox v. Burnham*, 120 Iowa. 43; 94 N. W. 265; *People v. Craig*, 112 N. Y. Supp. 1142.

<sup>84</sup> *Mead v. Statton*, 87 N. Y. 493; 41 Am. Rep. 386.

those provisions giving a civil remedy to persons sustaining damages occasioned by sales to drunkards and the like, the statutes are strictly construed in so far as giving a cause of action; and one must come clearly within their provisions,<sup>85</sup> for the cause of action is purely a statutory one. But if the person seeking to recover damages is clearly designated by the statute, and the wrong of which he complains is clearly denounced by the statute and provision made for the recovery of damages, there is no reason for a strict construction in enforcing the remedy given by the statute.<sup>86</sup>

<sup>85</sup> *Schneider v. Hosier*, 21 Ohio St. 98.

<sup>86</sup> That such statutes are strictly construed, see *Meidel v. Anthi-*

*71 Ill. 241; Feese v. Tripp*, 70 Ill. 496; *Fentz v. Meadows*, 72 Ill. 540; *Baecher v. State*, 19 Ind. App. 100; 49 N. E. 42.

## CHAPTER III.

### INTERSTATE COMMERCE.

#### SECTION.

- 191. Statutes drawn in general terms, how construed.
- 192. What constitutes interstate commerce.
- 193. Original packages.
- 194. What constitutes original packages—Size of packages.
- 195. Original packages — Illustrations.
- 196. Discrimination against citizens of other States.
- 197. Right of consignee to sell imported liquors.
- 198. Right of importer to sell in original packages.
- 199. "Wilson Law," origin and constitutionality.
- 200. Wilson Law construed—"Arrival" defined.
- 201. Liquors in transit—When transit ceases.
- 202. Wilson Law—Effect upon State laws.

#### SECTION.

- 203. Importing liquors for private use.
- 204. Leaving liquor unreasonable length of time in carrier's possession.
- 205. License — Tax — Regulating sale.
- 206. Prohibiting solicitation of orders.
- 207. Sales beyond State lines.
- 208. Sales to minors and drunkards.
- 209. Burden on defendant to show he is protected by the interstate commerce law.
- 210. Liability of officers serving warrant.
- 211. Shipping liquor under false brand.
- 212. Carrier refusing to accept liquors for transportation.

#### **Sec. 191. Statutes drawn in general terms, how construed.**

It is a general rule of interpretation, as has been elsewhere noted, that statutes drawn in general terms and which are, therefore, in terms, applicable to intoxicating liquors imported and while in the original packages, will not be held void for that reason, but will simply be held to apply to liquors not imported or not in the original packages, and, therefore, valid, unless the terms of the statute are such that

they cannot be made applicable to non-imported liquors or liquors not in the original package.<sup>1</sup>

### Sec. 192. What constitutes interstate commerce.

What does and what does not constitute interstate commerce is often a delicate question. As a general rule, commerce is not traffic alone—it is intercourse. Speaking of the interstate commerce laws of the Federal Constitution the Supreme Court of the United States said: "It describes the commercial intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse."<sup>2</sup> As distinguished from domestic or State commerce, interstate commerce includes traffic between points in different States as well as between points in the same State, but which in transit is carried through another State.<sup>3</sup> Goods shipped C. O. D. from one State to another constitutes interstate commerce, and such goods cannot be controlled by State laws.<sup>4</sup> So a wholesale dealer in liquors in one State, having no place of business in another State except one where he keeps a few samples, entering into a contract in the latter to ship whisky into it from the former State in the original package is engaged in inter-

<sup>1</sup> *Commonwealth v. Gague*, 153 Mass. 205; 26 N. E. 449; 10 L. R. A. 442; *Commonwealth v. Gay*, 153 Mass. 211; 26 N. E. 571, 832; see *Jung Brewing Co. v. Commonwealth* (Ky.), 98 S. W. 307; 30 Ky. L. Rep. 267; *State v. Kibling*, 63 Vt. 636; 22 Atl. 613; *State v. Fitzpatrick*, 16 R. I. 54; 11 Atl. 767; *McCord v. State* (Okla.), 101 Pac. 280.

<sup>2</sup> *Gibbons v. Ogden*, 9 Wheat. 1; followed in *Passenger Cases*, 7 How. 283; 12 L. Ed. 102; *Western U. T. Co. v. Pendleton*, 122 U. S. 347; 30 L. Ed. 1187; *Lottery Cases*, 188 U. S. 321; 47 L. Ed. 492; 23 Sup. Ct. 321.

<sup>3</sup> *Hanley v. Kentucky Cent. R. Co.*, 187 U. S. 617; 47 L. Ed. 333; 23 Sup. Ct. 214.

<sup>4</sup> *Sedgwick v. State*, 47 Tex. Cr. App. 627; 85 S. W. 813; *Taggart v. State* (Tex. Cr. App.), 85 S. W. 1155; *Hickcox v. State* (Tex. Cr. App.), 85 S. W. 1198; *American Exp. Co. v. State*, 196 U. S. 133; 25 Sup. Ct. 182; 49 L. Ed. 417 (reversing 118 Iowa, 447; 92 S. W. 66); *O'Neil v. Vermont*, 144 U. S. 323; 12 Sup. Ct. 693; 36 L. Ed. 450; *Adams Express Co. v. Commonwealth*, 124 Ky. 100; 96 S. W. 593; 29 Ky. L. Rep. 904; *Samuel Westheimer*, 131 Iowa, 643; 109 N. W. 189.

state commerce.<sup>5</sup> And it has been held that if a liquor dealer ship whisky C. O. D. into a prohibition State, consigned to a person not ordering it, and then notifies him of the shipment, and such consignee then pays for and receives the liquor, it is not an interstate transaction, for there was no previous contract for its purchase, and the contract of sale took place in the prohibition State.<sup>6</sup> But ordering goods by letter or telegram sent from another State to be shipped C. O. D. does not deprive the goods of their interstate character.<sup>7</sup> A statute imposing an annual tax on the business of selling only malt liquors and another tax on the business of manufacturing such liquors, and also providing that the manufacturer may sell, without paying anything beyond the latter tax, is a regulation of interstate commerce as to non-resident manufacturers in so far as it prevents their sending their liquors into the State, and there selling them in the original packages through an agent located there.<sup>8</sup> So a statute imposing a certain tax on wholesalers selling liquors to be shipped into the State from without, who do not have their principal place of business in such State, and which does not impose a like tax upon resident wholesalers of liquors manufactured in the State, is void, because it is a regulation of commerce between the States.<sup>9</sup> So a statute taxing imported liquors without taxing liquors manufactured within the State is such a discrimination against imported liquors as renders it void.<sup>10</sup> Where a dealer had an agent located in another

<sup>5</sup> *Sloman v. William D. Moebis Co.*, 139 Mich. 334; 102 N. W. 854; 11 Detroit Leg. N. 857.

<sup>6</sup> *Adams Exp. Co. v. Commonwealth*, 124 Ky. 100; 92 S. W. 932; 29 Ky. L. Rep. 224; 92 S. W. 935; 29 Ky. L. Rep. 230, 231; 92 S. W. 936; 29 Ky. L. Rep. 231.

<sup>7</sup> *O'Neil v. Vermont*, 144 U. S. 323; 12 Sup. Ct. 693; 36 L. Ed. 450.

<sup>8</sup> *Lung v. Michigan*, 125 U. S. 161; 10 Sup. Ct. 725; 34 L. Ed. 128 (following *Leisy v. Hardin*,

135 U. S. 100; 10 Sup. Ct. 681; 34 L. Ed. 128); and reversing *People v. Lyng*, 74 Mich. 579; 42 N. W. 139.

<sup>9</sup> *Walling v. People*, 116 U. S. 446; 6 Sup. Ct. 454; 29 L. Ed. 691 (reversing *People v. Walling*, 53 Mich. 264; 18 N. W. 807).

<sup>10</sup> *Tierman v. Rinker*, 102 U. S. 123; 26 L. Ed. 103.

A statute will always be construed as constitutional if it can be reasonably done. Under this rule a statute forbidding the sale



State to look after his business, and the agent sold liquor to a resident of the State in which he (the agent) resided and conducted his principal's business, and to fulfill the contract the dealer shipped liquor to his agent who delivered it to the purchaser in the original packages, it was held that the sale was legal and the purchaser liable for the price of the liquor, though neither the dealer nor his agent had a license to sell in the State to which the goods were consigned.<sup>11</sup>

### Sec. 193. Original packages.

Section 8, Article I, of the Constitution of the United States, provides, among other things, that Congress shall have the power, "To regulate commerce with foreign nations, and among the several States, and with the Indian tribes." It has been said that this clause "presents the remarkable instance of a national power which was comparatively unimportant for eighty years, and which in the last thirty years has been so developed that it is now in its nationalizing tendency, perhaps the most important and conspicuous power possessed by the Federal Government." This is all the more evident when we study the decisions of the Federal courts. It was thirty-seven years after the adoption of the Constitution before the first case was decided by the Supreme Court of the United States, placing a construction upon it. In 1840, there had been five cases; in 1860, twenty cases; in 1870, thirty cases; in 1880, seventy-seven cases; in 1890, one hundred and forty-eight cases; while at the present time there are more than two hundred and twenty-five which have been decided upon questions raised under it. The same increase of late years may be noted in the lower Federal courts, where at

of intoxicating liquors, but making no express exception in favor of imported liquors in the original packages, is not void, because it will be construed to apply only to domestic liquors. *Commonwealth v. Cagne*, 153 Mass. 205; 26 N. E. 449; 10 L. R. A.

442; *Commonwealth v. Gay*, 153 Mass. 211; 26 N. E. 571, 352.

A statute prohibiting the importation of liquors under an assumed name is not a regulation of interstate commerce. *State v. Moody*, 70 S. C. 56; 49 S. E. 8.

<sup>11</sup>*Carstairs v. O'Donnell*, 154 Mass. 357; 28 N. E. 271

the present time there have been probably fifteen hundred cases tried and determined which involved its construction. The first case in the Supreme Court of the United States construing it was decided in 1824.<sup>12</sup> In that case Chief Justice Marshall, who wrote the principal opinion, said: "To what commerce does this power extend? The Constitution informs us, to commerce 'with foreign nations, and among the several States, and with the Indian tribes.' It has, we believe, been universally admitted that the words comprehend every species of commercial intercourse between the United States and foreign nations. No sort of trade can be carried on between this country and any other to which this power does not extend. It has been truly said that commerce, as the word is used in the Constitution, is a unit, every part of which is indicated by the term. If this be the admitted meaning of the word in its application to foreign nations, it must carry the same meaning throughout the sentence, and remain a unit unless there be some plain, intelligible clause which alters it. The subject to which the power is next applied is to commerce 'among the several States.' The word 'among' means intermingled with. A thing which is among others—intermingled with them. Commerce among the States cannot stop at the external boundary line of each State but may be introduced into the interior.

\* \* \* The genus and character of the whole government seem to be that its action is to be applied to all the external concerns of the nation, and to these internal concerns which affect the State generally, but not to those which are completely within a particular State, which do not affect other States, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the Government. The completely internal commerce of a State, then, may be considered as reserved for the State itself." In 1827 a case reached that court which depended entirely upon the question whether the Legislature of a State could constitutionally require the importer of foreign articles (in this case intoxicating liquors) to take out a license from the State

<sup>12</sup> See § 848; *Gibbons v. Ogden*, 9 Wheat. (U. S.) 1.

before he could be permitted to sell a bale or package so imported.<sup>13</sup> This may be said to be the first "original package" case, for in it the court held that the right to import necessarily involved the right to sell and that until the goods had been sold or in some other way made a part of the property of the State they were not subject to its taxing jurisdiction. In so deciding, Chief Justice Marshall, said: "Commerce is intercourse—one of its most ordinary ingredients is traffic. It is inconceivable that the power to authorize this traffic, when given in the most comprehensive terms, with intent that its efficacy should be complete, should cease at the point when its continuance is indispensable to its value. To what purpose should the power to allow importation be given, unaccompanied with the power to authorize a sale of the thing imported? Sale is the object of importation, and is an essential ingredient of that intercourse, of which importation constitutes a part. It is as essential an ingredient, as indispensable to the existence of the entire thing, then, as importation itself. It must be considered as a competent part of the power to regulate commerce." In 1847, twenty years after the decision was rendered in *Brown v. Maryland*, what is generally known as the "license cases" was decided by that court, wherein laws passed by Massachusetts, Rhode Island and New Hampshire in reference to the sale of intoxicating liquors, came under review and were sustained.<sup>14</sup> In the case from New Hampshire the defendants had been fined for selling a barrel of gin which they had bought in Boston and brought coastwise to Portsmouth, and there sold in the same barrel and in the same condition in which it was purchased in Massachusetts, but contrary to the law of New Hampshire in that behalf. In it Chief Justice Taney said the case in hand "differs from *Brown v. Maryland*, in that the latter was a case arising out of commerce with foreign nations which Congress had regulated by law, whereas the case in hand was one of commerce between the two States, in relation to which Congress had not exercised its power." In

<sup>13</sup> *Brown v. Maryland*, 12 Wheat. (U. S.) 419.

<sup>14</sup> *The License Cases*, 5 How. (U. S.) 504; 12 L. Ed. 256.

other words, "The question brought up for our decision is whether a State is prohibited by the Constitution of the United States from making any regulation of foreign commerce with another State, although such regulation is confined to its own territory, and made for its own convenience or interest, and does not come in conflict with any law of Congress." In answering this question he said: "The controlling and supreme power over commerce with foreign nations and the several States is undoubtedly conferred upon Congress. Yet, in my judgment, the State may, nevertheless, for the safety or convenience of trade, or for the protection of its citizens, make regulations of commerce for its own ports and harbors and for its own territory; and such regulations are valid unless they come in conflict with the law of Congress. Such, I think, was the construction universally received at the time of its adoption, as appears from the legislation of Congress and of the several States, and a careful examination of the decisions of this court will show that so far from sanctioning the opposite they recognized and maintained the power of the States." His conclusion was that, "Upon the whole, therefore, the law of New Hampshire is, in my judgment, a valid one, for, although the gin sold was imported from another State and Congress has clearly the power to regulate such importations, under the grant of power to regulate commerce among the several States, yet as Congress has made *no regulation* on the subject the traffic in the article may be lawfully regulated by the State as soon as it is landed in its territory and a tax imposed upon it, or license required, or the sale altogether prohibited, according to the policy which the State may suppose to be its interest or duty to pursue." In that case the several justices wrote separate opinions. Mr. Justice Woodbury, in his opinion, for the first time formulated the modern rule; that is, that the commercial power in its nature is not more exclusive than other powers granted to Congress. In 1851 the suggestion made by him was adopted by the Supreme Court as the rule of decision in the case of *Cooley v. Port Wardens*.<sup>15</sup> and the distinction be-

<sup>15</sup> *Cooley v. Port Wardens*, 12 How. (U. S.) 298.



tween cases in which Congress has exerted its power over commerce and those in which it has abstained from its exercise, as bearing upon State legislation touching the subject, was first plainly pointed out by Mr. Justice Curtis. For many years after that the rule as to exclusiveness therein laid down was followed in the Supreme Court and that rule may be thus stated: The States may establish port regulations, regulations of pilotage, may improve their harbors and erect bridges and exercise many other local powers. In the exercise of this proper authority a State may enact laws providing for the inspection of goods, to determine whether they are fit for commerce and to protect the citizens and the market from fraud. But in all instances where the States may exercise powers, which may be said to partake of the nature of the power granted to the general government, they are strictly not such, but are merely local powers, which have full protection until circumscribed by the action of Congress in the general power. In matters admitting of uniform regulation throughout the country and affecting all the States, the action of Congress is to be taken as a declaration of its will that commerce "shall be free and unrestricted" so far only as concerns any general regulation of the States. This phrase does not mean mere freedom from such regulations as admit of uniformity, but it is only to this extent that the jurisdiction of Congress over interstate commerce is exclusive of State regulation. In 1887 the question again came before the Supreme Court of the United States in a case prosecuted for the purpose of construing a statute of the State of Iowa which was enacted to regulate the traffic in intoxicating liquors in that State and in which it was held that the State could not, for the purpose of protecting its people against the evils of intemperance, enact laws which regulate commerce between its people and those of other States of the Union unless the consent of Congress, expressed or implied, was first obtained.<sup>16</sup> Two years later the question as to whether intoxicating liquors Two years later arose the question as to whether intoxicating liquors imported into a State, where a statute of the State pro-

<sup>16</sup> *Bowman v. Chicago, etc., Ry. Co.*, 125 U. S. 465; 8 Sup. Ct. 689. 1062.



hibits their sale except for certain purposes, could be sold by the importer in the "original package," Congress having not made provision for such sales.<sup>17</sup> In the case of *Pearce v. New Hampshire* the court held that, "as Congress has made no regulation on the subject, the traffic in the article may be lawfully regulated by the State as soon as it is landed in its territory." The rule thus enunciated was overruled in the case now under consideration. In his opinion, Chief Justice Fuller, quoting from *Bowman v. Chicago, etc., Ry. Co.*, said: "The doctrine now firmly established is that where the subject upon which Congress can act under its commercial power is local in its nature or sphere of operation, such as harbor pilotage, the improvement of harbors, the establishment of beacons and buoys to guide vessels in and out of port, the construction of bridges over navigable rivers, the erection of wharves, piers and docks, and the like, which can be properly regulated only by special provisions adapted to their localities, the State can act until Congress interferes and supersedes its authority; but where the subject is national in its character and admits and requires uniformity of regulation, affecting alike all the States, such as transportations between the States, including the importation of goods from one State into another, Congress can alone act upon it and provide the needed regulations. The absence of any law of Congress upon the subject is equivalent to its declaration that commerce in that matter shall be free. Thus, the absence of regulations as to interstate commerce with reference to any particular subject is taken as a declaration that the importation of that article into the States shall be unrestricted. It is only after the importation is completed and the property imported has mingled with and become a part of the general property of the State that its regulations can act upon it, except so far as may be necessary to insure safety in the disposition of the import until thus mingled." From this statement of the law the conclusion follows that, as the grant of the power to regulate commerce among the States, so far as one system is required, is exclusive, the States cannot exercise that power without the

<sup>17</sup> *Leisy v. Hardin*, 135 U. S. 100; 10 Sup. Ct. 681.

assent of Congress, and, in the absence of legislation, it is left for the courts to determine when State action does or does not amount to such exercise; or, in other words, what is or is not a regulation of such commerce. When that is determined controversy is at an end. These decisions rest upon the undoubted right of the States of the Union to control their purely internal affairs, in doing which they exercise powers not surrendered to the national Government; but whenever the law of the State amounts essentially to a regulation of commerce with foreign nations or among the States, as it does when it inhibits, directly or indirectly, the receipt of an imported commodity or its disposition before it has ceased to become an article of trade between one State and another, or another country and this, it comes in conflict with a power which, in this particular, has been exclusively vested in the general government, and is, therefore, void. It may be added that in the decisions cited and others that might be cited, the rule prior to August, 1890, the date of the enactment of the Wilson Law, was that the right to sell imported liquor, given by the laws of the United States, was subject to two important limitations: 1. That it remained in the hands of the importer; and 2, That it should be sold in the condition in which its importation was authorized, and that all sales by other persons, or in any other quantity or condition than that in which it was imported, were subject, like sales of other property, to such regulations as might be prescribed by State laws. The right was neither general as to persons nor in its application to the property to which the laws of the United States related. The right, on the contrary, was limited to certain persons and qualified by the status of the property. While it was in the hands of the importer and in the condition in which it was imported, the laws under which he had imported it gave him the right to sell it in that condition. This was the extent of that right. When he parted with the property and changed its condition his right, and all right to sell it, derived from these laws, ceased. It was no longer the right to sell which was given by the laws of the United States.<sup>18</sup>

<sup>18</sup> *State v. Robinson*, 49 Me. Barb. (N. Y.) 567; *Bradford v. 285*; *Wynehamer v. People*, 20 Stevens, 10 Gray, 379; *Doorea*

## Sec. 194. What constitutes an original package—Size of package

In another section we have seen that bottles of whisky may be original packages. It would thus seem, and that is

v. Commonwealth (Ky.), 109 S. W. 302; 33 Ky. L. Rep. 69; *Yeartean v. Bacon*, 65 Vt. 516; 27 Atl. 198; *State v. Robinson*, 49 Me. 285; *State v. Intoxicating Liquors*, 82 Me. 558; 19 Atl. 913 (see *State v. Blackwell*, 65 Me. 556); *Bode v. State*, 7 Gill, 326; *State v. Amery*, 12 R. I. 64; *State v. Pfeajor*, 81 Iowa, 759; 46 N. W. 1063; *United States v. Fiscus*, 42 Fed. 395; *In re Beine*, 42 Fed. 545; *Tuckman v. Welch*, 42 Fed. 548; *M. Schandler Bottling Co. v. Welch*, 42 Fed. 561; *State v. Intoxicating Liquors*, 82 Me. 558; 19 Atl. 913; *Donald v. Scott*, 74 Fed. 859; *State v. Allmond*, 2 Houst. (Del.) 612; *Commonwealth v. Clapp*, 5 Gray, 97; *Commonwealth v. Gagne*, 153 Mass. 205; 26 N. E. 449; 10 L. R. 442; *Commonwealth v. Gay*, 153 Mass. 211; 26 N. E. 571, 852; *McCullough*, 41 S. C. 220; 19 S. E. 458; 23 L. R. A. 410; *Bradford v. Stevens*, 76 Mass. 379; *O'Neil v. Vermont*, 144 U. S. 323; 12 Sup. Ct. 693; 36 L. Ed. 450; *Ex parte Loeb*, 72 Fed. 657; *State v. Stilsing*, 52 N. J. L. 517; 20 Atl. 65; *Charleston v. State*, 4 Strobb. 241; *State v. Allmond*, 2 Houst. (Del.) 612; *Adams Exp. Co. v. Commonwealth*, 124 Ky. 160; 92 S. W. 932, 935, 936; 29 Ky. L. Rep. 224, 230, 231; *Commonwealth v. Illinois Cent. Ry. Co. (Ky.)*, 101 S. W. 894; 31 Ky. L. Rep. 99; *Adams Exp. Co. v. Commonwealth*, 206 U. S. 129; 51

L. Ed. 987; 27 Sup. Ct. 606 (reversing 87 S. W. 1111; 27 Ky. L. Rep. 1096); 206 U. S. 138; 27 Sup. Ct. Rep. 608; 51 L. Ed. 992 (reversing 92 S. W. 932; 29 Ky. L. Rep. 224; 5 L. R. A. (N. S.) 630); 206 U. S. 139; 51 L. Ed. 993; 27 Sup. Ct. 609 (reversing 97 S. W. 807; 30 Ky. L. Rep. 207, and 103 S. W. 353; 31 Ky. L. Rep. 811 to 813); *Commonwealth v. Southern Exp. Co.*, 103 S. W. 339; 31 Ky. L. Rep. 813; *State v. Intoxicating Liquors*, 102 Me. 206; 66 Atl. 393; *State v. Kenney*, 62 W. Va. 284; 57 S. E. 823; *State v. Moody*, 70 S. C. 53; 49 S. E. 8; *American Exp. Co. v. State*, 196 U. S. 133; 25 Sup. Ct. 182; 49 L. Ed. 417 (reversing *State v. American Exp. Co.*, 118 Iowa, 447; 92 N. W. 96); *Adams Exp. Co. v. State*, 196 U. S. 147; 25 Sup. Ct. 185; 49 L. Ed. 424 (reversing 95 N. W. 1129); *Sedgwick v. State*, 47 Tex. Cr. App. 627; 85 S. W. 813; *Taggart v. State (Tex. Cr. App.)*, 85 S. W. 1155; *Hickeox v. State (Tex. Cr. App.)*, 85 S. W. 1198; *Sloman v. William D. Moebis Co.*, 139 Mich. 334; 102 N. W. 854; 11 Det. Leg. N. 857; *Crescent Liquor Co. v. Platt*, 148 Fed. 894; *State v. Intoxicating Liquors*, 101 Me. 430; 64 Atl. 812.

The fact that a foreign company had an agent in a prohibition State to there sell its liquors does not make such company amenable to its laws nor prohibit

the fact, that the mere size of the package has nothing to do with the question. "It is not perceived why," said a Federal court judge, "in the absence of a regulation by Congress to the contrary, the importer may not determine for himself the form and size of the packages he puts up for export. The idea that small packages of liquor cannot be treated as original packages because they are small, springs from the construction back of it that liquor in any form, or in any sized package is not a legitimate subject of commerce. That question is put at rest by the decision of the United States Supreme Court until Congress shall act. As long as packages of liquor in any form or size may lawfully be sold by the importer or his agent in a prohibition State, the size of the package is not of much consequence."<sup>19</sup>

### Sec. 195. Original packages—Illustrations.

In this section, in order to avoid possible error, the cases cited are those only in which the right to receive from another State liquors and sell them was involved; and these cases do not involve a construction of the Wilson Law elsewhere discussed. Necessarily there arises the question what is and what is not an original package; for if the packages sold are the "original packages," then the State to which they are shipped cannot exact a license from the vendor; but if they are not then the State may. Thus, where each bottle of whisky was wrapped in paper and sealed and then a number of them were closely packed in uncovered wooden boxes furnished by an express company, and these boxes were marked "to be returned," and in that condition were shipped from one State to another, it was held that the boxes and not the bottles were the "original packages," and, therefore, a sale of a single bottle subjected the person receiving the box subject to the State law;<sup>20</sup> and it made no difference that each bottle

it shipping liquors into such State. *Doores v. Commonwealth* (Ky.), 109 S. W. 302; 33 Ky. L. Rep. 69; *Carstairs v. O'Donnell*, 154 Mass. 357; 28 N. E. 271.

<sup>19</sup> *In re Beine*, 42 Fed. 545.

<sup>20</sup> *In re Harmon*, 43 Fed. 372; *Keith v. State*, 91 Ala. 2; 8 So. 353; 10 L. R. A. 430; *Harrison v. State*, 91 Ala. 62; 10 So. 30; *Haley v. State*, 42 Neb. 656; 60 N. W. 962; 47 Am. St. 718; *State*



was labeled "original package."<sup>21</sup> But where bottles were so labeled and delivered singly to the carrier, and the carrier, without the shipper's knowledge, put the bottles into a box and then shipped them, it was held that each bottle was an original package and not the box.<sup>22</sup> The vendee of liquors shipped from one State to another was held not to be within the interstate clause of the Constitution where he imports bottles of liquor in boxes with closed tops which were broken open.<sup>23</sup> But the Arkansas case was overturned by a decision of the United States Supreme Court, which is the final arbiter in questions of this kind. In that decision it was held that where beer and whisky were put up in sealed bottles in one State and shipped in boxes and barrels for convenience by the owner to its agent in another State to sell, and he removed the bottles and sold them singly, without breaking the seals, to customers who were not allowed to open them and drink their contents on the premises, that neither the agent nor principal was liable to the license laws of the State where the liquors were sold.<sup>24</sup> This decision was distinguished by a State court in a case where a saloon keeper thus imported liquors in bottles, sold the bottles over his bar to his customers who destroyed the seals, drew the corks, poured the contents into glasses on the bar furnished by the saloon keeper, drank the contents of the glass and left the bottles on the bar. In such an instance it was held that the saloon keeper must have a license, and, of course, if a statute forbade

v. Chapman, 1 S. D. 414; 47 N. W. 411; 10 L. R. A. 432; State v. Parsons, 124 Mo. 436; 27 S. W. 1162; 42 Am. St. 457.

<sup>21</sup> Keith v. State, 91 Ala. 2; 8 So. 353; 10 L. R. A. 430.

<sup>22</sup> Tinker v. State, 96 Ala. 115; 11 So. 383.

<sup>23</sup> Smith v. State, 54 Ark. 248; 15 S. W. 882.

<sup>24</sup> Leisy v. Hardin, 135 U. S. 100; 10 Sup. Ct. 681; 34 L. Ed. 128; State v. Coonan, 82 Iowa 400; 48 N. W. 921; Collins v.

Hills, 77 Iowa, 181; 41 N. W. 571; 3 L. R. A. 110; State v. Winters, 44 Kan. 723; 25 Pac. 235; 10 L. R. A. 616. (This case overrules State v. Fulker, 43 Kan. 237; 22 Pac. 1020; 7 L. R. A. 183); May v. New Orleans, 178 U. S. 496; 44 L. Ed. 1165; 20 Sup. Ct. 976; affirming 51 La. Ann. 1064; 25 So. 959; Schollenberger v. Pennsylvania, 171 U. S. 1; 43 L. Ed. 49; 18 Sup. Ct. 1; State v. Miller, 86 Iowa 638; 53 N. W. 330.



the sale of intoxicating liquors he had violated its provisions.<sup>25</sup> But in a subsequent case in the same State it was held that where the person receiving the bottles was the agent of the shipper, and he removed the bottles from the boxes, delivered them with a corkscrew and glasses to the purchasers, and allowed them to open the bottles and drink their contents on the premises, the transaction was not within the prohibitory law of the State.<sup>26</sup> But where the sale is conditioned upon the right of the vendee to open or unseal the bottles and sample the liquor to see if it corresponds with the representations made concerning its quality, and to then return the shipment if it does not, the liquor is subject to the State laws because from the moment the bottles are unsealed the sale of the liquor became illegal.<sup>27</sup> All such shipments must be made in good faith, in the usual manner prevalent, in *bona fide* packages, under the ægis of the interstate commerce law.<sup>28</sup> The fact, contrary to a decision previously cited that the purchaser drew the bungs from the barrels to test the liquors, was held not to make such liquors part of the general mass of property in the State of their destination and thus become

<sup>25</sup> Hopkins v. Lewis, 84 Iowa 690; 51 N. W. 255; 15 L. R. A. 397. Also distinguishing Collins v. Hills, 77 Iowa, 181; 41 N. W. 571; 3 L. R. A. 110.

<sup>26</sup> State v. Miller, 86 Iowa 638; 53 N. W. 330; State v. Coonan, 82 Iowa 400; 48 N. W. 921.

<sup>27</sup> Wasserboehr v. Boulter, 84 Me. 165; 24 Atl. 808; 30 Am. St. 344. But the right to draw the bung and sample the liquors to see if they correspond with the representations, and to return them if they do not, has been held not to make the place of sale their destination. Wind v. Iler & Co., 93 Iowa, 316; 61 N. W. 1001; 27 L. R. A. 219; McCarty v. Gordon, 16 Kan. 35; Schlesinger v. Stratton, 9 R. I. 578; Mach v. Lee,

13 R. I. 293; Gill v. Kaufman, 16 Kan. 571; Snider v. Koeller, 17 Kan. 422.

Who is not an importer under the Massachusetts statute of 1855, c. 215, § 2. See King v. McEvoy, 4 Allen 110.

Of course, if liquor is lawfully imported, the shipper, though he by agent sell the liquor in the original package in the State to which it is shipped, may recover the purchase price. Carstairs v. O'Donnell, 154 Mass. 357; 28 N. E. 271.

The case of McGuinness v. Bligh, 11 R. I. 94, cannot be regarded as the law.

<sup>28</sup> Austin v. Tennessee, 179 U. S. 343; 45 L. Ed. 224; 21 Sup. Ct. 132.

subject to its police regulations.<sup>29</sup> A person vending single bottles of medicine manufactured in another State, and taken from a package in which were several bottles which had been shipped into the State, cannot claim exemption from a statute requiring him to have a license.<sup>30</sup>

### Sec. 196. Discrimination against citizens of other states.

A law which requires that an applicant for a license to sell intoxicating liquors shall be a citizen or inhabitant of the State in which the liquors are to be sold will not conflict with that clause of the Constitution of the United States which provides that, "The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States," nor will it contravene the provision of the Fourteenth Amendment, that "no State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States."<sup>31</sup> The argument against the constitutionality of such laws is that intoxicating liquors are property, as much so as hogs, horses, grain, or any other personal property, and that under these provisions of the Federal Constitution the citizens of any State in the Union have the right to sell such property anywhere within the United States, where the sale of such property is tolerated, and that a citizen of a sister State can be deprived of no right to sell which is enjoyed by the citizens of the State where he offers his property to the public. It is not true, as is sometimes urged, that the right to sell intoxicating liquors is derived from the State. It is a common law right, and the common law does not recognize any difference between intoxicating liquor as property and any other property. But while it is true that intoxicating

<sup>29</sup> *Wind v. Iler*, 93 Iowa 316; 61 Atl. 1001; 27 L. R. A. 219.

<sup>30</sup> *State v. Parson*, 102 Mo. 436; 27 S. W. 1102; 46 Am. St. 457.

<sup>31</sup> License Cases, 5 How. (U. S.) 504; 12 L. Ed. 256; *Conner v. Elliott*, 18 How. 591; *Kohn v. Melcher*, 29 Fed. Rep. 433; *Douglass v. Douglass*, 1 Del. Ch. 465;

*Heddriek v. State*, 101 Ind. 564; *Campbell v. Morris*, 3 Har. & Me-H. (Md.) 554; *Austin v. State*, 10 Mo. 591; *Mette v. McGucking*, 18 Neb. 323; *Coxfield v. Coryell*, 4 Wash. C. C. 371; *Rayman Brewing Co. v. Bristor*, 92 Fed. 28 (Dow Law of Ohio).

liquor is property, still its inherent character is such that it is the proper subject of the police power.<sup>32</sup> Acting upon the just assumption that the unrestricted sale of intoxicating liquors results in much evil, and that it is detrimental to society, the lawmaking power of each State in the Union has, in the exercise of such police power, assumed to control, regulate or prohibit the business, as seemed to it best. The extent to which such power shall be exercised must, of necessity, be left to the lawmaking power of the State exercising such right.<sup>33</sup> The object of such legislation is to provide safeguards against evasions and violations of the law, by confining the privilege of selling, as a matter of police regulation, to such persons as it may be deemed safe to intrust with this right, and not to grant greater privileges to citizens of the State than are accorded to citizens of other States, or to give the former an advantage of the latter.<sup>34</sup> In the State of New York it was held that, "The right of the State to regulate the traffic in intoxicating liquors, within its limits, has been exercised from the foundation of the Government, and it is not open to question. The State may prescribe the person by whom, and the conditions under which, the traffic may be carried on. It may impose upon those who act under its license such liabilities and penalties as in its judgment are proper to secure society against the dangers of the traffic and individuals against injuries committed by intoxicated persons under the influence resulting from their intoxication."<sup>35</sup> It is upon this theory that it is held that it is not an unreasonable requirement that a person who desires to avail himself of a license shall become subject to the jurisdiction of the State, by becoming a citizen or inhabitant thereof, to the end that he may be readily apprehended and punished for any violation of the law in connection with his business, and that process may be had against him in actions for personal injuries, and that laws which require an applicant for a license to sell intoxicating liquors to be a citizen or inhabitant of the

<sup>32</sup> *Welsh v. State*, 126 Ind. 71,  
76; 25 N. E. 883.

<sup>33</sup> *Welsh v. State*, 126 Ind. 71,  
77; 25 N. E. 883.

<sup>34</sup> *Kohn v. Melcher*, 29 N. Y.  
433.

<sup>35</sup> *Betholf v. O'Reilly*, 74 N. Y.,  
509.

State, are uniformly held to be not in violation of these constitutional provisions.<sup>36</sup>

### Sec. 197. Right of consignee to sell imported liquors.

Whether or not, before the passage of the Wilson Law, an importer or consignee of interstate commerce liquors had the right to dispose of them, was a question of dispute among the courts. All were agreed that the consignee could not break the original packages and dispose of them in less quantities than an original package contained, for the instant the package was broken they became subject to the State laws.<sup>37</sup> The authorities, however, are practically unanimous to the effect that the importer may sell in the original packages the liquors he had imported; for to deny him that privilege would be to overturn the interstate commerce law.<sup>38</sup> There are, however, some early cases which hold that liquors in the original package are subject to State laws; but these are no longer authorities. Thus, it has been held that a State law may prohibit the keeping for sale of all liquors, which applies

<sup>36</sup> *Welsh v. State*, 126 Ind. 71, 78; 25 N. E. 883; *Trageser v. Gray*, 73 Md. 250; 20 Atl. 905. It has been held that a statute imposing a tax of 15 per cent. upon liquors purchased by residents from persons not residing in the State, but only 10 per cent. upon such as are purchased from the maker in the State, is valid, not being a regulation of interstate commerce. *Davis v. Dashiell*, 62 N. C. 114.

<sup>37</sup> *Brown v. Maryland*, 12 Wheat. 419; 6 L. Ed. 678; *License Cases*, 5 How. 505; 12 L. Ed. 256; *State v. Allmond*, 2 *Houst. (Del.)* 612; *State v. Stilling*, 52 N. J. L. 517; 20 Atl. 65; *State v. Winters*, 44 Kan. 723; 25 Pac. 235; 10 L. R. A. 616.

<sup>38</sup> *State v. Robinson*, 49 Me.

285; *State v. Allmond*, 2 *Houst. (Del.)* 612; *Reynolds v. Geary*, 26 Conn. 179; *Jones v. Hard*, 32 Vt. 481; *Bradford v. Stevens*, 10 Gray, 379; *United States v. Fiscus*, 42 Fed. 395; *Carstairs v. O'Donnell*, 154 Mass. 357; 28 N. E. 271; *In re Beine*, 42 Fed. 545; *Tuchman v. Welch*, 42 Fed. 548; *M. Shandler Bottling Co. v. Welch*, 42 Fed. 561; *State v. Intoxicating Liquors*, 82 Me. 558; 19 Atl. 913; *Commonwealth v. Kimball*, 24 Pick. 359; 35 Am. Dec. 326; *Leisy v. Hardin*, 135 U. S. 100; 10 Sup. Ct. 681.

The *License Cases*, 5 How. 504; 12 L. Ed. 256, on this point is no longer an authority. See *Bowman v. Railway Co.*, 125 U. S. 465; 31 L. Ed. 700; 8 Sup. Ct. 1062; *Leisy v. Hardin*, 135 U. S. 100; 34 L. Ed. 128.



to imported liquors in the original package; <sup>39</sup> or may prohibit actual sales.<sup>40</sup> A statute, however, prohibiting sales in larger quantities than is contained in an original package is not necessarily void, for it does not exclude sales by the original package.<sup>41</sup> And if an importer mortgage liquor in the original packages in the United States warehouse, and the mortgagee forecloses the mortgage, purchases the liquors at judicial sale, pays the duties and receives the packages, he does not thereby become an importer under a State law authorizing the importer to sell liquors in the original unbroken packages.<sup>42</sup> "The point of time," said Chief Justice Fuller, "when the prohibition [of a State to prohibit sale of imported liquors] ceases, and the power of the State to tax commences, is not the instant when the article enters the country, but when the importer has so acted upon it that it has become incorporated and mixed with the mass of property in the country, which happens when the original package is no longer such in his hands; that the distinction is obvious between a tax which intercepts the import as an import on its way to become incorporated with the general mass of property, and a tax which finds the article already incorporated with that mass by the act of the importer; that, as to the power to regulate commerce, none of the evils which proceed from the feebleness of the Federal Government contributed more to the great revolution which introduced the present system than the deep and general conviction that commerce ought to be regulated by Congress; that the grant ought to be as extensive as the mischief, and should comprehend all foreign commerce and all commerce among the States; that that power was complete in itself, acknowledged no limitations other than those prescribed by the Constitution, was co-extensive with the subject on which it acts, and not to be stopped at the external

<sup>39</sup> *State v. Cunningham*, 25 Conn. 195; *State v. Brennan*, 25 Conn. 278; *State v. Wheeler*, 25 Conn. 290.

<sup>40</sup> *Pierce v. State*, 13 N. H. 536; *State v. Moore*, 14 N. H. 451; *State v. Zimmerman*, 78 Iowa

614; 43 N. W. 458; *State v. Peckham*, 3 R. I. 289; *McGuinness v. Bligh*, 11 R. I. 1, 94.

<sup>41</sup> *Commonwealth v. Kimball*, 24 Pick. 359; 35 Am. Dec. 326.

<sup>42</sup> *King v. McEvoy*, 4 Allen 110; *Bradford v. Stevens*, 10 Gray 379.



boundary of a State, but must be capable of entering its interior; that the right to sell any article was an inseparable incident to the right to import it; and that the principles in the case<sup>43</sup> applied equally to importation from a sister State.”<sup>44</sup> The court quoted from a recent case,<sup>45</sup> and thus concludes its opinion: “The plaintiffs in error are citizens of Illinois, are not pharmacists, and have no permit, but import into Iowa beer which they sell in original packages, as described. Under our decision in *Bowman v. Railway Co.*,<sup>46</sup> they had the right to import this beer into that State, and in the view which was here expressed they had the right to sell it, by which act alone it would become mingled in the common mass of property within the State. Up to that point of time we hold that, in the absence of congressional permission to do so, the State had no power to interfere by seizure, or any other action, in prohibition of importation and sale by the foreign or non-resident importer.”<sup>47</sup>

<sup>43</sup> *Brown v. Maryland*, 12 Wheat. 419.

<sup>44</sup> Chief Justice Fuller's exposition of *Brown v. Maryland*, *supra*, in *Leisy v. Hardin*, 135 U. S. 100; 10 Sup. Ct. 681, and explaining *Bowman v. Railway Co.*, 125 U. S. 465; 8 Sup. Ct. 869, 1062; and denying the soundness of *Pierce v. New Hampshire* (License Cases), 5 How. 504.

<sup>45</sup> *Bowman v. Railway Co.*, 125 U. S. 465; 8 Sup. Ct. 869, 1062. Part of this quotation is: “It is only after the importation is completed and the property imported is mingled with and becomes a part of the general property of the State, that its regulations can act upon it, except in so far as may be necessary to insure safety in the disposition of the import until thus mingled.”

<sup>46</sup> 125 U. S. 465; 8 Sup. Ct. 869, 1062.

<sup>47</sup> The court cited the following cases: *Kidd v. Pearson*, 128 U. S. 1; 9 Sup. Ct. 6; *Foster v. Kansas*, 112 U. S. 201; 5 Sup. Ct. 8; *Beer Co. v. Massachusetts*, 97 U. S. 25; *Bartemeyer v. Iowa*, 18 Wall 129; *Mugler v. Kansas*, 123 U. S. 623; 8 Sup. Ct. 273; *Webber v. Virginia*, 103 U. S. 344; *Patterson v. Kentucky*, 97 U. S. 501; *Walling v. Michigan*, 116 U. S. 446; 6 Sup. Ct. 454; *Welton v. Missouri*, 91 U. S. 275; *Kinnish v. Ball*, 129 U. S. 217; 9 Sup. Ct. 277; *Railway Co. v. Alabama*, 128 U. S. 96; 9 Sup. Ct. 28; *Smith v. Alabama*, 124 U. S. 465; 8 Sup. Ct. 564; *Morgan's S. S. Co. v. Board*, 118 U. S. 455; 6 Sup. Ct. 1114; *Brown v. Houston*, 114 U. S. 622; 5 Sup. Ct. 1091; *Transportation Co. v. Parkersburg*, 107 U. S. 691; 2 Sup. Ct. 732; *Escanaba Co. v. Chicago*, 107 U. S. 678; 2 Sup. Ct. 185; *Mobile v. Kimball*, 102

**Sec. 198. Right of importer to sell in original packages.**

Before the passage of the Wilson Law in 1890, the importer of liquors from a foreign country or other State, had the power not only to retain the imported article in his possession if he kept it in the original package unbroken, but he could also sell it and deliver it in that condition to the purchaser; but when he had completed his sale by a delivery of the package sold, the liquor passed from under the ægis of the interstate commerce law and at once became subject to the State laws.<sup>48</sup> And the fact that he knew the purchaser intended to violate the State law by selling them did not affect the validity of the sale.<sup>49</sup> But the Wilson Law now prevents the importer from selling his liquors in those States where State laws forbid the sale of liquors. "Upon arrival in such State or territory" they are "subject to the operation and effect of the laws of such State or territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquid or liquors had been produced in the State or terri-

U. S. 691; *Robbins v. Taxing District*, 120 U. S. 489; 7 Sup. Ct. 592; *Railway Co. v. Illinois*, 118 U. S. 557; 7 Sup. Ct. 4; *Cook v. Pennsylvania*, 97 U. S. 566; *Railroad Co. v. Hasen*, 95 U. S. 465; *Henderson v. Mayor*, 92 U. S. 259; *State Freight Tax*, 15 Wall. 232.

A statute prohibiting the sale of liquors to be drunk upon the premises is not an interference with the interstate commerce law. *People v. Huntington*, 4 N. Y. Leg. Obs. 187; nor is a prohibition law. *State v. Carney*, 20 Iowa 82.

<sup>48</sup> *Wynehamer v. People*, 20 Barb. 567; *State v. Peekham*, 3 R. I. 289; *Low v. Austin*, 13 Wall. 29; *State v. Robinson*, 49 Me. 285; *State v. Intoxicating Liquors*, 82 Me. 554; 19 Atl. 913; *Hinan v. Lott*, 8

Wall. 148; *State v. Fuller*, 33 N. H. 259; *Commonwealth v. Kimball*, 24 Pick. 359; 35 Am. Dec. 326; *State v. Amery*, 12 R. I. 64; *Hinson v. Lott*, 40 Ala. 123; *Bode v. State*, 7 Gill. 326; *Sears v. Warren Co.*, 36 Ind. 267; *State v. Allmond*, 2 Houst. 612.

<sup>49</sup> *Richards v. Woodward*, 113 Mass. 285.

It has been held, however, but on doubtful ground, that if the importer intended to break the package and sell the liquor, the liquor was not exempt from the State laws while in his hands in unbroken packages, thus making the interstate commerce exemption of the package to rest upon the lawful or unlawful intent of the owner, although the unlawful intent might never be put into execution. *State v. Blackwell*, 65 Me. 556.

tory," and are not "exempt therefrom by reason of being introduced therein in original packages or otherwise."<sup>50</sup> The question now turns upon point of "arrival" discussed in another section; but we add that liquors imported have not "arrived" when they reach the railroad station of their destination—not until they reach the importer's house or store, and in their passage from the station to his house or store they are still protected by the interstate commerce clause.<sup>51</sup>

**Sec. 199. "Wilson Law," origin and constitutionality.**

In the State of Iowa a statute was passed in 1886 which forbade any common carrier to bring within that State, to any person, or persons, or corporations, any intoxicating liquors from any other State or territory of the United States without first having been furnished with a certificate under the seal of the county auditor of the county to which such liquor was to be transported or was consigned for transportation that the consignee or person to whom the liquor was to be transported, conveyed or delivered, was authorized to sell intoxicating liquors in such county. After the passage of this law, a firm by the name of Bowman Brothers, doing business in the city of Marshalltown, Iowa, offered to the Chicago-Northwestern Railway Company, for shipment to Marshalltown, Iowa, five thousand barrels of beer which they had procured in the city of Chicago, and the railway company refused to receive the beer; and, because of this refusal, the firm instituted a suit against the railway company in the Circuit Court of the United States for the Northern District of Illinois to recover the sum of ten thousand dollars damages. Judgment was rendered against the plaintiffs on their demurrer to an answer of the defendant in which the defendant plead the existence of the statute of Iowa. An appeal was taken from that judgment to the Supreme Court of the United States on a writ of error to reverse the decision of the circuit court,

<sup>50</sup> 26 U. S. Stat. at L. 313, c. 728; U. S. Comp. Stat. 1901, p. 3177; 51 Cong. 1 Sess. c. 728, p. 313.  
<sup>51</sup> *Schwedes v. State (Okla.)*, 99 Pac. 804; *Hudson v. State (Okla.)*, 101 Pac. 275.

and the case was reversed, that court holding that a State cannot, for the purpose of protecting its people against the evils of intemperance, enact laws which regulate commerce between its people and those of other States of the Union unless consent of Congress, expressed or implied, has first been obtained, and that for this reason the Iowa statute was unconstitutional.<sup>52</sup> Subsequent to that decision, Leisy & Company, citizens of Illinois, instituted an action of replevin against one Hardin, marshall of the city of Keokuk, Iowa, to recover a quantity of beer which had been seized by him in a proceeding on behalf of the State of Iowa against them, and upon issue joined, the case was tried by the court and judgment rendered in their favor, the court holding that the prohibitory laws of Iowa were unconstitutional, being in contravention of Section 8, Article I, of the Constitution of the United States. The case was taken by appeal to the Supreme Court of Iowa where the judgment of the trial court was reversed, that court holding that the law in controversy was constitutional.<sup>53</sup> From that decision an appeal was taken to the Supreme Court of the United States, where it was held that a statute of a State, prohibiting the sale of any intoxicating liquors except for pharmaceutical, medicinal, chemical or sacramental purposes, and under licenses from a county court of the State, as applied to a sale by the importer, made in original packages or kegs, unbroken and unopened, of the liquors manufactured in and brought from another State, is repugnant to that clause of the Constitution of the United States granting to Congress the power to regulate commerce with foreign nations and the several States, and, therefore, unconstitutional and void.<sup>54</sup> The effect of these decisions was that a State could not enact a law which affected or interfered with intoxicating liquors manufactured in and shipped from a State into a sister State or territory until Congress had made provision for such interference, and not then so long as it remained in the original packages. This led to

<sup>52</sup> Bowman v. Chicago, etc. R. Co., 125 U. S. 465; 8 S. Ct. 869.

<sup>54</sup> Leisy v. Hardin, 135 U. S. 100; 10 S. Ct. 681.

<sup>53</sup> Leisy v. Hardin, 78 Ia. 286;

43 N. W. 188.



the opening up in the States, which prohibited the traffic in liquor, or imposed a high license on the traffic, of what were properly called "original package houses." Liquor imported in packages of all forms and sizes, but in original packages, was sold in these houses. In this way the retail traffic in liquor was practically established, and in many cases by the most irresponsible and unsuitable persons who were not citizens of the State and were indifferent to its welfare. Peaceful and quiet communities, from which the sale of liquor had been banished for years, were instantly afflicted with all the evils of the liquor traffic. The seats of learning were invaded by the "original package" vendor, and the youth of the State who gathered there for instruction were corrupted and demoralized, and disorder, violence and crime reigned, where only peace and order had been known before. The invaded communities were powerless to protect themselves. They could neither regulate, tax, restrain nor prohibit the traffic. The courts held, and rightly so, that the importer and vendor of original packages was not subject to State laws and that any application of such laws to him would be a violation of his rights under the Constitution of the United States, until Congress, in the exercise of its power to regulate commerce, should withdraw the protecting power of that instrument from original packages that had reached the State where they were designed for consumption or sale. Congress was applied to for relief. Petitions flowed in upon it, praying for immediate action. It acted promptly and with more celerity than ordinarily characterizes the action of so large a deliberative body and the President approved its action. This in brief is the origin of the "Wilson Law" which was approved August 8, 1890, and which provides, "That all fermented, distilled, or other intoxicating liquors or liquids transported into any State or territory or remaining for use, consumption, sale or storage therein, shall upon arrival in such State or territory be subject to the protection and effect of the laws of such State or territory enacted in the exercise of its police powers to the same extent and in the same manner as that if such liquids or liquors had been produced in such State or territory, and shall not be exempt therefrom by reason



of being introduced therein in original packages or otherwise.”<sup>55</sup> The first case under this law was on appeal from the Circuit Court of the United States for the District of Kansas, being an application for a writ of *habeas corpus* made to that court, the petitioner having been arrested by the State authorities for selling imported liquor on the 9th day of August, 1890. The trial court discharged the prisoner, holding that the Wilson Law was unconstitutional. From this decision an appeal was taken to the Supreme Court of the United States and there it was held that the law was constitutional, and after it took effect such liquors or liquids introduced into a State or territory from another State or territory, whether in the original packages or otherwise, became subject to such existing laws of the State as had been properly enacted by the State in the exercise of its police powers.<sup>56</sup> In thus deciding the court said: “The power to regulate commerce is solely in the general Government and it is essentially a part of that regulation to prescribe the means for governing the introduction and incorporation of articles into and with the mass of property in the country or State. No reason is perceived why, if Congress chooses to provide that certain distinct subjects of interstate commerce shall be governed by the rule which divests them of that character at an earlier period of time than would otherwise be the case, it is not within its competency to do so.” As to the effect of the Wilson Law the conclusion of the court was that, “Congress did not use terms of permission to the State to act, but merely removed an impediment to the enforcement of the State laws in respect to imported packages in their original condition, created by the absence of a specific utterance on its part. It imparted no power to the State not then possessed, but allowed imported property to fall at once upon arrival within the local jurisdiction.”<sup>56</sup> In other words, the Wilson Law declares that intoxicating liquors shall, on arrival in a State, be subject to the operation of the police powers of the

<sup>55</sup> Act of 51st Congress, 1st Ses., c. 728, p. 313; 26 U. S. Stat. at L. 313, c. 728; U. S. Comp. St. 1901, p. 3177.

<sup>56</sup> *In re Rahrer*, 140 U. S. 545; 11 S. Ct. 865; 35 L. Ed. 572; reversing 43 Fed. 556.

State and merely defines the time when imported intoxicating liquors shall become subject to State control, and is, therefore, not unconstitutional as being a delegation to the States of the power to regulate interstate commerce. It does not declare that the States shall, in general or in any particular, have the power to regulate interstate commerce. It confers no power upon the States to legislate upon that subject. The States are not authorized to declare when such importations shall become subject to State control. Nor can the States in any manner change or affect the enactment made by Congress on that subject. Congress can, at any time, abrogate or change the enactment in question and it is clearly a constitutional exercise of the power conferred on Congress."<sup>57</sup>

### **Sec. 200. Wilson Law construed—"Arrival" defined.**

The words "shall upon arrival in such State or territory be subject to the operation and effect of the laws of such State or territory," as used in the Wilson Law, in one sense might be held to mean arrival at the State line; but to so interpret them would necessitate isolating these words from the entire context of the act and would compel construction distinctive of other provisions contained therein. This would violate the fundamental rule requiring the construction of a statute as a whole and not by magnifying a particular word found in it. It is clear that the word "arrival" as used in this statute means that the goods shall actually come into the State, since it is further provided that "all fermented, distilled or other intoxicating liquors or liquids transported into a State or territory," or "remaining therein for use, consumption, sale or storage therein," shall "be subject to the operation and effect of the laws of such State or territory." This

<sup>57</sup> *In re* Spiekler, 43 Fed. Rep. 653; 10 L. R. A. 451; *In re* Van Vliet, 43 Fed. Rep. 761; *State v. Fraser*, 1 N. Dak. 425; 48 N. W. 343.

See also *Plumley v. Massachusetts*, 155 U. S. 461; 15 Sup. Ct. 154; *Emert v. Missouri*, 156 U.

S. 296; 15 Sup. Ct. 367; *In re* Jordon, 49 Fed. 238; *Cantini v. Tillman*, 54 Fed. 969; *Ex parte Edgerton*, 59 Fed. 115; *Indianapolis v. Bieler*, 138 Ind. 30; 36 N. E. 857; *Commonwealth v. Calhoun*, 154 Mass. 115; 27 N. E. 881.

language makes it impossible in reason to hold that the law intended "arrival" should mean at the State line, since it prescribes the coming of the goods into the State for "use, consumption, sale or storage." The fair inference from enumeration of these conditions, which are all embracing, is that the time when they arrive at the place to which they were consigned was made the test by which to determine the period when the operation of the State law shall attach to goods brought into the State. To construe the word "arrival" to mean arrival at the State line would be to hold that each State might compel every interstate commerce train to stop before crossing its borders and discharge its freight, lest by crossing the line it might carry within the State merchandise of the character named covered by the inhibitions of a State statute. In other words, that the statute of a State might attach and operate beyond the State, and thus become extra territorial in its operation. Such is not the construction which is to be placed upon the Wilson Law. If it had been the intention of the law to provide for the stoppage at the State line of every interstate commerce contract relating to the merchandise named in the act, such purpose would have been easy of expression. The fact that such power was not conveyed, and that, on the contrary, the language of the statute relates to the receipt of the goods "into any State or territory for use, consumption, sale or storage therein" negatives the correctness of an interpretation holding that the receipt into a State or territory for the purpose named could never take place. In the language of the Supreme Court of the United States: "We think that interpreting the statute by the light of all of its provisions, it was not intended to and did not cause the power of the State to attach to an interstate commerce shipment, whilst the merchandise was in transit under such shipment and until its arrival at the point of destination and delivery there to the consignee." In other words, the statute must be interpreted and enforced by the light of the fundamental rule of carrying out its purpose and object, of affording the remedy which it was intended to create, and of defeating the wrong which it was its purpose to frustrate. Undoubtedly the purpose of the act was to enable

the law of the several States to control the character of the merchandise therein enumerated at an earlier date than would have been otherwise the case, but it is equally unquestionable that the Wilson Law manifests no purpose to confer upon the States the power to give their statutes extra-territorial operation so as to subject persons and property beyond their borders to the restraints of their laws.<sup>58</sup> The fundamental right to be protected from the operation of State laws by the Constitution of the United States is the continuity of shipment of goods coming from one State into another from the point of transmission to the point of consignment and the accomplishment there of the delivery covered by the contract.<sup>59</sup> So where a State court held that the Wilson act did not protect a carrier carrying liquors from one State to another, and that it was liable under a State law requiring such a carrier to first obtain a certificate from the State authorities allowing it to carry liquors,<sup>60</sup> it was held on appeal to the Supreme Court of the United States that the decision was erroneous.<sup>61</sup> This act did not empower the State of South Carolina to enact a law prohibiting anyone, except the designated officers, importing liquors into the State, in accordance with the Dispensary Law of that State.<sup>62</sup> Where the defendant purchased in North Carolina liquor for his own use, loaded it in his buggy and started home, and as soon as he crossed the State line, and before his arrival at home, he was arrested, it was held that he had not "arrived" at his destination, and that the liquor was not liable to seizure nor he amenable to the State laws.<sup>63</sup>

<sup>58</sup> Rhodes v. Iowa, 170 U. S. 412; 18 S. Ct. 664; reversing 90 Iowa 496; 58 N. W. 887; 24 L. R. A. 245.

<sup>59</sup> Bowman v. Chicago, etc. Ry. Co., 125 U. S. 465; 8 S. Ct. 869.

The Wilson law extends no farther than to allow the police laws of the State to be applied to intoxicants shipped into the State after they have reached the end of the shipment, and have been delivered to the consignee. *In re Berger*, 115 Fed. 339.

<sup>60</sup> State v. Rhodes, 90 Iowa 496; 58 N. W. 887; 24 L. R. A. 245; *Ex parte Jervey*, 66 Fed. 957; *Jervey v. Carolina*, 66 Fed. 1013.

<sup>61</sup> Rhodes v. Iowa, 170 U. S. 412; 18 Sup. Ct. 664.

<sup>62</sup> Scott v. Donald, 105 U. S. 58; 17 Sup. Ct. 265; 41 L. Ed. 632.

<sup>63</sup> State v. Holleyman (S. C.), 33 S. E. 366; 45 L. R. A. 567; *High v. State* (Okla.), 101 Pac. 115; *Schwedes v. State* (Okla.), 99 Pac. 804. See State



Yet where an agent of a brewing company took an order as its agent in a foreign State to deliver a keg of beer at the residence of the purchaser situated in the latter State, and the beer was shipped to and received by another agent of the company, who conveyed it to and delivered at his house before his arrival home, it was held that the transaction amounted to a sale in the foreign State or place of delivery, and that the beer had "arrived" when it reached the station and was there delivered by the carrier to such agent and that it was then subject to the State law; and so far as the question of interstate commerce was concerned it was immaterial whether the sale was made before or after the arrival of the beer.<sup>64</sup> To constitute an "arrival" in the State of destination, within the meaning of the Wilson Law, delivery to the consignee is essential, and merely placing the liquors shipped in the warehouse of the carrier at the place of their destination is not such an "arrival" as will subject them to the State laws within the meaning of the Wilson act.<sup>65</sup> While the Wilson Law enables a State to regulate or prohibit the sale of liquors in the original packages after it has been actually delivered to the consignee, yet it does not empower it to enact a law prohibiting the carrier delivering the package to such consignee.<sup>66</sup> Delivery of the liquors to the consignee

v. Moody, 70 S. C. 56; 49 S. E. 8.

<sup>64</sup> Stevens v. State, 93 Fed. 793.

<sup>65</sup> Heyman v. Southern Ry. Co., 203 U. S. 270; 27 Sup. Ct. 104; 51 L. Ed. 178 (reversing 122 Ga. 608, 50 S. E. 342); American Express Co. v. Iowa, 196 U. S. 133; 25 Sup. Ct. 182; 49 L. Ed. 417 (reversing State v. American Express Co. 118 Iowa 447; 92 N. W. 66); Adams Exp. Co. v. Iowa, 196 U. S. 147; 25 Sup. Ct. 185; 49 L. Ed. 424 (reversing 95 N. W. 1129); Adams Exp. Co. v. Commonwealth, 206 U. S. 129; 27 Sup. Ct. 606; 51 L. Ed. 987 (reversing 87 S. W. 1111; 27 Ky.

L. Rep. 1096); State v. Intoxicating Liquors, 102 Me. 206; 66 Atl. 393; Rhodes v. Iowa, 170 U. S. 412; 42 L. Ed. 1088; 18 Sup. Ct. 664; State v. Winters, 44 Kan. 723; 25 Pac. 235; State v. Corrick, 82 Iowa, 451; 48 N. W. 808. (*Contra*, Southern Ry. Co. v. Heyman, 119 Ga. 616; 45 S. E. 491.) State v. Intoxicating Liquors, 96 Me. 415; 52 Atl. 911.

<sup>66</sup> Crescent Liquor Co. v. Platt, 148 Fed. 894. See Norfolk & W. R. Co. v. Commonwealth, 93 Va. 749; 24 S. E. 837; Lacey v. Palmer, 93 Va. 159; 24 S. E. 930. Liquors imported before the Wilson law was passed, and which



by the carrier is necessary to constitute an "arrival," whether the consignee was or was not known to the carrier, and whether or not the name used for the consignee was real or fictitious.<sup>67</sup> In the passage of the liquor from the express office, in charge of the express company's agent, they still are in transit and have not yet "arrived" at their ultimate destination, and cannot then be seized.<sup>68</sup> The more recent decisions hold that the word "arrival" has reference to the time when the liquors reach their destination, which is the home of the consignee, by continuous conveyance from the station to his house or place of business.<sup>69</sup>

### Sec. 201. Liquors in transit—When transit ceases.

Where liquors are subject to interstate commerce they cannot be seized while in transit, and on this point all the authorities agree;<sup>70</sup> but when they have reached their destination, then the authorities differ concerning whether they can be seized on arrival. Thus, it has been held that they may be seized while the importer retains possession of them, if he has the intent to break the original package and sell them in quantities less than a package.<sup>71</sup> But an agreement of the

was then free of State control, became subject to State control immediately upon passage of that act. *Tinker v. State*, 90 Ala. 638; 8 So. 814; *State v. Fraser*, 1 N. D. 425; 48 N. W. 343. *In re Spickler*, 43 Fed. 653; 10 L. R. A. 446.

<sup>67</sup> *State v. Intoxicating Liquors*, 102 Me. 206; 67 Atl. 312.

<sup>68</sup> *State v. Intoxicating Liquors*, 101 Me. 430; 64 Atl. 812.

<sup>69</sup> *Hudson v. State (Okla.)*, 101 Pac. 275; *Moreland v. State (Okla.)*, 101 Pac. 138; *McCord v. State (Okla.)*, 101 Pac. 280; *High v. State (Okla.)*, 101 Pac. 115; *Schwedes v. State (Okla.)*, 104 Pac. 765. The cases hold a resident of a prohibition State has the right

to bring into it liquors and keep them for his own uses. See *Crigler v. Commonwealth*, 120 Ky. 512; 87 S. W. 276; 27 Ky. L. Rep. 918; 87 S. W. 280; 27 Ky. L. Rep. 925, 927, 281; *Schwedes v. State, supra*.

<sup>70</sup> *State v. Intoxicating Liquors*, 10 Me. 206; 67 Atl. 312; *Crescent Liquor Co. v. Platt*, 148 Fed. 894.

To be in transit the goods must be actually delivered to the carrier. *Coe v. Errol*, 116 U. S. 517; 42 L. Ed. 1088; 6 Sup. Ct. 475; *Adams Express Co. v. Commonwealth (Ky.)*, 96 S. W. 593; 29 Ky. L. Rep. 904.

<sup>71</sup> *State v. Blackwell*, 65 Me. 556.

local agent of an express company carrying liquors into a State to hold them a few days, that were shipped C. O. D., to suit the convenience of the consignee in making the payment required, does not so change the character of the interstate commerce shipment as to render the express company liable to the State's laws, for the liquors are still in transit.<sup>72</sup> Nor can they be seized in the hands of the express company.<sup>73</sup> So where by a continuous waybill liquors were shipped from Massachusetts to Maine through Canada, and on arrival at its destination was left on a "team track" twenty rods from the claimant's freight house, and on its arrival the claimant's servants broke the car door seals and removed other merchandise, leaving the liquors in the car, and the usual practice was, in cases of shipments, to leave goods in the car two or three days on the team track, and if not claimed to take them to the freight house, it was held that they could not be seized in the car under the State law making liquors contraband, for the transportation had not ceased and could not at least until deposited in the freight house of the claimant railroad company.<sup>74</sup> And generally, it may be stated that notwithstanding the Wilson Law, liquors are not the subject of State pro-

<sup>72</sup> This case was decided after the Wilson law went into force. *Adams Express Co. v. Commonwealth*, 206 U. S. 129; 27 Sup. Ct. 606; 51 L. Ed. 987 (reversing 87 S. W. 1111; 27 Ky. L. Rep. 1096); 206 U. S. 138; 27 Sup. Ct. 608; 51 L. Ed. 992 (reversing (Ky.); 92 S. W. 932; 29 Ky. L. Rep. 224; 5 L. R. A. (N. S.) 630); *American Express Co. v. Commonwealth*, 206 U. S. 139; 27 Sup. Ct. 609; 51 L. Ed. 993 (reversing (Ky.); 97 S. W. 807; 30 Ky. L. Rep. 207; *Adams Express Co. v. Commonwealth* (Ky.), 103 S. W. 353; 31 Ky. L. Rep. 811 to 813; *American Express Co. v. Mullins*, 212 U. S. 311; 29 Sup. Ct. 381; 53 L. Ed.

<sup>73</sup> *American Express Co. v. Iowa*, 196 U. S. 133; 4 L. Ed. 417; 25 Sup. Ct. 182; reversing *State v. American Express Co.*, 118 Iowa 447; 92 N. W. 66; *Adams Express Co. v. Iowa*, 196 U. S. 147; 49 L. Ed. 424; 25 Sup. Ct. 185 (reversing 95 N. W. 1129); *Crescent Liquor Co. v. Platt*, 148 Fed. 894; *American Express Co. v. Mullins*, 212 U. S. 311; 29 Sup. Ct. 381; 53 L. Ed. —.

<sup>74</sup> *State v. Intoxicating Liquors*, 102 Me. 206; 66 Atl. 393.

It is to be observed that under the decisions of the United States Supreme Court, cited above, the transportation would not cease even if deposited in the freight house.

hibition laws until delivered to the consignee, and are subject to them on their arrival.<sup>75</sup> Thus, it has been held that a resident of a prohibition State may there order liquors to be shipped him from another State, and may convey the same in the original package from the railroad station to his house or home.<sup>76</sup> The conveyance from the station to his house is a part of the interstate transportation, and is not a violation of the prohibition law there in force.<sup>77</sup> The act of a drayman in taking the goods in the original package and placing it on his dray for delivery to the consignee is a part of the interstate transportation.<sup>78</sup> Liquors thus received for family use may be kept and so used by the consignee, notwithstanding prohibition statutes.<sup>79</sup>

## Sec. 202. Wilson Law's effect upon State laws.

There are decisions which hold, prior to the enactment of the Wilson Law, that a State statute might be void as against

<sup>75</sup> *Rhodes v. Iowa*, 170 U. S. 412; 42 L. Ed. 1088; 18 Sup. Ct. 664.

The following cases follow this decision: *State v. Winters*, 44 Kan. 723; 25 Pac. 235; *State v. Pfeleagor*, 81 Iowa, 759; 46 N. W. 1063; *State v. Coonan*, 82 Iowa, 400; 48 N. W. 921; *Carstairs v. O'Donnell*, 154 Mass. 357; 28 N. E. 271; *State v. Corrick*, 82 Iowa 451; 48 N. W. 808 (goods on depot platform); *Lemp v. Fullerton*, 83 Iowa 192; 48 N. W. 1034; *Schendler Bottling Co. v. Welch*, 42 Fed. 561; *Tuchman v. Welch*, 42 Fed. 548; *Woolstein v. Welch*, 42 Fed. 566; *United States v. Fiscus*, 42 Fed. 395; *In re Beine*, 42 Fed. 545.

Because a statute in general terms applies to sales of liquors generally, it will not necessarily be held void; because it may be invalid as to imported and valid as

to domestic liquors. *State v. Kibling*, 63 Vt. 636; 22 Atl. 613; *Commonwealth v. Gagne*, 153 Mass. 205; 26 N. E. 449.

It has been held that a statute making it an offense to handle "contraband liquors in the night time" or to deliver them "in the night time" was valid, not being an interference with interstate commerce. *State v. Holleyman* (S. C.), 31 S. E. 362.

<sup>76</sup> *Hudson v. State* (Okla.), 101 Pac. 275; *Moreland v. State* (Okla.), 101 Pac. 138.

<sup>77</sup> *McCord v. State* (Okla.), 101 Pac. 280; *High v. State* (Okla.), 101 Pac. 115.

<sup>78</sup> *McCord v. State* (Okla.), 101 Pac. 280; *Hudson v. State* (Okla.), 101 Pac. 275; *Moreland v. State* (Okla.), 101 Pac. 138.

<sup>79</sup> *Schwedes v. State*, 1 Okla. Cr. 245; 99 Pac. 804.

an importer of liquor in the original packages but still be valid as to domestic liquors, although in terms it applied to both liquors.<sup>80</sup> The question, therefore, necessarily arose whether or not these laws, even though they had been declared void, were or were not to apply to imported liquors in the original packages, and were in force after the passage of the Wilson Law. At first there was some fluctuation in decisions, but the Supreme Court of the United States put the question at rest by holding that the laws were still in force and became effective as soon as the Wilson Law was enacted.<sup>81</sup>

### Sec. 203. Importing liquors for private use.

It is of importance whether or not a man may import or bring into his State liquors for his own private use and for the use of his family. The authorities are practically one that he can do so, and that a State cannot prevent him doing so. "A resident of one State has the right to have shipped to him from another State alcoholic liquors when ordered by him for his and his family use, and to keep the same for such use; and the State cannot, under its police power, enact laws so as to substantially hamper or burden such constitutional right to have such shipment made and to receive and retain the same for personal use."<sup>82</sup> The Wilson Law does not change the rule; that law simply forbids his selling the liquor brought into the State.<sup>83</sup> And the Supreme Court of the United States

<sup>80</sup> *State v. Fuller*, 33 N. H. 259; *Commonwealth v. Kimball*, 24 Pick. 359; 35 Am. Dec. 326.

<sup>81</sup> *In re Raher*, 140 U. S. 545; 11 Sup. Ct. 865 (reversing 43 Fed. 556). To same effect. *In re Spiekler*, 43 Fed. 653; *In re Vliet*, 43 Fed. 761; *Commonwealth v. Calhame*, 154 Mass. 115; 27 N. E. 881; *State v. Fraser*, 1 N. D. 425; 48 N. W. 343.

This question now, however, is practically academic.

Liquors imported upon actual

arrival are subject to the State laws; and cannot be sold if prohibition is there in force. *State v. Fulker*, 43 Kan. 237; 22 Pac. 1020; 7 L. A. 183.

<sup>82</sup> *Schwedes v. State*, 1 Okla. Cr. 245; 99 Pac. 804; citing *Vance v. Vondercook Co.*, 170 U. S. 438; 18 Sup. Ct. 674; 42 L. Ed. 1100; and *Heyman v. Southern Ry. Co.*, 203 U. S. 270; 27 Sup. Ct. 104; 51 L. Ed. 178.

<sup>83</sup> *Pabst Brewing Co. v. Crenshaw*, 198 U. S. 17; 25 Sup. Ct. 552; 49 L. Ed. 925.



has declared that every resident of a prohibition State "is free to receive for his own use liquor from other States, and that the inhibitions of a State statute do not operate to prevent liquors from other States from being shipped into such State on the order of a resident for his use."<sup>84</sup> But this rule will not permit a brewery in one State to establish an agency in another State to sell liquors on orders given him for the purchasers' own private use, to be shipped from the State in which the liquor is manufactured, by a common carrier, directly to the purchaser.<sup>85</sup> Nor does it permit the bringing in of liquors for sale; and if brought in for sale they may be seized as soon as they pass into the exclusive possession of the consignee, even though that be upon the station grounds of the carrier.<sup>86</sup> And although a person may import liquors for his own private use, yet if after their arrival he changes his purpose and keeps them for sale, they may be seized as contraband goods. "After the liquors are removed to one's home on the theory that [the] same was ordered by the consignee from another State and received by him at the depot of the carrier, and also by him transported for the purpose and intention of being for his personal use, but afterwards he should change his intention and have them in his possession in his home for sale, contrary to law, the burden would be upon the Government, however, and the presumption would be in favor of the claimant, subject to be rebutted by proof. When the liquors are received at the depot by the consignee, if he then and there has the same in his possession with the intention of bartering or selling the same contrary to law, the same would, under such circumstances, be subject to forfeiture, the burden rest-

<sup>84</sup> *Vance v. Vanderecook Co., supra*; *Heyman v. Southern Ry. Co., supra*; *Delameter v. South Dakota*, 205 U. S. 93; 27 Sup. Ct. 447; 51 L. Ed. 724; *High v. State (Okla. Cr.)*, 101 Pac. 115; *McCord v. State (Okla. Cr.)*, 101 Pac. 280; *State v. Eighteen Casks of Beer (Okla.)*, 104 Pac. 1093; *Hudson v. State (Okla. Cr.)*, 101 Pac. 275.

<sup>85</sup> *Delameter v. South Dakota*, 205 U. S. 93; 27 Sup. Ct. 447; 51 L. Ed. 724.

<sup>86</sup> *State v. Eighteen Casks (Okla.)*, 104 Pac. 1092; *Foppiano v. Speed*, 199 U. S. 501; 26 Sup. Ct. 138; 50 L. Ed. 288. A sale on the carrier's premises would be illegal. *State v. Eighteen Casks, supra*.



ing upon the State, with the presumption likewise in favor of the claimant, subject to be rebutted by proof.”<sup>87</sup>

**Sec. 204. Leaving liquors unreasonable length of time in carrier's possession.**

As is well known, if goods be left in the hands of the carrier at the place of their destination after notice by it to the consignee of their arrival, and a sufficient length of time has elapsed after the receipt of the notice to enable him to take them from its possession, the relation of the carrier to such goods is that of warehouseman and not that of a carrier. And while the relationship between the consignee and the carrier is that of carrier, the liquors he has brought into the State is protected by the interstate commerce clause, and even after their storage. But if the consignee, after notice and full opportunity to receive them, designedly leaves them in the hands of the carrier for an unreasonable time, the conduct of the consignee, if affirmatively alleged and proven, will justify the court in holding that liquors so dealt with have come under the operation of the Wilson Law, because constructively delivered.<sup>88</sup>

**Sec. 205. License—Tax—Regulating sale.**

“The business of interstate commerce cannot be taxed at all, and as the right to bring goods from another State includes the right to sell them and to solicit sales therefor, as well as to deliver the property sold, the State cannot tax the right to sell or deliver, or to solicit sales, whether in the form of license tax or otherwise. It is immaterial that the tax is without discrimination, as between domestic and foreign drummers, as interstate commerce cannot be taxed at all.”<sup>89</sup> But when

<sup>87</sup> *State v. Eighteen Casks* (Okla.), 104 Pac. 1093; *Schwedes v. State*, 1 Okla. Cr. 245; 99 Pac. 804.

<sup>88</sup> This point is left undecided in *Heyman v. Southern Ry. Co.*, 203 U. S. 270; 27 Sup. Ct. 104; 51 L. Ed. 178; but evidently that is

the leaning of the court. See also *State v. Eighteen Casks* (Okla.), 104 Pac. 1092.

<sup>89</sup> *Judson on Inter. Com.* (1st ed.), § 18; citing *Robbins v. Shelby County Taxing District*, 120 U. S. 489; 7 Sup. Ct. 592; 30 L. Ed. 694; *McCullough v. Mary-*

liquors have reached their destination in the State, they may be taxed as property in common with other property in the State, if the tax be levied without discrimination between domestic and non-domestic goods,<sup>90</sup> whether they are in original packages or not; and this was true before the day of the Wilson act.<sup>91</sup> But the Wilson Law, so far as intoxicating liquors are concerned, has relaxed the rules in a measure on this subject. Thus, where the State of Tennessee exacted a license fee from a person engaged in selling liquors within the State on a ferry boat employed between that State and Arkansas in interstate commerce, it was held that the Federal statute authorized the enactment of the State law, and that the license fee could be exacted.<sup>92</sup> And a license tax imposed upon those engaged in selling beer by the barrel is valid, even though the barrels sold are original packages, a statute or ordinance exacting the license being merely an exercise of the police law, although the State or city derives more or less revenue thereby.<sup>93</sup> So a law requiring all liquors received from without the State to be inspected, and all sold within the State to be also inspected, is a valid exercise of the police power and is permitted under the Wilson act.<sup>94</sup> But a State

land, 4 Wheat. 316; 4 L. Ed. 479; and *Brown v. Maryland*, 12 Wheat. 419; 6 L. Ed. 678; *Sinclair v. State*, 69 N. C. 47.

<sup>90</sup> *American Steel & Wire Co. v. Speed*, 192 U. S. 500; 24 Sup. Ct. 365; 48 L. Ed. 538.

<sup>91</sup> *Woodruff v. Parham*, 8 Wall. 123; 19 L. Ed. 382; *Brown v. Houston*, 114 U. S. 622; 29 L. Ed. 257; *Pittsburg, etc. Coal Co. v. Bates*, 156 U. S. 577; 39 L. Ed. 538.

<sup>92</sup> *Foppiano v. Speed*, 199 U. S. 501; 26 Sup. Ct. 138; 50 L. Ed. — (affirming 113 Tenn. 167; 82 S. W. 222); *Harrell v. Speed*, 113 Tenn. 224; 81 S. W. 840.

<sup>93</sup> *Phillips v. Mobile*, 208 U. S. 472; 28 Sup. Ct. 370; 52 L. Ed. —; affirming 146 Ala. 138; 40

So. 826; *Richard v. Mobile*, 208 U. S. 480; 28 Sup. Ct. 372; 52 L. Ed. —; *Jones v. Yokum* (S. D.), 123 N. W. 272; *Commonwealth v. Newhall*, 164 Mass. 338; 41 N. E. 647; *Kohn v. Melcher*, 29 Fed. 433; *State v. Wheelock*, 95 Iowa, 577; 64 N. W. 620; 30 L. R. A. 429.

*Contra. In re Lebolt*, 77 Fed. 587.

<sup>94</sup> *Pabst Brewing Co. v. Crenshaw*, 198 U. S. 17; 25 Sup. Ct. 552; 49 L. Ed. 925; affirming 120 Fed. 144; *State v. Bixman*, 162 Mo. 1; 62 S. W. 828.

This statute was held not to apply, in its construction to beer shipped *through the State to another State*. *Pabst Brewing Co. v. Crenshaw*, 120 Fed. 144.

cannot require liquors temporarily stored in a State, on their transit for convenience in distributing them in other States, to be inspected and exact a fee for such inspection.<sup>95</sup> A statute of Michigan provided for an annual tax of five hundred dollars on wholesalers and another annual tax of sixty-five dollars on the brewing of liquor, and that no person paying the brewing tax should pay a wholesaler's tax on the liquor brewed under the brewer's tax. It defined wholesalers to be those who sell liquors in quantities of more than three gallons, or more than one dozen quart bottles at a time to any person. It was held that this statute was not in restraint of interstate commerce on the ground that wholesalers of brewed liquors were required to pay an annual tax while brewers were only required to pay sixty-five dollars and not to pay the wholesaler's tax, because in the sale of liquor at a brewery the sale was not at wholesale, the statute forbidding a brewer to establish a warehouse or place of sale elsewhere than at his brewery without the payment of a wholesaler's tax. The statute was held to apply to a foreign brewery sending liquors into the State for storage and sale therein by its agent.<sup>96</sup> A provision of the Constitution of Louisiana provides that no domestic or foreign corporation shall do any business within the State without having at least one known place of business therein and an authorized agent within the State on whom service of process can be made. A foreign corporation sold liquors within the State, to be shipped from Kentucky to New

<sup>95</sup> *Pabst Brewing Co. v. Crenshaw*, 120 Fed. 144. In this case it was held that the provision in the statute that beer made in the State and exported for sale outside of it should be inspected free of charge, was one of which a foreign manufacturer could not complain, and was not an illegal discrimination, since the inspection fee was charged alike on all beer sold within the State, regardless of where it was made.

<sup>96</sup> *People v. Voorhis*, 131 Mich.

398; 91 N. W. 624; 9 Detroit Leg. N. 377; *Indianapolis v. Bieler*, 138 Ind. 30; 36 N. E. 857. (In this Indiana case it was held that a city could pass an ordinance requiring a license of all wholesalers, but not merely of foreign brewers.) *Minneapolis Brewing Co. v. McGillivray*, 104 Fed. 258; *New Iberia v. Erath*, 118 La. 305; 42 So. 945; *State v. Bengsch*, 170 Mo. 81; 70 S. W. 710.

Orleans, and took notes for the purchase price. These notes were payable in New Orleans. It was held that the transaction was valid—an act of interstate commerce—and was, therefore, not within the provision of the State Constitution.<sup>97</sup>

### Sec. 206. Prohibiting solicitation of orders.

Unable to prohibit the shipment of intoxicating liquors into the State, several States have enacted laws prohibiting the soliciting of orders for liquors by agents of liquor dealers of other States, and several of these statutes come under the consideration of the courts. Thus, in Georgia, a State statute prohibited the solicitation of orders for liquors in a prohibition county, and it was held that the law was not void on the ground that it conflicts with the power of Congress to regulate and control interstate commerce, even though the seller and liquor sold be in another State.<sup>98</sup> So a statute making it an offense to act as an agent of either a vendor or purchaser of liquor in any territory of the State in which a sale is prohibited is not in contravention of the Federal Con-

<sup>97</sup> Julius Kessler & Co. v. E. F. Perilloux & Co., 127 Fed. 1011.

A statute requiring all persons soliciting orders for liquors in a State, the liquors thereafter to be shipped into the State to pay a specified tax is void. *Slooman v. Williams D. C. Moebs Co.*, 139 Mich. 334; 102 N. W. 854; 11 Detroit Leg. N. 857. (*Contra*, *People v. Walling*, 53 Mich. 264; 18 N. W. 807.)

Several cases have held that a statute requiring all dealers selling liquors in the State to take out a license is valid. *Keller v. State*, 11 Md. 525; 69 Am. Dec. 226; *Ingersoll v. Skinner*, 1 Denio 540; *Fincannon v. State*, 93 Ga. 418; 21 S. E. 53; but of those cases it cannot be said that they are sound.

An ordinance requiring dealers in liquors to procure a license from a city applies to a non-resident manufacturer who maintains a depot in a city from which sales are made by an agent, whether such sales are made to licensed dealers or consumers. *Duluth Brewing Co. v. Superior*, 123 Fed. 353.

Construction of Georgia Act, 1896, p. 26. *Smith v. State*, 109 Ga. 227; 34 S. E. 325; *Acme Brewing Co. v. Fletcher*, 109 Ga. 463; 34 S. E. 558.

<sup>98</sup> *Rose v. State*, 4 Ga. App. 588; 62 S. E. 117.

This decision took into consideration the Wilson law. *State v. Davis* (S. C.), 66 S. E. 875; *State v. Miller* (W. Va.), 66 S. E. 522.



stitution.<sup>99</sup> And in Ohio it is held that a sale of an original package of liquor by an agent of a manufacturer located in another State is a violation of the local law and the agent cannot claim protection on the ground of an interstate transaction.<sup>1</sup> On the other hand, it has been decided that the Wilson Law providing that liquors carried into a State shall be subject to local police regulations has no application to a sale of liquors by a traveling salesman where the liquors sold are to be transported into the State.<sup>2</sup> And where it was shown that a defendant had solicited orders for liquors, that he received an order which he filled out on a house in another State, that afterwards the liquor came C. O. D. by express and the consignee paid the express company the charges but he paid the defendant nothing for the liquor, it was held that the sale was protected by the interstate clause, although the defendant received a commission on all orders for liquors taken by him if the liquor was accepted by the consignees, but if not accepted it was shipped back at defendant's expense.<sup>3</sup> So a Michigan statute was held void which provided that anyone who comes into or brings into the State liquor or sells liquor to citizens of the State at wholesale, or solicits or takes orders for liquors to be shipped into the State or furnished at wholesale to any person within the State by any person not a resident of the State nor having his principal place of business therein, shall pay a tax specified, is invalid.<sup>4</sup> So a statute making it an offense to solicit orders in a State for liquors to be shipped into another State, with knowledge or reasonable cause to believe that the liquors were to be brought back into the State in violation of its laws, was held to be a regulation of commerce and void.<sup>5</sup> And a like decision was also made that the law was not valid

<sup>99</sup> Hart v. State, 87 Miss. 171;  
39 So. 523.

<sup>1</sup> Stevens v. State, 61 Ohio St.  
597; 56 N. E. 478.

<sup>2</sup> Moog v. State (Ala.), 41 So.  
166.

<sup>3</sup> Donley v. State, 48 Tex. Cr.  
App. 567; 89 S. W. 553.

<sup>4</sup> Sloman v. William D. C.  
Moebs Co., 139 Mich. 334; 102 N.  
W. 854; 11 Del. Leg. N. 857.

<sup>5</sup> Durkee v. Moses, 67 N. H.  
115; 23 Atl. 793. (Overruling  
Dunbar v. Locke, 62 N. H. 442,  
and Jones v. Surprise, 64 N. H.  
243; 9 Atl. 384.)



by reason of the Wilson act having been enacted.<sup>6</sup> And a like decision has been rendered by the Supreme Court of Iowa, where it was sought to punish under the Iowa statute a traveling salesman soliciting orders for liquors to be shipped C. O. D. by his principal in Illinois, the liquor being shipped from the latter State. The order, however, was subject to the acceptance or rejection by his principal.<sup>7</sup> And a like decision was rendered by a United States Circuit Court of Appeals, where the liquors purchased were for the private use of the purchaser.<sup>8</sup> The salesman had solicited orders in Kansas. About the same time the Supreme Court of Kansas held the statute of that State on the subject unconstitutional.<sup>9</sup> But it has been held by a Federal Court of Appeals that the laws of New Hampshire making it unlawful to solicit or take orders in the State for liquor to be delivered without the State, when the solicitor had reason to believe that it was the intention of the purchaser to sell the liquor illegally, was constitutional;<sup>10</sup> and a similar statute, without a clause concerning the evasion of the law, has been held valid recently in Illinois.<sup>11</sup> It has been held in Texas that a statute making it a misdemeanor "to solicit an order for the sale" of intoxicating liquors in prohibition territory was void, because in violation of the interstate commerce law.<sup>12</sup> And it has also

<sup>6</sup> *Corbin v. McConnell*, 71 N. H. 350; 52 Atl. 447.

<sup>7</sup> *State v. Hanaphy*, 117 Iowa 15; 90 N. W. 601; *Wind v. Iler*, 93 Iowa, 316; 61 N. W. 1001; 27 L. R. A. 219.

<sup>8</sup> *In re Beigen*, 115 Fed. 339.

<sup>9</sup> *State v. Hickox*, 64 Kan. 650; 68 Pac. 35. Recently such a statute has been held valid in that State. *State v. Wm. J. Lemp Brewing Co. (Kan.)*, 102 Pac. 504.

See *Kohn v. Melcher*, 29 Fed. 433.

<sup>10</sup> *Long v. Lynch*, 38 Fed. 489; 4 L. R. 831, distinguishing *Bowman v. Chicago & N. W. Ry. Co.*,

125 U. S. 465; 8 Sup. Ct. 689, 1062; 31 L. Ed. 700.

<sup>11</sup> *People v. McBride*, 234 Ill. 146; 84 N. E. 865.

A statute attempting to make the agent of a common carrier the vendor of liquors he delivers to persons in the State, except to persons having State licenses to sell or to the *bona fide* consignee thereof who has in good faith ordered the liquors for his own use, is unconstitutional. *Crescent Liquors Co. v. Platt*, 148 Fed. 894.

<sup>12</sup> *Ex parte Massey* (Tex. Civ. App.); 92 S. W. 1086; *Ex parte Hackney* (Tex. Civ. App.), 92 S.

been held that a statute making it an offense to solicit orders for liquor in such territory through agents, circulars, posters, or newspaper advertisements, was valid.<sup>13</sup>

**Sec. 207. Sales beyond State lines.**

A State has no power beyond its own territorial limits. It, therefore, cannot make it an offense for one of its own citizens where he goes into another State and there sells liquors he has manufactured in his own State in violation of its own laws.<sup>14</sup>

**Sec. 208. Sales to minors and drunkards.**

The interstate laws, however, cannot be stretched so far as to enable an importer to sell liquors to a minor or drunkard in violation of a State statute.<sup>15</sup> Yet a statute making it an offense to knowingly furnish liquor to an inebriate is, as applied to the transportation of liquors by a common carrier from one State to another, unconstitutional, because a regulation of interstate commerce.<sup>16</sup>

**Sec. 209. Burden on defendant to show he is protected by the interstate commerce law.**

The burden is upon a defendant who is charged with violating the State's liquor laws, if his defense is that he is an importer, to show: (1) that he is either an importer or agent of an importer; (2) that in such capacity he received the liquor in question from a State or foreign country; (3) that in such capacity he sold or held this importation by the original unbroken packages; and (4) that he was not making his house or place of business a saloon or tippling place for the rendezvous of persons, thus bringing it within the police power of the State to declare it a nuisance.<sup>17</sup> The *bona fides*

W. 1092; Carter v. State (Tex. Civ. App.), 92 S. W. 1093.

<sup>13</sup> Zinn v. State (Ark.), 114 S. W. 227; State v. J. Bass Co., 104 Me. 288; 71 Atl. 894.

<sup>14</sup> Lindley v. State (Ark.), 120 S. W. 987.

<sup>15</sup> Commonwealth v. Zelt, 138 Pa. St. 615; 21 Atl. 7; 11 L. R.

A. 602; Commonwealth v. Silverman, 138 Pa. St. 642; 22 Atl. 13.

<sup>16</sup> Adams Express Co. v. Commonwealth, 214 U. S. 218; 29 Sup. Ct. 633.

<sup>17</sup> State v. Chapman, 1 S. D. 414; 47 N. W. 411.

of his agency is a question for the jury.<sup>18</sup> The size of the package, however, is not a criterion of the lawfulness of the sale.<sup>19</sup>

### **Sec. 210. Liability of officer serving warrant.**

If an officer is directed by a warrant to seize liquors that are not liable to seizure because of the interstate commerce clause of the Constitution, he is justified in making the seizure, and the warrant is a protection to him. Whether or not the liquor is a commodity within the protection of that clause is a question for the court issuing the warrant and not one to be determined by the officer as a condition precedent to the execution of his warrant.<sup>20</sup>

### **Sec. 211. Shipping liquor under false brand.**

A statute of the United States<sup>21</sup> makes it an offense for any person to ship liquors under any other than their proper brand, and inflicts as a penalty the forfeiture of the liquors, and renders him subject to a fine of \$500. This statute is regarded as highly penal in its character and is strictly construed.<sup>22</sup>

### **Sec. 212. Carrier refusing to accept liquors for transportation.**

While it is the duty of a common carrier to accept all goods, in a safe or reasonable condition, for transportation, without discrimination, yet it may adopt a rule by which it can decline to receive shipments of liquors C. O. D., if the rule applies to all shippers and all locations alike, where the acceptance of such business has resulted in a loss to the company and detriment to its business through unclaimed packages, and has

<sup>18</sup> *Commonwealth v. Bushman*, 138 Pa. St. 639; 21 Atl. 12; *Commonwealth v. Pendergast*, 138 Pa. St. 633; 21 Atl. 12. See *Austin v. Tennessee*, 179 U. S. 343; 45 L. Ed. 224; 21 Sup. Ct. 132.

<sup>19</sup> *In re Beine*, 42 Fed. 545.

<sup>20</sup> *Kalloch v. Newbert (Me.)*, 72 Atl. 736.

<sup>21</sup> U. S. Rev. St. § 3449; U. S. Camp. St. [1901] p. 2277.

<sup>22</sup> *United States v. Twenty Boxes of Corn Liquor*, 123 Fed. 135, affirmed 133 Fed. 910; 67 C. C. A. 214.

had a tendency to annoy or drive its patrons away from it.<sup>23</sup> And if liquors in its possession be seized by the officers of the State to which it is consigned as contraband goods, the carrier may notify the consignor or consignee of the seizure, and request him to defend, and he will then be bound by whatever judgment be rendered, even though the judgment was rendered on default.<sup>24</sup>

<sup>23</sup> *Burk v. Platt*, 172 Fed. 777;  
*Davis Hotel Co. v. Platt*, 172  
Fed. 175.

<sup>24</sup> *American Express Co. v. Mul-*  
*lins*, 212 U. S. 311; 29 Sup. Ct.  
381; 53 L. Ed. —.

## CHAPTER IV.

### REGULATING LIQUOR TRAFFIC.

#### SECTION.

- 213. Extent of discussion in this chapter.
- 214. Statutory requirements as to location of barroom.
- 215. Arrangement of room.
- 216. Screens and curtains.
- 217. Removal of saloon.
- 218. Keeping more than one bar —Barroom.
- 219. More than one license.
- 220. Beneficial interest in more than one license.
- 221. Lamp burning until closing time.
- 222. Keeping door locked.
- 223. List of employes.
- 224. Music in saloon.
- 225. Obstruction of officer's entrance on premises.
- 226. Display of license.
- 227. Signs.
- 228. Sale in unmarked measure.
- 229. Registration of sales.
- 230. Sales on credit.
- 231. Entering saloon in violation of orders not an offense.
- 232. Permitting minors to "enter and remain" in a saloon.
- 233. Minor willfully misstating his age.
- 234. Permitting drunkenness on premises — Selling to drunken man.

#### SECTION.

- 235. Found drunk on licensed premises.
- 236. Power to exclude drunken man from premises.
- 237. Permitting employe to drink storage liquors—Premises.
- 238. Women in saloons — Wine rooms.
- 239. Prostitutes visiting premises.
- 240. Permitting premises to be a brothel.
- 241. Knowingly harboring thief on premises.
- 242. Gambling on premises.
- 243. Suffering gambling or betting on premises—English statute.
- 244. Servant permitting gambling—Knowledge of Gambling.
- 245. Keeping a betting house.
- 246. Public dispensary.
- 247. Sales by public agents.
- 248. Agent's liability on his bond.
- 249. Transportation or conveyance of liquors.
- 250. Limiting number of saloons.
- 251. Saloon for negroes.
- 252. Liquor sales carried on with other business.
- 253. Criminal Liability of owner and landlords.
- 254. Police regulations, enforcement by mandamus.



**Sec. 213. Extent of discussion in this chapter.**

In many of the other chapters have been discussed questions relating to the regulation of the liquor traffic and the sales of intoxicating liquors. This is particularly true of the concerning the constitutionality of statutes and the powers of municipalities to control and regulate the traffic. Necessarily these discussions are not to be repeated. In this chapter is discussed not so much the power to regulate as the extent to which the power in particular instances has been carried—a construction of statutes upon the subject; and in addition thereto have been added some instances not easy to classify under any head.

**Sec. 214. Statutory requirements as to location of bar-room.**

The opposition to the retail sale of intoxicating liquors has at times taken on almost fantastic rules and regulations. Thus, in some instances, statutes have required the removal of all tables and chairs from where liquors are sold for consumption, while other States require all liquors to be served at tables where the consumer can be seated thereat while drinking the liquor he has purchased. In the history of the temperance movement statutes have required all evidence of drinking to be screened from the public, so there would be as little allurements or enticement held out to the youth as possible, and where the evidence of drinking would not be flaunted in the face of the public. Then statutes have been enacted forbidding sales of liquor to be consumed on the premises where sold. All these statutes are simply expressions of opinions concerning what measures tend to suppress intemperance and are evidences of efforts in that direction. By compelling the sale of liquors in the open view it is the belief of many that, owing to the public obloquy cast upon the use of intoxicating liquors, men would refrain from drinking intoxicating liquors in view of the public, and not being able to procure it elsewhere by the drink would, in a large measure, at least, refrain from its use. With this end in view statutes have been enacted compelling the location of saloons on the

public streets with the entrance opening thereon, and even forbidding, in a few States, any other entrance. And they often require the view of the saloon to be unobstructed, at least during the time liquors may not be sold. In the latter instance the object is to prevent violations of the law, and if such violations do occur, then to render them easy of detection. Thus, a statute of Iowa required liquors to be sold in "a single room having but one entrance or exit, and that opening upon a public business street." While it was in force a saloon had one entrance opening into the street and another opening into an office, and this office had an exit upon another street. It was held that this was not a compliance with its provisions.<sup>1</sup> In that same State the "mulet" law required the liquor traffic to be conducted in a single room opening into the street and the bar to be established "in plain view of the street," unobstructed in any way; and it was held that a saloon located in a basement, with the bar thirty-five feet from the sidewalk, having the tops of its windows but four feet above such walk, was a violation of that law.<sup>2</sup> So sales in a small room, cut off from the barroom by a partition, in which is kept food from which to supply lunches to customers of the barroom, is not permitted by this statute;<sup>3</sup> and so is the use of a cellar, though having an entrance from the street, in which to store beer, when used in connection with the barroom.<sup>4</sup> But the statute has no relation to a brewery which operates a saloon in connection therewith, though the saloon be a nuisance in law.<sup>5</sup> This Iowa law forbids all connection of the saloon with other rooms in the building, and a connection with a cellar below it is prohibited.<sup>6</sup> In that State, where the saloon was located in a basement, reached by a

<sup>1</sup> *Ritchie v. Zalesky*, 98 Iowa 589; 67 N. W. 399; *Schlosser v. Mould* (Iowa), 121 N. W. 520.

<sup>2</sup> *McColl v. Rally*, 127 Iowa 633; 103 N. W. 972.

<sup>3</sup> *Garrett v. Bishop*, 113 Iowa 23; 84 N. W. 923; *State v. Bussamus*, 108 Iowa 11; 78 N. W. 700; *State v. Kline*, 107 Minn. 184; 119 N. W. 656 (wine stalls).

<sup>4</sup> *Garrett v. Bishop*, *supra*; *State v. Bussamus*, 108 Iowa 11; 78 N. W. 700; *Bartel v. Hobson*, 107 Iowa 644; 78 N. W. 689.

<sup>5</sup> *Orke v. McManus* (Iowa), 115 N. W. 580.

<sup>6</sup> *Jones v. Byington*, 128 Iowa 397; 104 N. W. 473.

long passage way from the street, it was held not to comply with the statute.<sup>7</sup> Even where beer was kept in a cold storage warehouse several blocks away and removed to the saloon as needed, it was held to be a violation of the statute, the traffic not being conducted "in a single room."<sup>8</sup> But where a statute made it unlawful to keep liquor at one's place of business, the keeping of liquor in a room used solely for storage, which is locked and only opened when liquors are to be taken out, to which the public is not invited and where no business is transacted, is not a violation of its provisions, for a place of business within the meaning of such statute is a public place of business in contradistinction to a private place of business. In such an instance the word "business" is not synonymous with the employment, vocation, or even occupation, but is used in the sense of trade, commerce or traffic.<sup>9</sup> So where saloon keepers were forbidden to construct any booth, stall or enclosure of any kind in connection with their saloons, enclosures used for secret lounging, drinking and immoral practices were illegal, though others connected therewith were innocently maintained and necessary.<sup>10</sup> A statute requiring a saloon to be located on the ground floor, and front on a public street, provided with windows or glass doors, does not apply to a cold storage warehouse from which liquors are sold in wholesale quantities and not for consumption there.<sup>11</sup> A statute of this kind applies to persons who obtained their licenses before it was adopted.<sup>12</sup> Though the statute requires the applicant to distinctly give a description where the saloon is to be located for which he applies for a license, and the licensing board can only issue a license for the place described

<sup>7</sup> *McColl v. Rally*, 127 Iowa, 633; 103 N. W. 972.

<sup>8</sup> *Bell v. Hamm*, 127 Iowa 343; 101 N. W. 475.

<sup>9</sup> *Roberts v. State*, 4 Ga. App. 207; 60 S. E. 1082.

<sup>10</sup> *State v. Barge*, 82 Minn. 256; 84 N. W. 911; *State v. Kline*, 107 Minn. 184; 119 N. W. 656.

<sup>11</sup> *Teegarden v. State*, 39 Ind. App. 15; 79 N. E. 211. See *State*

*v. Slentz*, 27 Ind. App. 557; 61 N. E. 793; *Slentz v. State*, 27 Ind. App. 956; 61 N. E. 956.

(These last two cases are on the sufficiency of an indictment under the statute referred to.)

<sup>12</sup> *Nelson v. State*, 17 Ind. App. 403; 46 N. E. 941. See also *People v. White*, 127 Mich. 428; 86 N. W. 992; 8 Detroit Leg. N. 397.

in such application, yet their action in granting the license is not an adjudication that the room licensed complies with the statute; and if it does not, and the licensee conducts a liquor business therein, he may be prosecuted.<sup>13</sup> Under such a statute a room situated in a hotel back of the cloak room is a violation of its provisions, though it had long been maintained there.<sup>14</sup> Where a statute required a retailer of liquors to provide a room for their sale separate and apart from any other business of any kind, and it was shown that the accused leased two rooms, in one of which he had his bar, the other one he sublet to his barkeeper for a card and pool room, in which the barkeeper served liquors from the bar, that the accused paid the light and water bills for the back room, owned all the furniture in it, honored checks with his initials on them given to customers of the pool room by giving liquor in exchange for them at his bar, and received a share of the profits arising from the operation of the pool room, it was held that he was interested in the pool room and had violated the provisions of the statute above referred to.<sup>15</sup>

### Sec. 215. Arrangement of room.

The use of chairs and tables in a barroom or saloon may be forbidden, and a municipality may adopt an ordinance to this effect.<sup>16</sup> So the State may forbid lounging places or wine rooms connected with the saloon or barroom.<sup>16\*</sup> So the Legislature may provide that liquor shall be sold only in a single

<sup>13</sup> *State v. Harrison*, 162 Ind. 542; 70 N. E. 877. See *Gray v. Commonwealth*, 9 Dana 300; 35 Am. Dec. 136.

<sup>14</sup> *People v. White*, 127 Mich. 428; 86 N. W. 992; 8 *Detroit Leg. N.* 397; *Schlosser v. Mould (Iowa)*, 121 N. W. 520.

In Nova Scotia a statute of this kind has been upheld. *Queen v. McDonald*, 26 N. S. 402.

<sup>15</sup> *Mason v. State*, 170 Ind. 195; 83 N. E. 613.

To solicit orders in saloons and

fill them from another room where it is stored is not a sale "in a single room having but one entrance or exit, and that opening on a business street," the orders being delivered in the saloons and there paid for. *Bartel v. Hobson*, 107 Iowa 644; 78 N. W. 689.

<sup>16</sup> *Brown v. Lutz*, 36 Neb. 527; 54 N. W. 960.

<sup>16\*</sup> *State v. Kline (Iowa)*, 119 N. W. 656.



room, having only one entrance or exit; and a room having a front entrance and also a back door unlocked, three feet above the ground, with no steps leading up to it, is a violation of its provisions.<sup>17</sup>

### Sec. 216. Screens or curtains.

A statute requiring all screens and blinds to be removed so that there may be an unobstructed view of the bar and bar-room does not apply to wholesalers but only to retailers.<sup>18</sup> Where the interior of the room can only be seen by stooping down and peering through a slot blind, the statute is violated, for the statute requires a clear view of the entire interior of the room without making unusual efforts to obtain it.<sup>19</sup> The statute applies to Sundays as well as to week days;<sup>20</sup> and to common victualer's licensed to sell liquor.<sup>21</sup> But if a liquor dealer has a room which fronts upon two streets, and he puts a partition through its center crosswise so as to make two rooms, one fronting on each street, and then obtains a license for each room, he is not required to remove such partition on the theory that the view of both places must be from both streets.<sup>22</sup> The entire premises must be kept open to view, not merely the place where sales are made.<sup>23</sup> If screens be up the offense is committed, though no police officer has

<sup>17</sup> State v. Roney, 133 Iowa 416; 110 N. W. 604.

<sup>18</sup> Ritchie v. Zalesky, 98 Iowa 589; 67 N. W. 399; Queen v. Power, 28 Nov. Sco. 373 (statute valid).

<sup>19</sup> Commonwealth v. Costello, 133 Mass. 192.

An employe does not violate the statute where he has nothing whatever to do with placing or maintaining the screens. *In re Adamek* (Neb.), 118 N. W. 109.

<sup>20</sup> Commonwealth v. Auberton 133 Mass. 404; Commonwealth v. Casey, 134 Mass. 194; *People v.*

*Smith*, 145 Mich. 530; 108 N. W. 1072; 13 Det. L. N. 651.

<sup>21</sup> Commonwealth v. Salmon, 136 Mass. 431.

<sup>22</sup> Commonwealth v. Barnes, 140 Mass. 447; 5 N. E. 252; Commonwealth v. Sansville, 140 Mass. 450; 5 N. E. 254.

<sup>23</sup> Commonwealth v. Worcester, 141 Mass. 58; 6 N. E. 700; Commonwealth v. Kane, 143 Mass. 92; 8 N. E. 880; *Nelson v. State*, 17 Ind. App. 403; 46 N. E. 941; *Componovo v. State*, (Tex. Cr. App.); 39 S. W. 1114; *Nelson v. State*, 17 Ind. App. 403; 46 N. E. 941.



ordered them taken down or notified the saloon keeper they were so kept up as to violate the law.<sup>24</sup> Curtains that so obscure the room that it cannot be seen from the outside how the business is conducted, is a violation of the statute, although other parts of the room can be plainly seen; and it is immaterial for what purpose the curtains are maintained.<sup>25</sup> The maintenance of a painted glass window is a screen if it obscures the view of the interior;<sup>26</sup> but the closing of one shutter to a window, if another window affords a view of the entire room, is not an offense.<sup>27</sup> In Massachusetts it is held that the statute applies to a druggist selling liquors.<sup>28</sup> The running of a partition through the licensed room and using the part cut off for another purpose, is not a violation of the law if the part in which liquor is sold is open to the view of the public.<sup>29</sup> In proving the offense, where the statute requires the barroom to be open to the public from the street or alley, it is not necessary to show that the street or alley had been dedicated to the public; it is sufficient to show that it was open to the use of the public.<sup>30</sup> If the licensee's servant place a screen so as to hide the barroom, the licensee will be liable for his act.<sup>31</sup> It is immaterial to the commission of the offense that the licensee is not, in fact, carrying on the liquor traffic when the screens are up;<sup>32</sup> and one not licensed may commit the offense.<sup>33</sup> It is a question of fact for the jury

<sup>24</sup> Commonwealth v. Roushe, 141 Mass. 321; 6 N. E. 383.

<sup>25</sup> Commonwealth v. Moore, 145 Mass. 244; 13 N. E. 893; Commonwealth v. Kane, 143 Mass. 92; 8 N. E. 880; People v. Smith, 145 Mich. 530; 108 N. W. 1072; 13 Det. L. N. 561.

A movable screen sufficient to obstruct a view of the interior through the door or window is a violation of the statute. Woods v. Varley (Neb.), 118 N. W. 1114; Woods v. Kirvohlavek (Neb.), 118 N. W. 1115.

<sup>26</sup> Commonwealth v. Sawtelle, 150 Mass. 320; 27 N. E. 54.

<sup>27</sup> Commonwealth v. McDon-

nough, 150 Mass. 504; 23 N. E. 112.

<sup>28</sup> Commonwealth v. Brothers, 158 Mass. 200; 33 N. E. 386.

<sup>29</sup> State v. Andrews, 82 Tex. 73; 18 S. W. 554; Shultz v. Cambridge, 38 Ohio St. 659.

<sup>30</sup> People v. Kennedy, 105 Mich. 75; 62 N. W. 1020.

<sup>31</sup> Commonwealth v. Kelley, 140 Mass. 441; 5 N. E. 834.

<sup>32</sup> Commonwealth v. Casey, 134 Mass. 194.

<sup>33</sup> Commonwealth v. Salmon, 136 Mass. 431.

As to rear door, see Commonwealth v. Ferder, 141 Mass. 28; 6 N. E. 239.

whether or not the screen or obstruction prevents the proper view of the barroom within the meaning of the law.<sup>34</sup> Where a statute required the barroom to "be so arranged, either with a window or glass door, as that the whole of said barroom may be in view from the street or highway, and no blinds, screens or obstructions to the view" shall "be arranged, erected or placed so as to prevent the entire view of said room from the street or highway upon which the" barroom was situated during the "days and hours when the sales" of liquor were prohibited by law, it was said: "To obstruct the view at certain times into such a room so situated and arranged is an offense. The offense consists in obstructing the view into a room located and arranged as the law requires, not in obstruction of the view into any kind of a room where liquors might be kept and sold. Sales can be lawfully made only in such a room as the law designates. Obstructing the view at certain times into such a room constitutes the offense."<sup>35</sup> Where a barroom located back of the cloak room of a hotel so it could not be seen had been used ten years before the statutes on screens were enacted, it was held that its use thereafter was a violation of the statute.<sup>36</sup> Such a statute includes a barroom used as an hotel office.<sup>37</sup> The use of an ell, the interior of which is not visible from the street, is not the maintenance of a screen nor a device for the obstruction of the view of the barroom.<sup>38</sup> It is a question for the

<sup>34</sup> *People v. Lacy*, 124 Mich. 180; 82 N. W. 826; *Commonwealth v. McDonnough*, 150 Mass. 504; 23 N. E. 112.

<sup>35</sup> *State v. Slentz*, 27 Ind. App. 559; 61 N. E. 793; *Slentz v. State*, 27 Ind. App. 700; 61 N. E. 956.

<sup>36</sup> *People v. White*, 127 Mich. 428; 86 N. W. 992; 8 Detroit Leg. N. 397.

<sup>37</sup> *People v. Carrell*, 118 Mich. 79; 76 N. W. 118.

<sup>38</sup> *State v. W. J. Langran & Co.* (Tex. Civ. App.), 87 S. W. 713.

As to what constitutes an obstruction to the view or screen, see *Lingelbach v. Hobson* (Iowa), 107 N. W. 168; *State v. Mathis*, 18 Ind. App. 608; 48 N. E. 645; *McColl v. Rally*, 127 Iowa 633; 103 N. W. 972, and what not, see *Plass v. Clark*, 71 N. Y. App. Div. 488; 76 N. Y. Supp. 2.

Charging the offense in the language of the statute is usually sufficient. *People v. Smith*, 145 Mich. 530; 108 N. W. 1072; 13 Det. L. N. 651.

jury whether the alleged screen was an obstruction of the view of the saloon interior.<sup>39</sup>

### **Sec. 217. Removal of saloon.**

Where a saloon is not licensed for a particular location, but the license is a permit to keep a saloon in a particular district, a city or license officials cannot prohibit its removal from one location to another, nor make it necessary to first secure permission from some official for its removal.<sup>40</sup>

### **Sec. 218. Keeping more than one bar—Barroom.**

A statute forbidding any one person to keep more than one bar is not violated by keeping an additional temporary bar in a hotel for one day. So a temporary bar so used in the hotel hall adjoining the regular bar does not constitute the hall a barroom.<sup>41</sup>

### **Sec. 219. More than one license.**

It is a valid police regulation for the Legislature to endow a local licensing board with power to grant more than one license to the same person for separate and distinct places for the sale of liquors.<sup>42</sup>

### **Sec. 220. Beneficial interest in more than one license.**

A statute forbade anyone to have "a beneficial interest in more than one license." While it was in force A sold a public house to B, but the license was not transferred to B as it might be. In the meantime A bought a public house from C, but in this case the license was also not transferred. It was held that A did not have a "beneficial interest in more than one license" as the statute forbade.<sup>43</sup>

### **Sec. 221. Lamp burning until closing time.**

Where a statute required a lamp to be kept burning in a saloon until closing time, it was held that it meant until the

<sup>39</sup> Commonwealth v. Auberton,  
133 Mass. 404.

<sup>40</sup> *In re Brodie*, 38 Up. Can. 580.

<sup>41</sup> *King v. Lewis*, 10 Can. Cr.  
Cas. 184.

<sup>42</sup> *In re Pittsburg Brewing Co.*,  
16 Pa. Super. Ct. Ap. 215.

<sup>43</sup> *Regina v. O'Meare*, 14 Vict.  
L. R. 516.

saloon actually closed and not until the law required it to be closed.<sup>44</sup>

### **Sec. 222. Keeping door locked.**

A statute of Australia required the bar door of a public house to be "locked" during the time liquors could not be sold. It was held that this required the door to be securely fastened; and where a door without a handle could be opened by a half turn of the key when it was in the lock, the key thus serving the purpose of a handle, the door was not locked as long as the key was in the lock.<sup>45</sup>

### **Sec. 223. List of employes.**

The Iowa Code <sup>45\*</sup> requires a person operating a saloon to file with the county auditor a list of the names of all persons he employs about the place. In the construction of this statute, however, it was held that if he employed no person about the place, but conducted the saloon himself, then he need not file such a list nor make any report concerning the matter whatever.<sup>46</sup> But this statute requires the proprietor of a saloon to list the name of his son, if he permits him to sell liquors for him.<sup>47</sup> This statute applies to any persons employed about the saloon for any purposes whatsoever.<sup>48</sup>

### **Sec. 224. Music in saloon.**

Many statutes prohibit music in saloons, and make it an offense to permit it therein. In an instance of this kind the evidence showed that the music was in a room in the rear of the barroom. This room was used for the accommodation of the saloon keeper's customers. It was separated from the barroom by a thin board partition with door openings. It was held that the court was justified in saying to the jury

<sup>44</sup> *Rex. v. Hammerschlag*, 21 *Juta* 399.

<sup>45</sup> *Graham v. Gubbins*, 26 *Aust. L. T.* 181; 11 *Aust. L. R.* 81.

<sup>45\*</sup> § 2448, Subd. 4.

<sup>46</sup> *Jones v. Mould*, 138 *Iowa* 683; 116 *N. W.* 733.

<sup>47</sup> *Jones v. Byington*, 128 *Iowa* 397; 109 *N. W.* 473.

<sup>48</sup> *Pumphrey v. Aanderson* (*Iowa*), 119 *S. W.* 617.



that the room so cut off by the partition was used by the defendant in connection with his barroom, and it constituted and was a part of the saloon.<sup>49</sup> But a statute which forbids a saloon keeper to keep on exhibition or suffer to be kept on exhibition in his saloon a musical instrument for the purpose of performing or having it performed upon in his saloon, does not apply to a musical instrument that is run by machinery which is started by dropping a coin into it. The instrument such a statute forbids is one that the saloon keeper himself performs upon, or engages some one else to perform upon it.<sup>50</sup>

### **Sec. 225. Obstructing officer's entrance on premises.**

An English statute makes it an offense for any person, by himself or by any person in his employ or acting by his direction or with his consent, to refuse or fail to admit any constable in the execution of his duty demanding to enter at any time the saloon for the purpose of preventing or detecting the violation of the liquor licensing act.<sup>51</sup> Any person who, by himself, or by any person in his employ or acting by his direction or with his consent, refuses or fails to admit any constable in the execution of his duty demanding to enter in pursuance of this statute is liable to a penalty. Under this statute it is said that the constable is not bound to give special reasons to the licensed person before entering the licensed premises, yet in case of a dispute as to the right of entry he will not be justified, without being able to show some reasonable ground to the court for thinking that the statute was about to be or had been violated. To prove the offense of refusing admission the constable must allege and prove some reasonable ground for

<sup>49</sup> *State v. Barnett*, 110 Mo. App. 584; 85 S. W. 615. In this case the saloon keeper testified that he had instructed his clerk not to permit musical instruments to be kept or used on the premises; but it was held that this was no defense unless he did so in good faith for the purpose

of preventing the use of such instruments. See *Bearley v. Morley* [1899], 2 Q. B. 121; 63 J. P. 582; 68 L. J. Q. B. 722; 47 W. R. 474; 15 T. L. R. 392.

<sup>50</sup> *Febur Sterling Music Co. v. Weizz*, 121 Pac. 1099.

<sup>51</sup> 37 and 38 Vict. c. 49, § 16.



entering. If, however, the constable says he wants to see if there was anything wrong in the house, as he was going a round of visiting all the licensed houses, this will be deemed a sufficient reason for demanding entry.<sup>52</sup> If he is unable to give any sufficient reason he may properly be excluded.<sup>53</sup> Accordingly, where a publican let a room to a society known as the Royal Antediluvian Order of Buffaloes, and a constable, without stating any reason, demanded admission to the room whilst a meeting was taking place, it was held that he was properly refused.<sup>54</sup> There is no limit as to the hour of demanding admission, but the court will always consider whether the time was reasonable. Where a constable had visited C's house twenty minutes previously, but hearing a noise again demanded an entry, and C's wife being at the door and saying he should not get in till he had heard her opinion of him, yet after some abuse he was allowed to go in, the husband, C, knowing nothing of what had taken place outside, it was held that this was no evidence that C had refused admittance as he was not bound by the acts of his wife.<sup>55</sup> Where the appellant was licensed to sell beer "by retail in order that it may be consumed in the said dwelling house of the said T, and in the premises thereunto belonging," it was held that the license included an outhouse though only used as a cellar.<sup>56</sup> A constable is not entitled to admission to a private room upon the ground that he desires to prevent or detect offenses.<sup>57</sup> In Nova Scotia, a statute authorized a policeman to enter a house at any time where liquors were reputed to be sold, or where he believed liquors were kept for sale or disposal contrary to law. It was held that he could

<sup>52</sup> Regina v. Dobbins, 48 J. P. 182.

<sup>53</sup> Duncan v. Dowding [1897], 1 Q. B. 575; 61 J. P. 280; 66 L. J. Q. B. 363; 76 L. T. 294; 45 W. R. 383; 13 T. L. R. 290; 18 Cox C. C. 527.

<sup>54</sup> Duncan v. Dowding, *supra*.

The question was raised, but not decided, whether a publican could be convicted because a guest who

occupied a private room refused admission.

<sup>55</sup> Caswell v. Hundred House J. J., 54 J. P. 87.

<sup>56</sup> Regina v. Tott, 25 J. P. 327; 30 L. J. M. C. 177; 4 L. T. 306; 9 W. R. 663.

<sup>57</sup> Duncan v. Dowding, 66 L. J. Q. B. 369 [1893] 1 Q. B. 575; 76 L. T. 294; 45 W. R. 383; 18 Cox C. C. 527; 61 J. P. 280.

not enter late at night on merely seeing a light burning and hearing voices inside the house, there being no evidence of disorder, when he had no reason for his suspicions except information from a person some days previously that liquors were being sold there.<sup>58</sup> An honest refusal to admit a constable into a hotel bar cannot be construed into a willful delay of admittance.<sup>59</sup> Only a person who has the legal right to give or not give admission can be charged with the offense of delaying admission to a saloon within the meaning of a statute making it an offense to delay an officer's admission to a place licensed to sell liquors.<sup>60</sup> An officer had watched a number of persons entering a hotel on Sunday, and upon going in he found the door leading to the bar locked, and was told the defendant was upstairs. Upon the defendant coming down, the officer asked him to open the door leading to the bar but the defendant refused, saying he would be liable to a fine if he did so; that the keys were upstairs, and the officer, if he pleased, might open it. The offer was not accepted by the officer. The defendant *bona fide* believed that he was not allowed to open the door on Sunday. It was held that he was not guilty of a willful delay in opening the door.<sup>61</sup> A person who is apparently assisting in conducting the business of a licensed victualer may, in the absence of evidence that he does not act in that capacity, be convicted of willfully delaying admission to the licensed premises.<sup>62</sup>

<sup>58</sup> White v. Beckham, 26 N. S. 50.

<sup>59</sup> Thomas v. Ivey, 12 Austr. L. T. 190; Buttons v. Justice, 16 Vict. L. R. 604; 12 Austr. L. T. 83.

<sup>60</sup> Ellis v. Dempster, 12 Austr. L. T. 216.

<sup>61</sup> Buttons v. Justices, 16 Vict. L. R. 604; 12 Austr. L. T. 83.

<sup>62</sup> Devine v. O. Sullivan, 23 Vict. L. R. 75; 19 Austr. L. T. 3; 3 Austr. L. R. (C. N.) 33.

One who throws to the ground

a drunken policeman making an unprovoked attack upon him is not guilty of the offense of resisting an officer. United States v. Fortin, 1 Phillipine 299.

In New York when the outer door of a hotel is open a police officer may go into every part of the hotel to search for violators of the law, and forcible exclusion from any room in it constitutes resistance to an officer. People v. Miller, 79 N. Y. St. 1122.

**Sec. 226. Display of license.**

If a statute requires a dealer to post up in a conspicuous place in his saloon his license, a failure to do so will render him liable; and there must be a substantial compliance with its provisions and not a posting up where it will be difficult to see it. The object of such a statute is twofold: one, that the officers of the law may easily ascertain whether or not the liquor dealer is selling liquor in violation of the law; and the other, that his would-be customers may ascertain if they are assisting him in its violation by purchasing liquors from him.<sup>63</sup> Where a statute required a license to be displayed in a window facing the street from which a door was opened into a room in which liquors were sold, it was held that it was violated by placing it on a wall in the room, though it could be plainly seen thereon through a portion of the window not covered by the window curtain.<sup>64</sup>

**Sec. 227. Signs.**

A statute forbade the use of a sign for a saloon where none was situated, and a licensed dealer on the expiration of his license took out a license for a temperance hotel, but left his saloon sign up, reading, "North California Hotel, Joseph Loiseau," taking away that part of the sign indicating that he had a license to sell intoxicating liquors. It was held that he had not violated the statute by maintaining an improper sign.<sup>65</sup>

**Sec. 228. Sale in unmarked measure.**

In England liquor sold at retail and not in a cask or bottle in a quantity of a half pint or over must be sold "in measures marked according to the imperial standards," and if the sale be made in an unmarked measure a penalty is incurred and the measure liable to forfeiture.<sup>66</sup> In construing this statute it is said by an acknowledged authority: <sup>67</sup> "The penalty in this section is incurred only by the person who sells

<sup>63</sup> *Schwartz v. State*, 32 Tex. Cr. Rep. 387; 24 S. W. 28.      Leg. 139. See *King v. Orland*, 8 Cr. Can. Cas. 208.

<sup>64</sup> *In re Chapman* (N. Y.), 119 N. Y. Supp. 352.

<sup>66</sup> 35 and 36 Vict. c. 94, § 8.

<sup>67</sup> *Patterson's Licensing Acts*

<sup>65</sup> *Carpeau v. Loiseau*, 12 Rev. (19 ed.), p. 355.

or suffers his servants to sell and act in contravention of the section. There may be cases where the keeper of the house shows successfully that he did not suffer his servants to sell in measures not marked, as where the servant has, in disregard of his order, so sold. This penalty will apply to unlicensed as well as licensed persons selling, and is a cumulative penalty. A publican who uses earthen mugs, and serves customers with them, impliedly represents them to be of imperial measure, and if they are unstamped they will be liable to seizure.<sup>68</sup> It has been held that if a customer asks for a quantity of liquor, not under any usual denomination of imperial capacity, but by some local name, and the quantity supplied equals or exceeds half a pint, as, for example, a 'blue of beer,' which is about one-third of a quart, the seller is liable under this section."<sup>69</sup> "A man asked for a 'schooner' of beer at a public house, a schooner being a glass tumbler capable of holding about a third of a quart. He was supplied with one filled from the counter pump, and paid 2 *d.* It was held by the Court of Justiciary in Scotland that he [the seller] had contravened an enactment corresponding to Section 8."<sup>70</sup> But where the customer asks for a glass of beer or other quantity which is not a known legal measure of capacity, and which does not exceed or equal half a pint, then no offense will be committed by the seller, whatever may be the capacity of the glass."<sup>71</sup> "In *Addy v. Blake*,<sup>72</sup> B went into a licensed

<sup>68</sup> Citing *Regina v. Aulton*, 30 L. J. M. C. 129; 25 J. P. 69; 3 E. & E. 568; 3 L. T. 699; 9 W. R. 278; 16 Cox C. C. 259; *Washington v. Young*, 19 L. J. Exch. 348; 5 Exch. 403.

<sup>69</sup> "Notwithstanding the Weights and Measures Act [1878] (41 and 42 Vict. c. 49), § 22." Citing *Payne v. Thomas*, 60 L. J. M. C. 3; 53 J. P. 824; 63 L. T. 456; 17 Cox C. C. 212; 39 W. R. 240. "The language of § 8 [above quoted in part] is that every person shall sell all liquors, if not in cask or bottle, or if not less

than half a pint, in measures marked according to imperial standards. That is general and imperative." *Ibid.*, per Hawkins, J.

<sup>70</sup> Set forth at the beginning of this section. Citing *Riddell v. Neilson*, 5 F. (J. C.) 57.

<sup>71</sup> Citing *Craig v. McPhee*, 10 Ct. Sess. Cas. (4th series) 51; 48 J. P. 115. "It is under this section a person may be convicted for selling by the 'long pull.'" *Patterson's Licensing Act* (19th Ed.), p. 356.

<sup>72</sup> 19 Q. B. Div. 478; 51 J. P. 599; 56 L. T. 711; 35 W. R. 710.



house of A and asked for a pint of beer. A went into the back parlors, poured the liquor into a stamped measure not seen by B, and then into a jug, and delivered the jug to B, and the court held that this was not a selling by imperial measure, as the measure was not seen by B, and, therefore, A had committed the offense under this section. Smith, J., said: 'What was done did not amount to a sale in a stamped measure, which is the obvious requirement of Section 8.' Wills, J., said: 'The beer was sold when it was placed before the customer and not till then.' ''<sup>73</sup> Where a pint was asked for, and a marked vessel filled with beer and then poured into the customer's jug, and then one gill more was pumped into it as a "long pull," and then the jug handed to the purchaser, it was held that the seller was not guilty of selling in an unmarked measure.<sup>74</sup>

### Sec. 229. Registration of sales.

In a very few States statutes have been enacted requiring the registration of sales and also requiring reports to be made at certain times to designated officers. In Iowa, the statute required those reports to be made "on the last Saturday of every month" to the auditor of the county, "showing the kind and quantity of liquors sold and purchased;" but the court held that the statute was not mandatory concerning the exact time of making the report and that it was sufficient to make it at any time before a suit was begun to recover the penalty inflicted for a neglect to report;<sup>75</sup> but afterwards the statute was amended so as to make it mandatory to report at

<sup>73</sup> For a decision under the Weights and Measures Act, see *Bellamy v. Pow*, 60 J. P. 712; 14 T. L. R. 527.

<sup>74</sup> *Pennington v. Pincock* [1908], 2 K. B. 244; 77 L. J. K. B. 537; 98 L. T. 804; 72 J. P. 199; 6 L. G. R. 830; 24 T. L. R. 509.

The phrase "such intoxicating liquors as are sold or delivered in corked or sealed vessels" means such as are in fact so sold or de-

livered, and not such as are commonly so sold or delivered." *Ferndale v. Dillon* [1907], 2 K. B. 513; 76 L. J. K. B. 922; 97 L. T. 284; 71 J. P. 374; 21 Cox C. C. 500; but this decision has been disapproved in *Jones v. Shervington* [1908], 2 K. B. 539; 77 L. R. K. B. 771; 99 L. T. 57; 72 J. P. 381; 24 T. L. R. 693.

<sup>75</sup> *Abbott v. Sartori*, 57 Iowa, 656; 11 N. W. 626.



the time fixed by it;<sup>76</sup> and it was held also that all sales or prescriptions must be reported.<sup>77</sup> In Vermont, the statute gave a form to be used, and in it was a requirement not required by the statute itself; and it was held that the form in this respect need not be complied with.<sup>78</sup> In this instance the statute prescribed the form in which the liquor seller should keep an account of his sales, but it was held that if he kept the form in a different manner, yet had the same entries as the statute required, there was a sufficient compliance with its provisions.<sup>79</sup> A failure to keep the record as the statute requires renders a town agent for the sale of liquors liable;<sup>80</sup> but a statute requiring him to keep a "book and enter therein the date of every sale made by him, the person to whom sold, the kind, quantity, and price thereof, and the purpose for which sold, substantially in the following form [setting out a tabulated form],'" does not require the book to be in tabular form.<sup>81</sup>

### Sec. 230. Sales on credit.

Sales on credit may be forbidden;<sup>82</sup> but such a statute is construed strictly and not extended to persons not clearly within its provisions, as one prohibiting an innkeeper giving credit will not be extended to a retail grocer selling liquor.<sup>83</sup>

<sup>76</sup> *State v. McEntee*, 68 Iowa, 381; 27 N. W. 265.

<sup>77</sup> *State v. Chamberlin*, 74 Iowa 266; 37 N. W. 326.

<sup>78</sup> *Barnard v. Houghton's Estate*, 34 Vt. 264.

It may be added that in Indiana, where the statutory tax schedules, that the owner of property was required to use, differed from the provisions of the statute, the schedule controlled. *Wasson v. First National Bank*, 107 Ind. 212; 8 N. E. 97; *Clark v. Carter*; 40 Ind. 190; *In Matter of*

*Campbell*, 71 Ind. 512; *Evansville Bank v. Button*, 105 U. S. 322.

<sup>79</sup> *Barnard v. Houghton's Estate*, 34 Vt. 264.

As to druggists' report of sales, see index.

<sup>80</sup> *Wenham v. Dodge*, 98 Mass. 474.

<sup>81</sup> *Wenham v. Dodge*, 98 Mass. 474.

<sup>82</sup> *Kizer v. Randleman*, 50 N. C. 428.

<sup>83</sup> *Brittain v. Bethany*, 31 Miss. 331.

**Sec. 231. Entering saloon in violation of orders not an offense.**

A conviction of a violation of a statute declaring it unlawful for the proprietor of a saloon to permit any person to go into the saloon room at times when the sale of liquor is prohibited by law, cannot be sustained where a person who entered the saloon at the prohibited time did so in violation of orders of the saloon keeper, given in good faith, with the intention and expectation that they should be obeyed; but whether such orders were given in good faith or not is a question of fact for the jury.<sup>84</sup> It cannot be said that putting it within the power of another to do an act means a permission to do such act. The defendant, to be guilty under such a statute, must have known of the illegal use to which his premises were being put. Justice Blatchford, in construing the words "suffer" and "permit" has said: "Every definition of 'suffer' and 'permit' includes knowledge of what is to be done under the sufferance and permission and intention, that what is done is what is to be done."<sup>85</sup> The word "permit" is derived from the Latin "*permittere*," which means "to concede, to give leave, to grant."<sup>86</sup> It is one of the underlying principles of our criminal law that a man shall not be deemed guilty of a crime in the absence of a wrongful intent. Nowhere have we been able to find where the courts compelled a man involuntarily and against his will to be guilty of a crime, against the commission of which he protested, was not present when it was committed, and the evidence showed he tried to prevent it."<sup>87</sup> Where a defendant went upon the premises and in three minutes came off with a bottle of gin, it was held that he had violated the statute.<sup>88</sup>

<sup>84</sup> Botkins v. State, 36 Ind. App. 179; 75 N. E. 298.

<sup>85</sup> Gregory v. United States, 17 Blatchf. 325.

<sup>86</sup> Welsch v. State, 19 Ind. App. 389; 46 N. E. 1050.

<sup>87</sup> Lauer v. State, 24 Ind. 131; Hanson v. State, 43 Ind. 550; O'Leary v. State, 44 Ind. 91; Thompson v. State, 45 Ind. 495.

<sup>88</sup> Thomas v. Powell, 57 J. P. 329.

**Sec. 232. Permitting minors to "enter and remain" in a saloon.**

A statute in Texas requires a licensed dealer's bond to be conditioned that he will not permit a minor to "enter and remain" in his saloon.<sup>89</sup> Under this statute it is held that it is no defense that the saloon keeper in good faith believed that the minor entering and remaining was an adult.<sup>90</sup> To constitute a violation of the bond these must be both an entry and remaining, or, in other words, the entry must be followed by a remaining, and if there be a mere entry and no remaining, no offense is committed.<sup>90\*</sup> And where it was shown that the minor entered on three occasions and remained in the saloon only long enough to purchase, drink and pay for beer, it was held that there was no breach of his bond.<sup>91</sup> The complaint in a civil action is sufficient if it charges that the minor was permitted to enter and remain "on or about" specified dates; and the court may instruct the jury that the plaintiff may recover if the minor was permitted to enter at any time on or about the date given. It is not error to refuse to confine the plaintiff's right to recover to violations on the exact date alleged.<sup>92</sup> Where an ordinance forbids a saloon keeper to suffer a minor or female to drink in his saloon or remain in it over five minutes, and declaring that it shall be a defense to show that the minor or female was in good repute, proof that the accused suffered a minor or female to drink in his saloon or to remain in it over five minutes is sufficient to justify a conviction; for if he wishes to escape a conviction he must show that the persons so obtaining the liquor or remaining therein was in good repute.<sup>93</sup> A statute prohibiting

<sup>89</sup> Rev. Stat. [1895], Art. 5060g, as amended by Act April 27, 1901 (Laws, 1901, p. 314, c. 136).

<sup>90</sup> *Minter v. State* (Tex. Civ. App.), 76 S. W. 312; *State v. Dittforth* (Tex. Civ. App.), 79 S. W. 52. See *State v. Johnson* (S. D.), 121 N. W. 785.

<sup>90\*</sup> *Minter v. State*, *supra*.

<sup>91</sup> *Tinkle v. Sweeney* (Tex. Civ. App.), 78 S. W. 248; *Ghio v.*

*Stephens* (Tex. Civ. App.), 78 S. W. 1084.

<sup>92</sup> *Munoz v. Brassel* (Tex. Civ. App.), 108 S. W. 417. As to sufficiency of a complaint under this statute, see *Markus v. Thompson* (Tex. Civ. App.), 111 S. W. 1074.

<sup>93</sup> *Commonwealth v. Price* (Ky.), 94 S. W. 32; 29 Ky. L. Rep. 593.

An instruction that the ques-

a minor visiting a saloon is constitutional.<sup>94</sup> Where it was made an offense for the owner of public billiard tables to permit minors to congregate at a place where billiards were played, it was held that a congregation or assemblage of minors must be shown to sustain a conviction, the statute implying the joint action or co-operation of two or more persons, it being applicable to the coming together of a considerable number of persons.<sup>94\*</sup>

### **Sec. 233. Minor willfully misstating his age.**

Where a statute made it an offense in a minor, for the purpose of inducing any person to give or sell him intoxicating liquor, to represent that he is twenty-one years of age or over, it was held that the seller could not escape punishment on a

tion for the jury to determine whether the accused was the owner of a saloon, and whether he permitted the person, who was, in fact, under the age of twenty-one years, to remain in his saloon, does not assume that the person was under such age. *State v. Baker* (Ore.), 92 Pac. 1076; 13 L. R. A. (N. S.) 1040.

Where a statute made it an offense to permit a minor to gamble in a saloon, it is no defense that the proprietor instructed his servants not to permit it, where they permitted it. *Church v. Territory* (N. M.), 91 Pac. 720.

<sup>94</sup> *Territory v. Crunka*, 15 Hawaii, 607.

<sup>94\*</sup> *Powell v. State*, 62 Ind. 531; *Manheim v. State*, 66 Ind. 65; *Hanrahan v. State*, 57 Ind. 527; *Walbert v. State*, 17 Ind. App. 350; 46 N. E. 827.

In a trial for a violation of a statute forbidding a minor to be on the premises, it is not a ques-

tion of fact for the jury to determine as to the peculiar evils that might surround a particular visit. *State v. Johnson* (S. D.), 121 S. W. 785.

Where a saloon keeper employed an adult to furnish music for his saloon, and the adult brought a minor who played in the company of other musicians, and the saloon keeper, as soon as he discovered he was a minor, ordered him to leave, it was held that he was not guilty of employing a minor in a saloon. *State v. Haugh*, 123 N. W. 251.

An ordinance providing that minors shall not be permitted to enter a place where "near beer" is sold is valid. *Campbell v. Thomasville* (Ga.), 64 S. E. 815.

A statute forbidding the employment of a minor in a place where intoxicating liquors are sold applies to a beer garden. *State v. Hough* (Wis.), 123 N. W. 251.



charge of selling to a minor, on the ground that the minor stated he was of age, where such seller knew the statement was false.<sup>95</sup>

### **Sec. 234. Permitting drunkenness on premises—Selling to drunken man.**

Statutes sometimes forbid a licensee to permit drunkenness or a drunkard to come on the licensed premises. To violate such a statute it is not necessary for the licensee to sell the liquor that creates the drunkenness, nor any part of it.<sup>96</sup> A licensee cannot be convicted of permitting drunkenness in the absence of knowledge, or connivance, or carelessness on his part. Thus where the evidence showed that a person who was on the premises was in fact drunk, and it also showed that the licensed person did not know that such person was drunk, it was held that the licensed person could not be convicted.<sup>97</sup> Where the only evidence was that a person had been drinking in a licensed house, and three-quarters of an hour later was found drunk in a ditch about one hundred yards distant, and the court convicted the keeper of the licensed house, its judgment was sustained.<sup>97\*</sup> So to supply liquor to one already drunk is to permit drunkenness on the licensed premises.<sup>98</sup> And where a person is found on licensed premises, and is known to be so by the licensee, the latter is liable, though no drink may have been given him by the licensee.<sup>99</sup> At the same time it must be recollected, to permit drunkenness on the licensed premises implies that there was power to prevent it; and if a customer becomes drunk, but is not allowed to remain on such premises, the licensee cannot be deemed to permit it.<sup>101</sup> A sim-

<sup>95</sup> *State v. Gulley*, 41 Ore. 318; 70 Pac. 385.

<sup>96</sup> *Edmunds v. James* [1892], 1 Q. B. 18; 56 J. P. 40; 61 L. J. M. C. 56; 40 W. R. 140; 65 L. T. 675.

<sup>97</sup> *Somerset v. Wade* [1894], 1 Q. B. 574; 58 J. P. 231; 63 L. J. M. C. 126; 70 L. T. 452; 42 W. R. 399.

<sup>97\*</sup> *Ex parte Ethelstane*, 40 J. P. 39; 33 L. T. 339.

<sup>98</sup> *Edmunds v. James* [1892], 1 Q. B. 18; 56 J. P. 40; 61 L. J. M. C. 56; 40 W. R. 140; 65 L. T. 675.

<sup>99</sup> *Hope v. Warburton* [1892], 2 Q. B. 134; 56 J. P. 328; 61 L. J. M. C. 147; 66 L. T. 589; 40 W. R. 510.

<sup>101</sup> Where a statute (*Scottish Licensing Act, 1903, § 98*) provided that when a licensed person was charged with permitting



ilar statute has been adopted in certain English colonies. Thus, in Australia, under a statute where it was proved that there was a drunken person upon the premises, but it was also shown that both the licensee, who was absent, and the person left by him in charge of the premises, had in fact no knowledge of the presence of the drunken man, it was held that the *prima facie* conclusion to be drawn from the presence of such drunken man, to the effect that the licensee permitted a drunken person to be on his premises, was rebutted, and the accused was discharged.<sup>102</sup> This English statute also prohibits sales to a drunken person; and the prohibition is absolute. Where, therefore, the customer is really drunk, the licensee cannot set up the defense that he and his partner considered the customer not to be drunk, for the risk of discovering the facts rests

drunkenness on his premises, and it was proved that any person was drunk on his premises, it should "be on the licensed person to prove that he and those employed by him took all reasonable steps for preventing drunkenness on the premises," it was held that on a showing that the licensed defendant and one X were friends and were both found in the licensed premises at 3 A. M. asleep and intoxicated, the defendant must be convicted of having permitted X to remain on the premises while in a state of intoxication, he not having discharged the onus imposed on him by the statute. *Kessack v. Smith*, 7 F. (Just. Cas.) 75. There is a similar English statute (2 Edw. VII, c. 28, § 4; and Patterson (Licensing Acts [19th Ed.], p. 583) construes it in this wise: "The effect of this section appears to be that, where any person is drunk on licensed premises, this will be *prima facie* evidence of permitting drunkenness, and, to

rebut this, the licensed person must prove that he and his servants took all reasonable steps for preventing drunkenness on the premises. If a licensed person, or his servant, as soon as he found that the person was drunk, turned him off the premises, he would rebut the *prima facie* presumption. If, on the other hand, he supplied the person with drink, so that the latter became drunk on the premises, the licensee would be liable to be convicted, for, by supplying the drink which caused the drunkenness, he has not taken all reasonable steps to prevent drunkenness on the premises. A licensee would be similarly liable if he neglected to notice the condition of the drunken person entering or being on the premises."

<sup>102</sup> *Hillard v. Fitzpatrick*, 27 Vict. L. R. 380; 23 Austr. L. T. 1; 7 Austr. L. R. 223. See *Connolly v. Stenniker*, 22 Vict. L. R. 257; 18 Austr. L. T. 60; 2 Austr. L. R. (C. N.) 322.

with the licensee.<sup>103</sup> The licensee is also liable where his manager, contrary to express general instructions, supplies liquor to a drunken person.<sup>104</sup> Moreover, if a drunken man and a sober man enter together, and the latter orders liquor for both, this will be deemed a selling to a drunken man.<sup>1</sup> A licensee cannot be convicted under this statute for being drunk on his own premises.<sup>2</sup>

### Sec. 235. Found drunk on licensed premises.

Where a statute provides that it shall be an offense "to be found drunk on licensed premises," if found drunk on unlicensed premises, no offense is committed. If he is drunk in licensed premises, but is not "found" in the state of drunkenness, he escapes the penalty of the statute. But to incur the penalty it is not necessary that a police officer find him on the premises in a state of intoxication. If the drunken person, before being found has staggered out of the licensed premises into an adjoining field he escapes the penalty. And if the licensed premises are his own house, the drunken person would obviously not be liable, except to be found drunk during open hours and in the public part of the premises.<sup>3</sup> But a person who enters a house to use it as licensed premises, and not as a lodger or inmate, and is found drunk in the house after the closing hours, may be convicted.<sup>4</sup>

<sup>103</sup> *Cundy v. LeCocq*, 13 Q. B. Div. 207; 48 J. P. 599; 53 L. J. M. C. 125; 51 L. T. 265; 32 W. R. 769.

<sup>104</sup> *Commissioners of Police v. Cartman* [1896], 1 Q. B. 655; 60 J. P. 357; 65 L. J. M. C. 113; 74 L. T. 726; 44 W. R. 637; 12 T. L. R. 334; *Worth v. Brown*, 46 Sol. J. 515; 62 J. P. 658.

<sup>1</sup> *Scatchard v. Johnson*, 52 J. P. 389; 57 L. J. M. C. 41.

<sup>2</sup> *Warden v. Tye*, 2 C. P. Div. 74; 41 J. P. 120; 46 L. J. M. C. 111; 35 L. T. 852.

<sup>3</sup> *Lester v. Torrens*, 2 Q. B. Div. 404; 41 J. P. 821; 25 W. R. 691; 46 L. J. M. C. 280. *Lush, J.*: "I

think, looking at the *collection* of words, that 'licensed premises,' for the purpose of the section [Every person found drunk in any highway, or other public place, whether a building or not, on any licensed premises, shall be liable,' etc.], must mean open to the public during licensed hours, or during the time when the premises are a quasi public place."

<sup>4</sup> *Regina v. Rely* [1897], 2 Q. B. 33; 61 J. P. 373; 66 L. J. Q. B. 519; 45 W. R. 504; *Warden v. Tye*, 2 C. P. Div. 74; 41 J. P. 120; 46 L. J. M. C. 111; 35 L. T. 852.

**Sec. 236. Power to exclude drunken man from licensed premises.**

An English statute expressly authorizes any licensed person to "refuse to admit to and may turn out of the premises in respect of which his license is granted any person who is drunken, violent, quarrelsome, or disorderly, and any person who would subject him to a penalty" under the law.<sup>5</sup> This section also authorizes all constables<sup>6</sup> on demand of any licensed person, agent, or servant to expel or assist in expelling a drunken, violent, quarrelsome or disorderly person from the licensed premises, "and may use such force as may be required for that purpose." In turning out a drunken, violent, quarrelsome or disorderly person, no more force can be lawfully used than is necessary to overcome the resistance of the person to be turned out. Of this statute it is said that "a request to leave peaceably should always be first made to such person and proved on the hearing of the charge. The constable acts usually as the agent of the licensed person, unless he has witnessed some violation of the act." "If the licensed person turns out a person who is not drunken, violent, quarrelsome or disorderly, or whose presence would not subject him to a penalty, then such person when turned out cannot be convicted under this section. Where a chimney sweep in his working dress came to the public house bar amongst the company and refused to leave, it was held that he could be excluded by force, even though the premises were an inn.<sup>7</sup> And the same where a person had a large dog accompanying him, which caused reasonable alarm.<sup>8</sup> The respondent, who was not a traveler, entered the appellant's licensed premises—not being an inn—he having been on several previous occasions ejected by the appellant from the premises for using offensive language and behaving in a disorderly manner, and he was known to be one of a disorderly gang. The respondent was half drunk when he entered, and threatened to fight the appellant, but the magis-

<sup>5</sup> 35 and 36 Vict. c. 94, § 18.

<sup>6</sup> The English term for policemen.

<sup>7</sup> Citing *Pidgeon v. Legge*, 21 J. P. 743.

<sup>8</sup> Citing *Regina v. Rymer*, 2 Q. B. Div. 136; 46 L. J. M. C. 108; 41 J. P. 199; 25 W. R. 415; see also *Howell v. Jackson*, 6 C. & P. 725.

trate found as a fact that he was neither drunken nor quarrelsome nor disorderly. The appellant requested the respondent to leave, but he refused. The appellant went to eject him, and the respondent kicked him in the face. The magistrate refused to convict the respondent of an assault on the ground that the appellant had no right to eject the respondent for refusing to leave when requested. The court held that the appellant had the right to request the respondent to leave if he did not wish him to remain on the premises, and remitted the case to the magistrate to hear the charge of assault."<sup>9</sup> A landlord of a saloon may eject customers from his premises, though they are not drunken, violent, quarrelsome, or disorderly;<sup>10</sup> but a person not drunken, nor violent, nor quarrelsome, nor disorderly cannot be convicted for not leaving the premises when requested to leave by the landlord or licensee.<sup>11</sup>

### Sec. 237. Permitting employes to drink storage liquors—Premises.

A statute of Texas<sup>12</sup> makes it an offense for anyone engaged in the "business or occupation" of keeping or storing intoxicating liquors in a county which has adopted local option, to

<sup>9</sup> Patterson's Licensing Acts (19th Ed.), p. 387; citing *Sealy v. Tandy* [1902], 1 K. B. 296; 66 J. P. 19; 71 L. J. K. B. 41; 50 W. R. 347; 85 L. T. 459; 18 T. L. R. 38; 20 Cox C. C. 57.

<sup>10</sup> *Sealy v. Tandy*, *supra*.

<sup>11</sup> *Dallimore v. Tulton*, 78 L. T. 469; 62 J. P. 423; 19 Cox. C. C. 31.

In New Zealand it is an offense for an habitual drunkard to enter on licensed premises during the time an order is in force prohibiting him entering thereon. To commit the offense, he need not buy liquor. *Rex v. Ward*, 21 N. Z. 506. In Australia the prohibiting order must name the house and give the time at which a pro-

hibited person may demand entrance. *Waters v. Fitzgerald*, 25 Vict. L. R. 86; 21 Austr. L. T. 17; 5 Austr. L. R. 149.

In Canada, a railway employe may be discharged summarily for being drunk while on duty with other employes; and although only a recipient of the intoxicating liquor, such conduct constitutes a participation in a criminal offense under § 299 of the Railway Act, 51 Vict. c. 29 C. D. which prohibits anyone selling, giving or bartering spirits or intoxicating liquors while on duty. *Marshall v. Central Ontario Ry. Co.*, 28 Ont. Rep. 241.

<sup>12</sup> Gen. Laws [1905], p. 91, c. 64.



permit another to drink any of such liquor within such place of business. It was held that the terms "business" or "occupation," so used in a statute, means the trade, the calling, or the vocation in which one engages to make a living or obtain wealth. Consequently, it was held error to define "business or occupation" in an instruction to a jury to be that which engages one's time and labor or attention, or that about which one is engaged or employed, where it was shown that the intoxicants drank on the premises were not kept for profit, nor as a business, or calling; but they were kept casually or incidentally to another business.<sup>13</sup> So an Iowa statute<sup>14</sup> provides that any person operating a brewery who permits its products to be drunk or sells them at retail "upon the premises of any such manufacturing establishment" shall be subject to a forfeiture. It was held that the word "premises" was limited to the buildings occupied by and the grounds used in connection with the brewery. Consequently it was held where a brewery had an entrance into the general manager's office and an entrance from that office to a saloon in the same building, upon which saloon the liquor taxes were paid, the operation of the saloon was not a violation of the statute, the entrance from the brewery being used by no one to obtain liquor, and the employes, when they desired liquor, entering only from the outside.<sup>15</sup>

### Sec. 238. Women in saloons—Wine rooms.

Statutes are common forbidding the furnishing of liquor to women in saloons or the keeping of wine rooms in connection with saloons into which women are permitted to enter and be supplied with liquor. Where wine rooms are forbidden, a room to come within the prohibition of the statute must be kept as a part of the saloon. The statute refers to a place where patrons of the saloon are supplied with liquor privately instead of drinking at the bar.<sup>16</sup> Where such rooms are for-

<sup>13</sup> *Cohen v. State*, 53 Tex. Cr. App. 422; 110 S. W. 66.

<sup>14</sup> Iowa Code, § 2460.

<sup>15</sup> *Orke v. McManus* (Iowa), 115 N. W. 580.

<sup>16</sup> *Ellis v. People*, 38 Colo. 516; 88 Pac. 461; *Denver v. Domedian*, 15 Colo. App. 36; 60 Pac. 1107.



bidden balls or like entertainments cannot be given in them.<sup>17</sup> But to supply liquor to a female in a restaurant with her meal, the restaurant being located in the same building, owned by the saloon keeper, but separated by a hall, is not a serving of liquor in the saloon, and the act is not a violation of the statute.<sup>18</sup> A statute which forbids the employment of females in a saloon cannot be evaded under the subterfuge of taking them in as partners in the business.<sup>26</sup> Where a female servant went into a bar and obtained liquor which she took out of the bar and went to a customer in a parlor of the hotel in which the bar was kept, it was held that she had not served liquors in a bar within the meaning of a statute forbidding a female to serve liquor in a bar.<sup>27</sup>

### Sec. 239. Prostitutes visiting premises.

An English statute forbids any licensed person to knowingly permit his premises "to be the habitual resort of or a place of meeting of reputed prostitutes, whether the object of their so resorting or meeting is or is not prostitution" "longer than is necessary for the purpose of obtaining reasonable refreshment."<sup>28</sup> The word "knowingly," as used in this statute, applies to the character of the persons who are permitted to resort to the premises; and it is said that "this expression is necessary, because if that or some similar word were not used it might be contended that if women were knowingly permitted to resort to the premises it would be no defense that it was not known that they were reputed prostitutes."<sup>29</sup> "In or-

<sup>17</sup> *Cunningham v. Porchet*, 23 Tex. Civ. App. 80; 56 S. W. 574.

<sup>18</sup> *Denver v. Domedian*, 15 Colo. App. 36; 60 Pac. 1107.

Such a statute is considered a fair one. *Greiner v. Hoboken*, (N. J. L.); 53 Atl. 693; *People v. Case*, 153 Mich. 98; 116 N. W. 558; *Hoboken v. Goodman*, 68 N. J. L. 217; 51 Atl. 1092.

<sup>26</sup> *Walter v. Commonwealth*, 88 Pa. St. 137.

<sup>27</sup> *Ex parte Cameron*, 23 N. S. W. 24; 6 S. R. 132.

A "dancing saloon" means a place to which persons are admitted on payment of money, or on the understanding that they will purchase liquor. But a statute prohibiting the keeping of such a place does not prohibit the licensee admitting his friends to dance as his guests. *Walsh v. Bedford*, 16 Aust. L. T. 35.

<sup>28</sup> 35 and 36 Vict. c. 94, § 14.

<sup>29</sup> *Patterson's Licensing Acts* (19th Ed.), p. 368, citing *Mathew, J.*, and *Collins, J.*, in *Somerset v.*

der to prove the offense," says the author just cited, "it must be shown: (1) That the licensed person, or at least his manager, knew the women were reputed prostitutes, and the justices will inquire into the grounds of belief of witnesses as to this evil reputation; (2) That he allowed them to remain longer than necessary for reasonable refreshment, which is partly a matter of arithmetic, the nature of the meal or refreshment being generally the best materials for showing whether they remained longer than was necessary for its consumption. Accordingly, where a woman of the unfortunate class was found on licensed premises by a police constable, and the woman immediately left upon being spoken to by the publican as soon as the constable entered, it was held that this was not enough to sustain a conviction under this section.<sup>30</sup> In this case there was no evidence as to whether the woman had gone to the house for the purpose of obtaining refreshment or not, nor how long she had been upon the premises, but the constable stated that at the time when he saw the woman she was not partaking of any refreshment. The evidence was thus consistent with the woman having finished her refreshment and being on the point of leaving when the constable entered, and was therefore insufficient to sustain a conviction." "Unless the woman," continues the same writer, "remains longer on the premises than is necessary for the purpose of refreshment, it seems that, though her object may be prostitution, yet the penalty will not be incurred by the licensed person till the time for her refreshment has ceased. It is only after that time that her remaining on the premises can be inquired into; but for whatever purpose she is there after that time is immaterial. And if she do not resort for refreshment at all, then if the landlord allow her to remain for any length of time, however short, he will be liable for the penalty. The licensed person has the power to turn her out,<sup>31</sup> and if he fails to do so he will run the risk of the penalty. An objection, founded on the conduct of licensed houses as to serving pros-

Wade [1894], 1 Q. B. 574; 58 J. P. 231; 63 L. J. M. C. 126; 70 L. T. 452; 42 W. R. 399.

<sup>30</sup> Citing *Miller v. Dudley*, J. J., 46 W. R. 606.

<sup>31</sup> Section 18 of the same act gives the power.

titutes, being often raised to the renewal of a license, in one case there was evidence given that several times seventeen prostitutes were found in the house at one time, and this was known to the license holder, and he produced no evidence that they were there for the purpose of refreshment, the licensing justices were held justified, after due notice of opposition, in refusing to renew the license.<sup>32</sup> It is not essential that the prostitutes who 'meet' should be the same persons; it is enough that persons of their class frequently come to the house, and that one is there, though for the first time, if known as to character. And in any summons or conviction it is not necessary to name the disorderly persons or allege that they are unknown."<sup>33</sup>

#### Sec. 240. Permitting premises to be a brothel.

An English statute provides that "if any licensed person is convicted of permitting his premises to be a brothel he shall

<sup>32</sup> Citing *Sharpe v. Hughes*, 57 J. P. 104.

<sup>33</sup> Citing *Wray v. Take*, 12 Q. B. 492; 17 L. J. M. C. 183; 12 J. P. 804.

Cases under previous English statutes are *Greig v. Bendeno*, E. B. & E., 133; 27 L. J. M. C. 294; *Purkis v. Huxtable*, 1 E. & E., 780; 28 L. J. M. C. 221; 5 Jur. 790; 23 J. P. 197, and *Whitfield v. Bainbridge*, 30 J. P. 644.

"The constable having seen prostitutes previously in the house is some evidence of the keeper's knowledge of their character." Patterson's *Licensing Acts* (19th Ed.), p. 369, citing *Belasco v. Hannant*, 3 B. & S. 13; 26 J. P. 823; 31 L. J. M. C. 225; 6 L. T. 577; 10 W. R. 867; *Parker v. Green*, 2 B. & S. 299; 26 J. P. 247; 31 L. J. M. C. 133; 10 W. R. 316; *Cole v. Coulton*, 24 J. P. 596; 2 E. & E. 695; 29 L. J. M.

C. 125; 2 L. T. 216; 8 W. R. 412. "The cases decided," says Patterson, "under the previous statutes, show that prostitutes are entitled, like other people, to refreshment, and that it cannot be reasonably implied from the fact of the licensed person supplying them with refreshment that he permits them to assemble in an unlawful manner."

In Australia it is held that, although the presence of reputed prostitutes on licensed premises is made by statute *prima facie* evidence that the licensee knowingly permitted them to be present with the knowledge they were prostitutes, the presumption may be rebutted. *Cullen v. Ware*, 3 Austr. L. R. (C. N.) 65.

Using a room at a hotel for the purpose of illicit sexual intercourse is using it "for the purpose of prostitution.

be liable to a penalty not exceeding twenty pounds, and shall forfeit his license, and he shall be disqualified forever from holding any license for the sale of intoxicating liquors.”<sup>34</sup> In order to prove the offense it is not material that there was no outward sign of indecency,<sup>35</sup> or that there was no actual disorderly conduct.<sup>36</sup> A brothel is the same thing as a “bawdy house,” and the term applies to a place resorted to by persons of both sexes for the purpose of prostitution.<sup>37</sup> If a licensee or his manager permits people to use the premises for purposes of prostitution *once*, this is some evidence to support the charge of permitting the premises to be used as a brothel.<sup>38</sup> A charge under the statute that the licensee permitted his premises to be used as a brothel on the 26th, 28th, 29th and 31st of January, and 1st, 4th, 5th and 6th of February, was held to charge him with but one offense, the charge being a continuing offense, notwithstanding the days were not consecutive.<sup>39</sup>

### Sec. 241. Knowingly harboring thief on premises.

An English statute makes it an offense for the keeper of a saloon to knowingly lodge or knowingly harbor thieves or reputed thieves, or “knowingly suffer them to meet or assemble therein.”<sup>40</sup> Under this statute where a meeting was held in a saloon, pursuant to a circular, to get up a subscription for the wife and children of a convicted thief, several thieves being in the company, it was held that there was such an assembly of thieves as the statute forbade, notwithstanding their

<sup>34</sup> 35 and 36 Vict. c. 94, § 15.

<sup>35</sup> *Regina v. Rice*, L. R. 1; C. C. R. 21; 35 L. J. M. C. 93; 13 L. T. 382; 14 W. R. 56.

<sup>36</sup> *Greig v. Bendeno*, E. B. & E. 133; 27 L. J. M. C. 294.

<sup>37</sup> *Singleton v. Ellison* [1895], 1 Q. B. 607; 64 L. J. M. C. 123; 59 J. P. 119; 72 L. T. 236; 43 W. R. 426; 18 Cox, 79.

<sup>38</sup> *Regina v. Justices*, 46 J. P. 312; *Webb v. Catchlove*, 50 J. P. 795. In this last case the police

officer refused to say where he was standing when he discovered that the place was used as a brothel, and the court held that he was bound to answer on cross-examination as to this, as it had an important bearing on his credibility.

<sup>39</sup> *Ex parte Burnby* [1901], 2 K. B. 458; 70 L. J. K. B. 739; 85 L. T. 168.

<sup>40</sup> 34 and 35, c. 112, § 10.



good intentions.<sup>41</sup> But permitting a person who has received stolen goods to be on the premises is not permitting a thief to be on the premises.<sup>42</sup>

### Sec. 242. Gambling on premises.

In all States gambling is an offense, and in many of them statutes especially prohibit gambling in saloons or on premises where intoxicating liquors are sold. When such a statute is in force it is an offense to play for the drinks on a pool table, even though there be no prior agreement that the loser should pay for them, if he in fact did so pay.<sup>43</sup> And the same is true of a game of cards,<sup>44</sup> or where the loser pays for the use of the pool or billiard table.<sup>45</sup> Throwing dice to determine who shall pay for the drinks, or whether the saloon keeper shall furnish them free is gaming.<sup>46</sup> Where a statute forbids gambling in or

<sup>41</sup> Marshall v. Fox, L. R. 6; Q. B. 370; 24 L. T. 751; 40 L. J. M. C. 142; 19 W. R. 1108; 35 J. P. 631.

<sup>42</sup> McGan v. Pratley, 24 Vict. L. R. 840; 5 Austr. L. R. (C. N.) 80.

<sup>43</sup> Dunbar v. State, 34 Tex. Cr. Rep. 596; 31 S. W. 401; Humphreys v. State, 34 Tex. Cr. Rep. 434; 30 S. W. 1066; Stone v. State, 3 Tex. App. 675; Hall v. State, (Tex. Cr. App.); 34 S. W. 122; Hitchens v. People, 39 N. Y. 454; Robinson v. State, 24 Tex. App. 4; 5 S. W. 509; Ballen v. State, 26 Tex. App. 483; 9 S. W. 765; Commonwealth v. Arnold, 4 Pick. 251; Commonwealth v. Bolkom, 3 Pick. 251; Buford v. Commonwealth, 14 B. Mon. 24; State v. Kennedy, 1 Ala. 31; Ray v. State, 50 Ala. 172; Shihagan v. State, 9 Tex. 430; Smith v. State, 23 Ala. 39; Cole v. State, 9 Tex. 42.

<sup>44</sup> Bachellor v. State, 10 Tex.

260; Brown v. State, 49 N. J. L. 61; 7 Atl. 340; Commonwealth v. Taylor, 14 Gray, 26; Commonwealth v. Gourdier, 14 Gray, 390; Stahel v. Commonwealth, 7 Bush, 387; Marston v. Commonwealth, 18 B. Mon. 485; State v. Leicht, 17 Iowa, 28; State v. Cooster, 10 Iowa, 453; State v. Maurer, 7 Clarke (Ia.), 406; Montford v. Christian, 13 Vict. L. R. 893; *Ex parte* Little, 19 W. N. (N. S. W.) 268; Fuller v. Fouhy, 24 N. Z. 753; McCalman v. State, 96 Ala. 98; 11 So. 408; King v. Laird, 7 Can. Cr. Cas. 318; Jenks v. Turpin, 13 Q. B. Div. 505, 524; 48 J. P. 489; 49 J. P. 20; 53 L. J. M. C. 161; 50 L. T. 808; Craig v. Boyan [1901], 2 Irish Rep. 429.

<sup>45</sup> Hall v. State, (Tex. Cr. App.); 34 S. W. 122; People v. Cutler, 28 Hun, 465; Marshall v. Green, 26 N. Z. 161.

<sup>46</sup> McDaniel v. Commonwealth, 18 B. Mon. 485; Marston v. Commonwealth, 18 B. Mon. 485.



at a place where liquors are sold, it is immaterial whether the place is licensed or not.<sup>47</sup> A statute preventing gambling "at" any tavern, storehouse for retailing liquor, or the like, means in or near such place,<sup>48</sup> and one which forbids it in the house means any part of the house;<sup>49</sup> but if the place where gaming is forbidden is "the premises," then only such places as are occupied by the dealer with the house in which he retails, is the place.<sup>50</sup> If there be no connection between the saloon and the room where the gambling takes place, though in fact connected by a stairway, but not used by the family in reaching it, the offense against gambling in a house where liquor is sold is not committed.<sup>51</sup> But a mere partition between the saloon and the gambling room having a window in it through which liquor is supplied when called for (by rapping) is not sufficient to prevent the commission of the offense.<sup>52</sup> Playing in a private or upper bedroom in the building, the bedroom not being connected with the saloon, is not an offense.<sup>53</sup> But where the proprietor used the story over his saloon for a bedroom and reached it by an outside stairway, it was held that he violated the statute.<sup>54</sup> If it had been his tenant who occupied the bedroom, the proprietor would not have been guilty.<sup>55</sup> Where the gambling took place in the yard immediately back of the licensed hotel, but the yard was not included in the lease of the hotel, and the frequenters of the hotel had no right to occupy the yard, it not being open to the

<sup>47</sup> *State v. Hawkins*, 91 N. C. 626; *State v. Terry*, 4 Dev. & B. 185. See *State v. Hix*, 3 Dev. (N. C.) 116.

<sup>48</sup> *Ray v. State*, 50 Ala. 172.

<sup>49</sup> *Cole v. State*, 9 Tex. 42; *State v. Terry*, 9 Ired. (N. C.) 378; *State v. Terry*, 4 Dev. & B. 185.

<sup>50</sup> *State v. Black*, 9 Ired. (N. C.), 378.

<sup>51</sup> *Winters v. State*, 33 Tex. Cr. Rep. 395; 26 S. W. 839; *Watson v. State*, 13 Tex. App. 160.

<sup>52</sup> *Stebbins v. State*, 22 Tex. App. 32; 2 S. W. 617.

<sup>53</sup> *Phillips v. State*, 51 Ala. 20; *Watson v. State*, 13 Tex. App. 160; *Dale v. State*, 27 Ala. 31; *Miller v. State*, 35 Tex. Cr. Rep. 650; 34 S. W. 959; *Winters v. State*, 33 Tex. Cr. Rep. 395; 26 S. W. 839.

<sup>54</sup> *Johnson v. State*, 19 Ala. 527; *Kicker v. State*, 133 Ala. 193; 32 So. 253.

<sup>55</sup> *Galbreath v. State*, 36 Tex. 200; *Hercrow v. State*, 2 Tex. App. 511; *In re Clement*, 190 N. Y. 523; 83 N. E. 1123; affirming 119 N. Y. App. Div. 622; 104 N. Y. Supp. 25.

street for the use of the public, and access to it being gained from the hotel, it was held that the yard might properly be regarded as a part of the hotel, and evidence of gambling there was properly admitted.<sup>56</sup> Where a statute forbade gambling on a steamboat while "navigating any of the rivers of the State," it was held no offense to gamble on a steamboat while on a salt water bay within the State.<sup>57</sup> Permitting gambling in the back yard of a saloon, from which entrance to the saloon is provided, is the permitting of gambling "at" a store where liquor is sold.<sup>58</sup> Where the prohibition is against gambling in a "public place," then a place which becomes a public place by force of circumstances is included; and a "public house" is such a place.<sup>59</sup> A court house, or tavern, or store, or saloon is a public place.<sup>60</sup> But a bedroom adjoining a law office is not when all doors are locked and the windows closed, and the persons playing are privately invited by the occupant to it.<sup>61</sup> Nor is a place one hundred yards from the saloon, in the woods and that distance from the public highway, which cannot be seen from either the saloon or highway.<sup>62</sup> When the gambling took place in a room behind the bar, without the saloon keeper's knowledge, and one of the participants in the game was a boarder on the premises, and the cards used were his, it was held that the saloon keeper was liable.<sup>63</sup> On the other hand, where the keeper of a hotel closed up and locked his premises at 11 P. M. and went to bed, leaving no one in charge, and at 12:30 A. M. the police entered and found several persons, some of whom were boarders, gambling, it was held that he was not guilty.<sup>64</sup> Where a statute provided that betting at a private residence should be exempt from its

<sup>56</sup> Briggs v. Noonan, 27 Vict. L. R. 580; 23 Austr. L. T. 138; 7 Austr. L. R. 274.

<sup>57</sup> Johnson v. State, 74 Ala. 537.

<sup>58</sup> James v. State, 133 Ala. 208; 32 So. 237. As within an open place within ten feet of the house. Napier v. State, 50 Ala. 168; Ray v. State, 50 Ala. 172.

<sup>59</sup> Windham v. State, 26 Ala. 69; Napier v. State, 50 Ala. 168; Ray

v. State, 50 Ala. 172; Shihagan v. State, 9 Tex. 430.

<sup>60</sup> Shihagan v. State, 9 Tex. 430.

<sup>61</sup> Roquemore v. State, 19 Ala. 528.

<sup>62</sup> Smith v. State, 23 Ala. 39.

<sup>63</sup> Rex. v. Laird [1903], 6 Ont. L. R. 180.

<sup>64</sup> *Ex parte* Lambert, 22 W. N. (N. S. W.) 130.

provisions, and the bet was made in a room over a saloon, reached by a stairway from the sidewalk to a hall, into which the room door opened, and the room was furnished with a bed, table, washstand, trunk, and clothing, and was used by a single man for a bedroom, it was held that no offense had been committed.<sup>65</sup> Games of skill and chance are not, usually, forbidden; and a statute forbidding unlawful games in a saloon does not reach such games when not played for stakes.<sup>66</sup> If the charge be that the accused played "in a house for retailing spirituous liquors," proof of playing in a "saloon" will not support the charge, unless it be shown spirituous liquors were there sold.<sup>67</sup> The evidence must show that the gambling took place before the indictment was found, and proving that it took place at the time of the trial is not sufficient.<sup>68</sup> If liquor had been sold in the past, but the selling had ceased when the gaming took place, then there can be no conviction.<sup>69</sup> A statute forbidding the use of pool tables in a saloon makes it an offense to maintain a table irrespective of the question of gambling.<sup>70</sup>

<sup>65</sup> *Stewart v. State*, 34 Tex. Cr. Rep. 33; 28 S. W. 806.

<sup>66</sup> *Lockwood v. Cooper* [1903], 2 K. B. 428; 72 L. J. K. B. 690; 89 L. T. 306; 52 W. R. 48; 67 J. P. 307; 20 Cox C. C. 539.

Euchre has been held not to be an "unlawful game" even when played for money, the statute not making it an unlawful game. *Glasson v. Whitly*, 2 N. Z. L. R. 118; *Leight v. Milton*, 2 N. Z. L. R. 214. But it has been held to be a game of chance. *King v. Laird*, 7 Can. Cr. Cas. 318.

Poker played for stakes is an "unlawful game." *Ex parte Little*, 19 W. N. (N. S. W.) 268.

A witness may be asked to describe what he saw in a room in the way of furniture for the purpose of eliciting from him whether or not any gambling devices were

in the room. *Utsler v. Territory*, 10 Okla. 463; 62 Pac. 287.

If a saloon keeper receives part of the money won in his place, he is liable for the whole of the amount lost. *Cartright v. McElden* (Ky.), 116 S. W. 297.

<sup>67</sup> *Springfield v. State*, (Tex.); 13 S. W. 752.

<sup>68</sup> *Mitchell v. State*, 55 Ala. 160.

<sup>69</sup> *Logan v. State*, 24 Ala. 182.

<sup>70</sup> *State v. Ranelle*, (Mo.); 119 S. W. 55.

A special verdict finding these facts was held to show the defendant guilty of the offense of gaming: "We find that the defendant, with some six or more other gentlemen, played at a game called 'tenpins,' or 'handicap.' In this game no one played to beat any other gentleman, but each one had assigned to him a certain

**Sec. 243. Suffering, gambling or betting on premises—  
English statute.**

An English statute provides that "if any licensed person suffers any gaming or unlawful game to be carried on on his premises it shall be an offense.<sup>71</sup> What is "gaming or an unlawful game," has been the subject of a number of decisions in that country. Thus, nine-pins or skittles played for beer on licensed premises are unlawful,<sup>72</sup> and it is immaterial whether the beer is drunk on the premises or not.<sup>73</sup> So this is true if cards are played for money.<sup>74</sup> It is no defense that the game, such as skittle pool, is said to be mostly a game of skill, if it is played for money.<sup>75</sup> But playing a game of skill and chance, not being of itself an unlawful game, and not being played for stakes, but for prizes given by third persons, is not unlawful within this statute.<sup>76</sup> Where a licensed person suffered the game of "pool" to be played for small stakes on a table in his licensed premises, it was held by the Irish courts that he had committed the offense

number of pins to get, with a certain number of balls, some more and some less, according as they were considered good or bad players. If the player did not get the number of pins assigned him, he was to treat to a bottle of champagne. The defendant did play in this game, in Maury county, in less than six months preceding this presentment, and did sometimes, on failing to get the number of pins allotted to him, treat to a bottle of champagne, and sometimes he did not. It was agreed by the parties, at the commencement of the playing, that the treat was a voluntary thing, and no one need do so, unless he was perfectly willing. The jury further find that the defendant and the other gentlemen engaged in this play did not believe it to

be gaming." *Walker v. State*, 32 Tenn. (2 Swan) 287.

Rooms of a commercial club, to which only the club members and invited visitors are admitted, is not a public place where card playing is forbidden. *Grant v. State*, 33 Tex. Cr. Rep. 527; 27 S. W. 127; *Winters v. State*, 33 Tex. Cr. App. 395; 26 S. W. 839.

<sup>71</sup> 35 and 36 Vict. c. 94, § 17.

<sup>72</sup> *Danford v. Taylor*, 20 L. T. 483; 33 J. P. 612.

<sup>73</sup> *Luff v. Leaper*, 36 J. P. 773.

<sup>74</sup> *Patten v. Rhymer*, 3 El. & El. 1; 29 L. J. M. C. 189; 24 J. P. 342; 2 L. T. 352; 8 W. R. 496.

<sup>75</sup> *Dyson v. Mason*, 22 Q. B. Div. 351; 53 J. P. 262; 58 L. J. M. C. 55; 60 L. T. 285.

<sup>76</sup> *Lockwood v. Cooper*, 72 L. J. K. B. 690; 67 J. P. 307; 52 W. R. 48; 89 L. T. 306; 19 T. L. R. 610.



of gaming under this statute.<sup>77</sup> If the licensee lend money to a guest to play for money, such licensee cannot recover it;<sup>78</sup> nor can he recover money lost, *e. g.*, at the game of billiards.<sup>79</sup> There are some games unlawful in themselves, and others are illegal only when played for money.<sup>80</sup> Thus cards and dice are not in themselves unlawful,<sup>81</sup> nor dominoes.<sup>81\*</sup> The games may be lawful, as being mostly games of skill,<sup>82</sup> yet if played for money they are generally gaming.<sup>83</sup> The licensee cannot set up an exemption from liability under the statute on the ground that the persons playing at the game were his own private friends and not customers.<sup>84</sup> And although another statute<sup>85</sup> allows him to keep private friends in his house after closing hours, he is still liable under the statute if he allows them to gamble<sup>86</sup> or play at billiards.<sup>87</sup> The game of baccarat is more of a game of chance than skill, and is illegal.<sup>88</sup> Gaming intended to injure public morals is illegal at common law.<sup>89</sup> But mere excessive gaming not in a common gambling house is not unlawful.<sup>90</sup> In England ace of hearts, pharaoh (faro),

<sup>77</sup> Craig v. Boyan [1901], 2 Irish Rep. 429.

<sup>78</sup> Foot v. Baker, 6 Scott N. R. 301; 5 Man. & Gr. 335.

<sup>79</sup> Parsons v. Alexander, 24 L. J. Q. B. 277; 5 E. & B. 263.

<sup>80</sup> For an enumeration of illegal games, see Jenks v. Turpin, 12 Q. B. Div. 505; 48 J. P. 489; 49 J. P. 20; 53 L. J. M. C. 161; 50 L. T. 808; Fairclough v. Whitmore, 64 L. J. Ch. 386; 72 L. T. 354; 43 W. R. 421; 13 Rep. 402.

<sup>81</sup> Allport v. Nutt, 1 C. B. 975; 14 L. J. C. P. 272.

<sup>81\*</sup> Regina v. Ashton, 1 E. L. & B. L. 286; 16 J. P. 790; 22 L. J. M. C. 61; 17 Jur. 501.

<sup>82</sup> Bew v. Harston, 3 Q. B. Div. 454; 42 J. P. 808; 47 L. J. M. C. 121; 26 W. R. 915.

<sup>83</sup> Dyson v. Mason, 22 Q. B. Div. 351; 53 J. P. 262; 58 L. J. M. C. 55; 60 L. T. 265; Parsons v. Alexander, 24 L. J. Q. B. 277;

5 E. & B. 263; Lockwood v. Cooper, 72 L. J. K. B. 690; 67 J. P. 307; 52 W. R. 43; 89 L. T. 306; 19 T. L. R. 610.

<sup>84</sup> Patten v. Rhymer, 3 El. & El. 1; 29 L. J. M. C. 189; 24 J. P. 342; 2 L. T. 352; 8 W. R. 496.

<sup>85</sup> 37 and 38 Vict. c. 49, § 30.

<sup>86</sup> Hare v. Osborne, 34 L. T. 294; Osborne v. Hare, 40 J. P. 759; Cooper v. Osborne, 34 L. T. (N. S.) 347; 40 J. P. 759.

<sup>87</sup> Ovenden v. Raymond, 40 J. P. 727; 34 L. T. 698.

<sup>88</sup> Jenks v. Turpin, 13 Q. B. Div. 505; 53 L. J. M. C. 161; 50 L. T. 808; 48 J. P. 420*n*; 49 J. P. 20.

<sup>89</sup> Rex v. Rogiers, 1 B. & C. 272; 2 D. & Ry. 431; Regina v. Rice, L. R. 1; C. C. R. 21; 35 L. J. M. C. 93; 14 W. R. 56; 13 L. T. 382.

<sup>90</sup> Jenks v. Turpin, *supra*.



bassett and hazard,<sup>91</sup> panago, and every other game with dice or dice (except backgammon) and roulette (or roly-poly), and any other mere game of chance are illegal games by statutes. Other games are unlawful only when played in common gaming houses. Thus, bowling, coytng, half-bowl, tennis, dieing table, or carding were unlawful until 1845, after which games of mere skill were said not to be illegal.<sup>92</sup>

### Sec. 244. Servant permitting gambling—Knowledge of gambling.

If the barkeeper or servant of the saloon keeper permit gambling on the premises without such keeper's knowledge and contrary to his orders, such keeper is not liable.<sup>93</sup> In all such cases it must appear that the saloon keeper had either actual or constructive knowledge that gambling was going on, to make it a violation of the statute.<sup>94</sup> The fact that the servant knew of the gambling when he was not in charge of the premises, will not render the keeper liable.<sup>95</sup> But if the servant was in charge of the premises when the gambling took place, then the keeper is liable.<sup>96</sup> If the game is played without the knowledge of the licensed person or the manager, and is a mere casual frolic, no penalty is incurred by him.<sup>97</sup> But if the conduct of the landlord is such that he leaves the management of the house to a servant, and either he or such servant closes his eyes to what is going on, the landlord will be guilty of the offense, his gross negligence or willful shutting of his own eyes or his manager's eyes being equivalent to "suffering the

<sup>91</sup> Mackinnell v. Robinson, 3 M. & W. 434.

<sup>92</sup> Jenks v. Turpin, per Hawkins, J.

<sup>93</sup> Wilson v. State, 64 Ark. 586; 43 S. W. 972; *Ex parte* Little, 19 W. N. (N. S. W.) 268 (wife in charge); Avards v. Dance, 26 J. P. 437.

<sup>94</sup> Francis v. Smith, 2 W. N. C. (N. S. W.) 82; Maloney v. Clifford, 6 W. N. (N. S. W.) 124.

<sup>95</sup> Somerset v. Hart, 53 L. J. M. C. 77; 12 Q. B. Div. 360; 48 J. P. 327.

<sup>96</sup> Bond v. Evans, 57 L. J. M. C. 105; 21 Q. B. Div. 249; 59 L. T. 411; 36 W. R. 767; 52 J. P. 612; Tippet v. Heyman, 19 W. N. (N. S. W.) 6; King v. Laird, 7 Can. Cr. Cas. 318.

<sup>97</sup> Avards v. Dance, 26 J. P. 437.

game to be carried on.”<sup>98</sup> Thus, where the manager goes to bed and leaves the house under the management of the “boots,” in England, during late hours, and gaming goes on, the licensed person may be rightly convicted.<sup>99</sup> And where the skittle alley was in charge of a separate attendant, who allowed gambling, though directed generally by the licensed holder never to do so, the latter was held rightly convicted.<sup>1</sup> But where all that was shown was that the potman, who was not proved to be in charge, saw some gambling, and did nothing to prevent it, and the master was in another part of the public building and knew nothing whatever about the matter, the defendant master was acquitted.<sup>2</sup> From these cases it would seem that a licensee is liable if the offense be committed by a person who has been left to act in the management of the business, although the licensee did not know or connive at the offense.<sup>3</sup> If a licensed person allows a man to visit his house and to make bets with persons resorting thereto, he (the licensed person) may be convicted for suffering his house to be used for the purpose of betting with persons resorting thereto.<sup>4</sup>

### Sec. 245. Keeping a betting house.

An English statute provides that “no house, office, room or other place shall be opened, kept, or used for the purpose

<sup>98</sup> *Bosley v. Davies*, 1 Q. B. Div. 84; 45 L. J. M. C. 27; 33 L. T. 528; 24 W. R. 140; 40 J. P. 550; *Redgate v. Haynes*, 1 Q. B. Div. 89; 41 J. P. 86; 33 L. T. 779; 45 L. J. M. C. 65.

<sup>99</sup> *Crabtree v. Hale*, 43 J. P. 499.

<sup>1</sup> *Bond v. Evans*, 21 Q. B. Div. 249; 52 J. P. 513; 57 L. J. M. C. 105; 59 L. T. 411; 36 W. R. 767.

<sup>2</sup> *Somerset v. Hart*, 12 Q. B. Div. 360; 48 J. P. 327; 53 L. J. M. C. 77.

<sup>3</sup> The case of *Bosley v. Davies*, *supra*, was sent back for trial,

“with an intimation of the opinion of the court that actual knowledge in the sense of seeing or hearing by the party charged is not necessary, but that there must be some circumstance from which it may be inferred that he or his servants had connived at what was going on. Constructive knowledge will supply the place of actual knowledge.” Quoted in *Patterson's Licensing Acts* (19th Ed.), p. 377.

<sup>4</sup> *Peddie v. Bennett*, 61 J. P. 680. But see *Ex parte Marshall*, 71 J. P. 501.

of the owner, occupier or keeper thereof, or any person using the same, or any person procured or employed by or acting for or on behalf of such owner, occupier, or keeper, or person using the same, or of any person having the care or management or in any manner conducting the business thereof, betting with persons resorting thereto, or for the purpose of any money or valuable thing being received by or on behalf of such owner, occupier, keeper or person aforesaid, as or for the consideration for any assurance, undertaking, promise or agreement, express or implied, to pay or give thereafter any money or valuable thing on any event or contingency of or relating to any horse race or other race, fight, game, sport, or exercise, or as or for the consideration for securing, the paying or giving by some other person of any money or valuable thing on any such event or contingency aforesaid; and every house, office, room or other place opened, kept or used for the purposes aforesaid, or any of them, is hereby declared to be a common nuisance and contrary to law.”<sup>5</sup> The second section of this same act makes all such places in law a common gaming house. Inasmuch as saloons are frequently used as places for gambling, it is believed that the construction of this act as made by the courts will be of use sufficient to justify their citation and consideration here. Under its provisions a bookmaker using the bar of a public house for the purpose of paying debts made and lost elsewhere is not using the house for the purpose of “betting with persons resorting thereto.”<sup>6</sup> This statute creates two separate and distinct offenses, the one keeping the places referred to, first, for the purpose of betting with persons resorting thereto; and, secondly, for the purpose of receiving deposits on bets. A person may be rightly convicted for one or the other of these offenses.<sup>7</sup> It is not necessary to a conviction for keeping a house for the purpose of betting with persons resorting thereto to prove an actual resorting, and it is enough to show that the house was opened and

<sup>5</sup> 16 and 17 Vict. c. 119, § 1.

Stoddart v. Hawke, 50 W. R. 93;

<sup>6</sup> Bradford v. Dawson [1897], 1

18 T. L. R. 22.

Q. B. 307; 61 J. P. 134; 66 L. J.

<sup>7</sup> Bond v. Plumb [1894], 1 Q.

Q. B. 191; 76 L. T. 54; 45 W. R.

B. 169; 58 J. P. 168.

347; 18 Cox C. C. 473. See also

advertised as a betting house. But if evidence of resorting is relied upon it must be physical "resorting" as that term is used in its ordinary sense.<sup>8</sup> If two separate acts of betting with strangers are proved and betting books kept, this is some evidence of keeping a betting house.<sup>9</sup> But if the betting takes place between members of a *bona fide* club this is not an offense within this statute.<sup>10</sup> A person who goes into a bar of a public house, and not casually, but for several days, habitually bets with people he meets there on horse-racing, though he has no interest in the room or house, may be convicted of using the house for betting.<sup>11</sup> Where it was proved that on each of three different days the defendant was in the bar of a beer house and a number of persons came in, took slips of paper which were hanging on the wall, wrote on the slips the names of the horses they wished to back for the races, wrapped up in the slips the money they staked and handed the slips with the money enclosed to the defendant; and it was also proved that usually the defendant went outside and received the slips and the money on the doorstep of the house, but on one of the three days he received two slips with money enclosed in the bar, it was held that there was evidence to go to the jury that the defendant had used the bar for the purpose of betting with persons resorting thereto on each of the three days, and that he was rightly convicted.<sup>12</sup> The license holder who knows of a bookmaker using the bar of his house for the purpose of betting with the customers may also be convicted of suffering betting upon his premises.<sup>13</sup> Where a stranger stood on a piece of waste ground near but not belonging to a public house and received bets in sealed packets, and these

<sup>8</sup> Regina v. Brown, 1 Q. B. 119; 64 L. J. M. C. 1; 72 L. T. 22; 43 W. R. 222; 59 J. P. 485; 15 Rep. 59.

<sup>9</sup> Foote v. Butler, 41 J. P. 792.

<sup>10</sup> Downs v. Jackson [1895], 2 Q. B. 203; 59 J. P. 487; 64 L. J. M. C. 238; 72 L. T. 728; 43 W. R. 566; 15 Rep. 466; Oldham v. Ramsden, 44 L. J. C. P. 309; 22 L. T. 825; 39 J. P. 583.

<sup>11</sup> MacWilliam v. Dawson, 56 J. P. 182; Whitehurst v. Fincher, 62 L. T. 433; 54 J. P. 565.

<sup>12</sup> Regina v. Warton [1895], 1 Q. B. 227; 64 L. J. M. C. 74; 72 L. T. 29; 15 Rep. 102; 18 Cox C. C. 70.

<sup>13</sup> Hornsby v. Raggett [1892], 1 Q. B. 20; 66 L. T. 21; 40 W. R. 111; 55 J. P. 508.



packets were fetched at intervals by a servant of the house, who kept them in the house till the stranger entered and opened them, but the stranger had no interest in the house, it was held that the license holder could not be convicted of suffering the stranger to use the house as a betting house.<sup>14</sup> Where a professional betting man went for three hours every day to a beer house and conducted the business of ready-money betting in the saloon to the knowledge of the license holder, it was held that the betting man was guilty of the offense of using a place for betting and the license holder of permitting his licensed premises to be used as a place of betting.<sup>15</sup> If a betting man carries on his betting without the knowledge or consent of the license holder, he [the licensee] cannot be convicted.<sup>16</sup> The sale and receipt of the purchase money for tickets in an ordinary Derby sweepstakes by a licensed victualler in England in the bar of his house is not an offense against the betting act of that country, although it may be a lottery.<sup>17</sup> Where the grounds of a public house are used for races or matches much depends on the kind of uses and the relation between the owner of the place and those who bet there to constitute the user an offense. Thus, where the owner of the ground allowed a betting man to receive bets in a palisade forty-four yards long and two yards wide, the latter was held to keep a "place."<sup>18</sup> So where a betting man stood on a stool on which there was a large umbrella, on a race ground, it was held he

<sup>14</sup> *Davis v. Stephenson*, 24 Q. B. Div. 529; 54 J. P. 565; 59 L. J. M. C. 73; 62 L. T. 436; 38 W. R. 492.

<sup>15</sup> *Belton v. Busby* [1899], 2 Q. B. 380; 68 L. J. Q. B. 859; 63 J. P. 709; 47 W. R. 636; 81 L. T. 196; 15 T. L. R. 458. Consult also *Tromans v. Hodgkinson* [1903], 1 K. B. 30; 72 L. J. K. B. 21; 67 J. P. 30; 51 W. R. 286; 87 L. T. 549; 19 T. L. R. 19; *Rex v. J. Deaville* [1903], 1 K. B. 468; 72 L. J. K. B. 272; 67 J. P.

82; 51 W. R. 604; 88 L. T. 32; 19 T. L. R. 223.

<sup>16</sup> *Rex v. A. Deaville, Rex v. Simpson* [1903], 1 K. B. 468; 72 L. J. K. B. 272; 67 J. P. 82; 51 W. R. 604; 88 L. T. 32; 19 T. L. R. 223.

<sup>17</sup> *Regina v. Hobbs* [1898], 2 Q. B. 647; 62 J. P. 474, 551; 67 L. J. Q. B. 928; 79 L. T. 160; 14 T. L. R. 573; 47 W. R. 79.

<sup>18</sup> *Shaw v. Morley*, L. R. 3 Exch. 137; 32 J. P. 391.



kept a "place."<sup>19</sup> Likewise, where the place was a field of three acres, in which was a pigeon-shooting match for ten pounds a side, and afterwards a foot race took place, to which persons were admitted who betted with each other, it was held he kept a "place."<sup>20</sup> The same ruling was made where an occupier of enclosed land permitted bookmakers to bet on a foot race in the enclosed land,<sup>21</sup> and also where the bookmaker stood in the ring at a grand stand during the race.<sup>22</sup> But where one S went into a field where dog races were held, but only walked up and down, and stood in no one spot making bets, it was held that he did not keep a "place" for betting.<sup>23</sup>

<sup>19</sup> *Bows v. Fenwick*, L. R. 9; C. P. 339; 43 L. J. M. C. 107; 30 L. T. 524; 22 W. R. 804; 38 J. P. 440.

<sup>20</sup> *Eastwood v. Miller*, L. R. 9; Q. B. 440; 43 L. J. M. C. 139; 30 L. T. 716; 22 W. R. 799; 38 J. P. 647.

<sup>21</sup> *Haigh v. Sheffield*, L. R., 10 Q. B. 102; 44 L. J. M. C. 17; 31 L. T. 536; 23 W. R. 547; 39 J. P. 230.

<sup>22</sup> *Galloway v. Morris*, 8 Q. B. Div. 275; 46 J. P. 326.

<sup>23</sup> *Snow v. Hill*, 14 Q. B. Div. 588; 54 L. J. M. C. 95; 52 L. T. 859; 33 W. R. 475; 40 J. P. 440.

Under this English statute there must be evidence of more than one act of betting. *Jayes v. Harris*, 99 L. T. 56; 72 J. P. 364.

Further illustrations as to the meaning of a "place" will be found in *Liddell v. Lofthouse* [1896], 1 Q. B. 498; 69 J. P. 264; 12 T. L. R. 204; *McInaney v. Hildreth* [1897], 1 Q. B. 600; 61 J. P. 325; 66 L. J. Q. B. 376; 76 L. T. 463; 13 T. L. R. 284; *Regina v. Humphrey* [1897], 2 Q. B. 242; 61 J. P. 548; 66 L. J. Q. B. 601; 77 L. T. 2; 46 W. R.

9; affirmed H. L. [1899] A. C. 143; 68 L. J. Q. B. 392; 63 J. P. 260; 47 W. R. 580; 80 L. T. 538; 15 T. L. R. 266; overruling *Hawke v. Dunn* [1897], 1 Q. B. 579; 61 J. P. 292; 66 L. J. Q. B. 364; 76 L. T. 355; 45 W. R. 359; 13 T. L. R. 281; and *Brown v. Patch* [1899], 1 Q. B. 892; 68 L. J. Q. B. 588; 63 J. P. 421; 47 W. R. 620; 80 L. T. 716.

An ordinance prohibiting persons from frequenting and using any street or public place for the purposes of bookmaking or betting is valid. *Burnett v. Berry* [1896], 1 Q. B. 641; 60 J. P. 375; 65 L. J. M. C. 118; 44 W. R. 512; 74 L. T. 494; 12 T. L. R. 362; *Jones v. Walters*, 62 J. P. 374; 78 L. T. 167; 14 T. L. R. 265; *White v. Morley* [1899], 2 Q. B. 34; 63 J. P. 550; 66 L. J. Q. B. 702; 47 W. R. 883; 80 L. T. 761; 15 T. L. R. 360; *Thomas v. Sutters* [1900], 1 Ch. 10; 69 L. J. Ch. 27; 63 J. P. 724; 48 W. R. 133; 81 L. T. 469; 16 T. L. R. 7; *Hickey v. Hay*, 65 J. P. 232; 17 T. L. R. 52.

For a case of a penny-in-a-slot machine held to be kept in vio-

### Sec. 246. Public dispensary.

In several States liquor is only sold at public dispensaries owned and managed by the State or by one of its subdivisions. This was particularly true of South Carolina. Usually the person or officer in charge of the dispensary was selected by the county wherein it was located, but he was a State officer, and all books, documents and letters therein *prima facie* related to the public business, subject to examination by the Legislature.<sup>24</sup> The County Board of Control in that State designated the location of a dispensary, notice thereof being duly given, and thereupon the voters of the township wherein it was to be located could remonstrate by petition against its location in the township, and it was not necessary for this remonstrance to specifically specify the exact place where the dispensary was to be located.<sup>25</sup> The officer in charge of a dispensary was required to deposit all monies received for sales of liquors with the County Treasurer, and to give bond for a faithful accounting.<sup>26</sup> Any one purchasing liquors outside the State and bringing them within it was required to comply with the regulations of the dispensary law on their arrival or the liquor would become "contraband."<sup>27</sup> This dispensary law did not repeal by implication prior statutes forbidding the sale of intoxicating liquors in various counties of the State, and in such counties dispensaries could not be established.<sup>28</sup> This is also true in Alabama, where a dispensary law had been enacted;<sup>29</sup> nor could one be located within the distance of a

lation of the law, see *Fielding v. Turner* [1903], 1 K. B. 867; 67 J. P. 252; 72 L. J. K. B. 542; 51 W. R. 543; 89 L. T. 273; 19 T. L. R. 404.

<sup>24</sup> *State v. Farnum*, 73 S. C. 165; 53 S. E. 83.

<sup>25</sup> *Severance v. Murphy*, 67 S. C. 409; 46 S. E. 35. See also *Little v. Barksdale* (S. C.), 63 S. E. 308.

<sup>26</sup> *Guy v. McDaniel*, 51 S. C. 436; 29 S. E. 196 (sufficiency of complaint to recover funds).

On winding up the affairs of

the State Dispensary, all its funds was held to be a trust fund for the payment of claims of dispensary creditors. *Fleischman Co. v. Murray*, 161 Fed. 152 (officers not officers of State).

<sup>27</sup> *Dispensary Act*, March 6, 1896, § 37; *State v. Holleyman* (S. C.), 31 S. E. 362.

<sup>28</sup> *Bailey Liquor Co. v. Austin*, 82 Fed. 785; See also *State v. Loftis*, 49 S. C. 443; 27 S. E. 451.

<sup>29</sup> *Rose v. Lampley*, 146 Ala. 445; 41 So. 521; *Gilmore v. State*, 126 Ala. 20; 28 So. 382;

church or schoolhouse wherein the Legislature had provided by a prior act that liquors should not be sold.<sup>30</sup> A like rule prevails in Georgia.<sup>31</sup> The right to operate a dispensary is the exercise of a franchise which must be given by the State.<sup>32</sup> In North Carolina the dispensary law does not repeal the general statute forbidding the retail of liquors without a license, although the County Commissioners are forbidden to issue a license, and if issued it would be no protection to the holder of it.<sup>33</sup> The Georgia statute authorizing the city of Rome to maintain a dispensary and to borrow money and make purchases of liquors on credit is constitutional.<sup>34</sup>

### Sec. 247. Sales by public agents.

In some of the New England States for more than half a century sales of liquors have been in the hands of public agents.

see Sheppard v. Dowling, 127 Ala. 1; 28 So. 791; Hubbard v. Lancaster, 127 Ala. 157; 28 So. 796; Davis v. State, 145 Ala. 247; 40 So. 663.

<sup>30</sup> Tallassee v. Toombs (Ala.), 47 So. 308.

<sup>31</sup> Rose v. State, 4 Ga. App. 588; 62 S. E. 117; see also *Ex parte* Hall (Ala.), 47 So. 199; Fowler v. Rome Dispensary (Ga. App.), 62 S. E. 660.

<sup>32</sup> Union Town v. State (Ala.), 39 So. 814; State v. Wilburn (Ala.), 39 So. 816. The Alabama act is constitutional. Sheppard v. Dowling, 127 Ala. 1; 28 So. 791.

<sup>33</sup> State v. Smith, 126 N. C. 1057; 35 S. E. 615. Citing Hillsboro v. Smith, 110 N. C. 417; 14 S. E. 972; State v. Smiley, 101 N. C. 709; 7 S. E. 904; State v. Stevens, 114 N. C. 873; 19 S. E. 861; State v. Reid, 115 N. C. 741; 20 S. E. 468; State v. Robinson, 116 N. C. 1046; 21 S. E. 701; State v. Downs, 116 N. C. 1064; 21 S. E. 689; State v. Weathers, 98 N. C. 685; 4 S. E. 512; State

v. Haynie, 118 N. C. 1270; 24 S. E. 536; State v. Hicks, 101 N. C. 747; 7 S. E. 707; State v. Hamby (N. C.), 35 S. E. 614.

As to disposal of profits of sale of liquors in North Carolina, see Crocker v. Moore, 140 N. C. 429; 53 S. E. 229.

<sup>34</sup> Chamlee v. Davis, 115 Ga. 266; 41 S. E. 691.

As to what officers shall have control of these dispensaries, see Dallis v. Griffin, 117 Ga. 408; 43 S. E. 758; and as to what towns and cities under the Lee County Act (Acts 1902, p. 222) may establish a dispensary, see Smithville v. Lee County, 125 Ga. 559; 54 S. E. 539; Waters v. McDowell, 126 Ga. 807; 56 S. E. 95.

As to the funds coming into the hands of the public town liquor agent in Vermont, see State v. Brattleboro, 68 Vt. 520; 35 Atl. 472.

After a dispensary has been abolished, sales by its officers are illegal. Dispensary Commissioners v. Hooper, 128 Ga. 99; 56 S. E. 997.

These were the forerunners of the dispensaries of the South—of South Carolina, of Alabama, of Georgia. These agents are not officers of the political division of the State selecting them, their positions are not offices, and they do not hold over until their successors have been selected and qualified, as is the case of officers generally.<sup>35</sup> Where selectmen were liable to a penalty for failure to select an agent, and the selectmen of a town appointed one of their own number, making the appointment a matter of record, and he accepted, it was held that they were not guilty under the statute on the ground that they fixed no salary for him, made no regulations concerning sales, the town clerk made no entry on the town records of the appointment, and the agent gave no bond, as required by statute, nor entered upon his duties.<sup>36</sup> But as a rule the selectmen of a New England State cannot appoint one of their own number as agent, nor can they purchase liquors and bind their town by the purchase.<sup>37</sup> If a duly appointed agent sell liquors in violation of law he becomes liable to its penalty the same as any other person so selling liquors.<sup>38</sup> As, for instance, if he sells to a minor.<sup>39</sup> A statute authorizing a town to sell liquor for a specific purpose is sufficient to authorize them to make a purchase of the liquor in order to sell it.<sup>40</sup> Irregularity in making the appointment of the agent will not render him liable if he make a sale thereunder, on the theory that the sale is illegal;<sup>41</sup> but if he must give a bond, then a sale before

<sup>35</sup> *State v. Weeks*, 67 Me. 60; 8 Atl. 754.

<sup>36</sup> *Rowe v. Edmunds*, 3 Allen, 334; see *State v. Woodbury*, 35 N. H. 230.

Where the statute was in its main purpose ineffectual, mandamus was refused to compel an appointment. *People v. Lawton*, 30 Mich. 386.

<sup>37</sup> *Richards v. Columbia*, 55 N. H. 96.

In South Carolina it was held that the attempt to make the governor a member of the State

Dispensary Board was ineffectual, the act in that respect being unconstitutional. *State v. Porterfield*, 47 S. C. 75; 25 S. E. 39.

<sup>38</sup> *Sate v. Keen*, 34 Me. 500; *State v. Putnam*, 38 Me. 296; *State v. Parks*, 29 Vt. 70; *State v. Fisher*, 35 Vt. 584.

<sup>39</sup> *State v. Fairfield*, 37 Me. 517.

<sup>40</sup> *Kidder v. Knox*, 48 Me. 551; *Great Falls Bank v. Farmington*, 41 N. H. 32.

<sup>41</sup> *State v. Weeks*, 67 Me. 60; 8 Atl. 754.



he has given his bond will be illegal.<sup>42</sup> If a town agent refuse to sell to any particular person, his refusal does not render him liable to such person in damages.<sup>43</sup> A statute requiring him to keep an account of all liquors he purchases, the several kinds purchased, and the prices paid with the dates, is complied with by keeping the receipted bills, rendered by the seller, showing the date, price and kind of liquors sold him.<sup>44</sup> Anyone selling to a person claiming to act as town agent must take notice of his authority or power to bind his town, and for that purpose is chargeable with notice of the record of his appointment as entered in the town records, even though such agent has a certificate of his appointment.<sup>45</sup> Where there is a State agent authorized to make sales to town agents, if a person falsely represent himself as such State agent, and thereby induces a town to purchase liquors, on discovering the fraud the town may rescind the purchase and tender back the liquors, if done within a reasonable time after the discovery is made.<sup>46</sup> Under the town agency law in Vermont, in 1863, an agent could only sell liquor upon application for it for a lawful purpose, and such application must have been accompanied by representations reasonably inducing the belief that it was desired for that purpose only; and a sale without such application and representations, and upon a belief that they were truthfully made, rendered the agent liable.<sup>47</sup> The liquor in the hands of the agent is the liquor of the town and not his property; and liquor shown to be in his hands will be so regarded until the contrary is shown.<sup>48</sup> So the fact of money advanced to a town by the agent will not make the money he receives on sales his money to reimburse himself; and the fact that the selectmen give their personal obligation in payment

<sup>42</sup> Commonwealth v. Pillsbury, 12 Gray, 127.

<sup>43</sup> Dwinnels v. Parsons, 98 Mass. 470.

<sup>44</sup> Wenham v. Dodge, 98 Mass. 474.

<sup>45</sup> Backman v. Charlestown, 42 N. H. 125.

<sup>46</sup> Butler v. Northumberland, 50 N. H. 33.

In New Hampshire, in 1878, towns were liable only for liquors purchased of a State agent. Lawten v. Allentown, 58 N. H. 289.

<sup>47</sup> State v. Fisher, 35 Vt. 584.

<sup>48</sup> Lemington v. Blodgett, 37 Vt. 210.



of the liquors will not make the liquor theirs when they purchase on behalf of their town.<sup>49</sup>

### **Sec. 248. Agent's liability on his bond.**

Usually a public agent for the sale of liquor is not liable on his bond until a demand on him has been made; but if his term expire and he fails to turn over the monies in his hands, a demand is not necessary.<sup>50</sup> Usually the bondmen's liability is limited to sales made during the term for which he is appointed and not for sales made thereafter, even though he holds over.<sup>51</sup> In a suit on his bond to recover monies due the town his records as kept by him in his official capacity are admissible in evidence; and if they show he paid more for liquors than he reports he received for them on sales thereof made, it is a question for the jury whether he made sales which he has not recorded.<sup>52</sup>

### **Sec. 249. Transportation or conveyance of liquors.**

In a number of States, in order to restrict the liquor traffic, statutes forbid the transportation of liquors in or into prohibition districts. A statute forbidding the conveyance of liquors has no reference to a removal of liquors from one room in a house to another room in the same house.<sup>53</sup> A statute making it unlawful to manufacture, sell, or keep for sale, give away, or furnish liquors, or to "keep a saloon at any other place where such liquors are manufactured, sold or stored for sale, given away, or furnished," does not forbid anyone conveying or delivering liquors within local option districts.<sup>54</sup> The conveyance of liquors from one place in a

<sup>49</sup> *Lemington v. Blodgett*, 37 Vt. 215.

<sup>50</sup> *Powesheik County v. Ross*, 9 Iowa, 511.

<sup>51</sup> *Dover v. Twombly*, 42 N. H. 59.

<sup>52</sup> *Wenham v. Dodge*, 98 Mass. 474.

<sup>53</sup> *State v. Kaplicsky*, 73 Atl. 830.

Incidentally it may be stated that the interstate law has no ref-

erence to the conveyance of liquors from one place within a State to another place therein. *High v. State (Okla.)*, 101 Pac. 115.

<sup>54</sup> *People v. Converse*, (Mich); 121 N. W. 475.

As to what does not show the agent of an express company was guilty of delivering liquors in a local option district, see this case.

See also *Mason v. Lathrop*, 7 Gray, 354.

town to another place in the same town is a violation of a statute forbidding the conveyance or transportation of liquors.<sup>55</sup> This covers an instance of a wholesaler delivering goods sold to his customers.<sup>56</sup> A common carrier cannot screen itself from prosecution under its common law duty to accept and convey goods tendered it for carriage.<sup>57</sup> A statute which forbids express companies, common carriers, or their employes, "or any other person," to convey liquors applies to the driver of a team who undertakes with his team to deliver liquors in his own wagon.<sup>58</sup> Where a statute makes it an offense to "receive for conveyance liquors unlawfully sold or intended for unlawful sale," it is the receipt of the liquors for the purpose of conveyance that creates the offense, for that act completes their sale. In such an instance the purchaser's intention with regard to the sale is immaterial; and he need not be named in the indictment, nor need it be shown he had no authority to sell.<sup>59</sup> In order to show that the carrier had reasonable cause to believe the liquors conveyed were intended to be unlawfully sold, the general reputation of the consignee as a liquor dealer, and of discoveries made on a search warrant of his premises, may be shown.<sup>60</sup> In a statute forbidding any person or corporation not "regularly" conducting a "general" express business, except a railroad or street railway company authorized to carry freight or express, to receive for transportation, for hire, for delivery of liquor in a place where licenses are not granted, the word general imports something more than a casual, infrequent and incidental carriage of goods other than liquors, and means that the major part of its business is the carriage of a variety of goods commonly carried by express companies. The word

<sup>55</sup> Commonwealth v. Waters, 11 Gray, 81.

<sup>56</sup> State v. Campbell, 76 Iowa, 122; 40 N. W. 100.

<sup>57</sup> State v. Goss, 59 Vt. 266; 9 Atl. 829.

<sup>58</sup> State v. Campbell, 76 Iowa, 122; 40 N. W. 100.

<sup>59</sup> Commonwealth v. Locke, 114 Mass. 288.

<sup>60</sup> Commonwealth v. Harper, 145 Mass. 100; 13 N. E. 459; see Commonwealth v. Fisher, 138 Mass. 504.

Evidence which showed defendant was conducting a general express business. Commonwealth v. People's Express Bureau (Mass.), 88 N. E. 420.

regularly means fixedness and permanency in the character of the business, and indicates stated times and established routes of conveyance.<sup>61</sup> Upon a charge of a violation of such a statute brought against an express company, no presumption arises from its name that it is engaged in carrying on a general express business. That fact must be proven.<sup>62</sup> It was held that the statute just alluded to included those who carried liquors in their own vehicles as well as those who go on trains or steamers, but it involves the idea of route and time, or both.<sup>63</sup> Such a statute is constitutional.<sup>64</sup> Where a statute requires expressmen to keep open for inspection of police officers a book, in which must be plainly entered the date of reception of each package of liquor received for carriage into a no-licensing town, with a correct transcript of the marks as well as date of delivery, it is violated if the expressman carries the liquor into such town before he makes the entries, although he may have made them correctly after their arrival.<sup>65</sup> In South Carolina, a statute forbidding the "transport" of liquors "from place to place" within the State, applies to the carriage or conveyance of liquor on the person.<sup>66</sup>

### Sec. 250. Limiting number of saloons.

The Legislature may limit the number of saloons within a city or within a block of a city, and such limitation is not a prohibitory law but a mere regulation of the sale of liquor.<sup>67</sup> And where a city council or town board has a discretion to issue a license or refuse the application without assigning any

<sup>61</sup> Commonwealth v. Peoples Express Co. (Mass.), 88 N. E. 820.

<sup>62</sup> Commonwealth v. Peoples Express Co. (Mass.), 88 N. E. 420.

<sup>63</sup> Commonwealth v. Peoples Express Co., *supra*.

<sup>64</sup> Commonwealth v. Peoples Express Co., *supra*.

<sup>65</sup> Commonwealth v. Shea, 185 Mass. 89; 69 N. E. 1066.

<sup>66</sup> State v. Pope, 79 S. C. 87; 60 S. E. 234.

A city may require a common carrier to deliver all liquor brought within such city by it from without the State at a particular depot and nowhere else. Barrett v. Rickard (Neb.), 124 N. W. 153.

<sup>67</sup> *Ex parte* Abrams (Tex. Cr. App.), 120 S. W. 883; *Ex parte* Clark (Tex. Cr. App.), 120 S. W. 892.

cause, or without any cause for its refusal to its issuance, a refusal of a license for a town where others are in force will not be reviewed, and the licensing authorities are justified in doing so.<sup>68</sup> But an ordinance limiting the number of licenses<sup>69</sup> to one in a space of nine hundred yards on a single street, including the parks on intersecting streets, is unreasonable, amounting to substantial prohibition, especially when taken in connection with a clause in it requiring the consent of all owners and occupants of stores, residences and other buildings within a radius of one hundred miles from the place where the business is to be conducted.<sup>70</sup>

### **Sec. 251. Saloon for negroes.**

In Louisiana separate saloons are provided for negroes and whites; and the requirements of the statute that they can be used only by the race for which they are provided seems to be regarded as valid.<sup>71</sup>

### **Sec. 252. Liquor sales carried on with other business.**

An ordinance providing that the sale of "near" beer shall not be carried on in connection with any other business is a reasonable regulation.<sup>72</sup>

### **Sec. 253. Criminal liability of owner and landlord.**

In some States, by statute, it is made a misdemeanor for the owner of real estate to lease it for the illegal sale of intoxicating liquors, or to suffer premises under his control to

<sup>68</sup> *Schweirman v. Highland Park* (Ky.), 113 S. W. 507.

<sup>69</sup> In this case limiting the sale of "near beer."

<sup>70</sup> *Campbell v. Thomasville* (Ga.), 64 S. E. 15.

A licensee who opens two bars in different buildings cannot insist that he cannot be punished for maintaining either, as one or the other is lawful. *Huber v. Commonwealth* (Ky.), 112 S. W. 583; 33 Ky. L. Rep. 1031.

In Rhode Island one license only can be issued for each 500 inhabitants according to the last United States or the State census (Acts 1908, p. 206, c. 1783). *Greenough v. Narragansett* (R. I.), 71 Atl. 594.

<sup>71</sup> *State v. Falkenheimer* (La.), 49 So. 214.

<sup>72</sup> *Campbell v. Thomasville* (Ga.), 64 S. E. 15.



be used for that purpose. Under such a statute, if a building is leased to a tenant for a lawful purpose, and the tenant enters into possession under the lease, the building is under the control of the tenant while he continues in possession under the lease, unless there are special provisions in the lease which give the control to the landlord.<sup>73</sup> The gist of the offense is in the landlord allowing his premises to be used for purposes violative of the liquor law, when he might have prevented it. Accordingly, it is held that the owner of premises upon which intoxicating liquors are kept for sale contrary to law, is not guilty of an offense if he leased them for a lawful purpose, and does not affirmatively assent to such unlawful use; the mere failure to prevent or attempt to prevent the illegal use or sale of the liquors will not subject him to the penalties of the statute.<sup>74</sup> Under such a statute, a landlord who lets a house, knowing at the time of letting it that it is to be used for the clandestine sale of intoxicating liquors, or who afterwards advises, encourages, or aids such sales, is guilty of a misdemeanor; but when he leases the house for a lawful purpose, his mere non-interference with the subsequent illegal traffic of his tenant, after he becomes aware of it, does not involve him in his tenant's guilt. The enforcement of a law is a duty which rests primarily upon the officers and the courts. The law is not so unreasonable as to require a private citizen to embroil himself in personal difficulties, contentions and law suits for the public good.<sup>75</sup> And in a prosecution for a violation of the statute the State must show such acts or circumstances as will satisfy the jury that the landlord, having knowledge that the house was being used for such illegal purpose not only remained inactive, but he assented or

<sup>73</sup> State v. Pearsell, 43 Ia. 630; Commonwealth v. Wentworth, 146 Mass. 36; 15 N. E. 138; Koester v. State, 36 Kan. 27; 12 Pac. Rep. 339; State v. Shanahan, 54 N. H. 497; Crofton v. State, 25 Ohio St. 249; Robinson v. State, 24 Tex. 152; Commonwealth v. Conway, 112 S. W. 575; 33 Ky. L. Rep. 996.

<sup>74</sup> State v. Ballingall, 42 Ia. 87; State v. Bates, 62 Vt. 184; 19 Atl. Rep. 229.

<sup>75</sup> Crocker v. State, 49 Ark. 60; 4 S. W. Rep. 197; State v. Potter, 30 Ia. 587; Koester v. State, 36 Kan. 27; 12 Pac. Rep. 339; State v. Williams, 30 N. J. L. 102.



consented to such use, the burden of proof being upon the State.<sup>76</sup> In such case, as we have already said, an affirmative assent on the part of the landlord is necessary, but in establishing such affirmative assent it is not necessary to show that the defendant told the lessee that he assented to the building being used for an illegal purpose. Such assent is the result of the landlord's mind and need not be coupled with any other purpose. In order, however, to ascertain such assent, the jury must find that the defendant did some affirmative act, or made some declaration in connection therewith, or in relation thereto, from which they can find that the defendant did so assent.<sup>77</sup>

### **Sec. 254. Police regulations—Enforcement by mandamus.**

The remedy by mandamus is one which is allowed to compel the performance of some duty owing to an individual or to the public. The duty must be specific in its nature and of such character that the court can prescribe a definite act or series of acts which will constitute a performance of the duty, so that the respondent may know what he is obliged to do and may do the act required, and the court may know that the act has been performed and may enforce its performance. It is not necessary, in all cases, that the performance of the duty should consist of a single act. It may be a succession of acts if this duty is specific and the acts are of such a nature that the court can supervise the performance of the duty and the execution of the mandate. But the writ has never been made use of and does not lie for the purpose of enforcing the performance of duties generally. It will not lie where the court would have to control and regulate a general course of official conduct and enforce the performance of official duties generally. In such a case the court could not prescribe the particular act to be performed and enforce its performance. Accordingly, it has been held that mandamus will not lie to compel the mayor of a city to enforce Sunday

<sup>76</sup> State v. Abrahams, 4 Ia. 541. Cordes v. State, 37 Kan. 48; 14

<sup>77</sup> State v. Abrahams, 6 Ia. Pac. Rep. 493.  
116; State v. Pearsell, 43 Ia. 630;

closing laws and ordinances against the saloons of such city. In such a case the court could not prescribe the particular act to be performed and enforce its performance. To do so it would be necessary for the court to supervise generally the official conduct of the mayor and to determine in numerous instances whether he had persistently, and to the extent of his power and the force in his hands, carried out the mandate of the court and performed his official duty. For a court to assume the management of municipal affairs of a city would be to depart from its proper sphere and assume governmental functions, which are outside of the jurisdiction of the courts and not within the remedy by writ of mandamus.<sup>78</sup> And in Massachusetts, it has been held that mandamus will not lie to compel the marshal of a city to station a police officer at a certain place in accordance with an order of the board of aldermen of the city.<sup>79</sup>

<sup>78</sup> *People v. Dunne*, 218 Ill. 346;      <sup>79</sup> *Alger v. Seaver*, 138 Mass.  
76 N. E. 570; *People v. Buss*, 238      331.  
Ill. 593; 77 N. E. 840; affirming  
111 Ill. App. 218.

## CHAPTER V.

### MUNICIPAL REGULATION.

#### SECTION.

- 255. Creation of public corporations—Ordinances.
- 256. Municipal power, how conferred and construed.
- 257. Municipal control — Legislative power — Police power.
- 258. Discretionary powers of municipal corporations.
- 259. Exclusive municipal power, effect.
- 260. Powers delegated to and by municipal corporations.
- 261. Municipal regulations beyond corporate limits.
- 262. Reasonableness of ordinance.
- 263. Extent of power of municipality to grant licenses.
- 264. Power to license—Use and grant.
- 265. Power to require a license—Instances.
- 266. Power to grant a license, what includes.
- 267. Ordinances necessary to exacting of a license.
- 268. Delegation by city of power to require a license.
- 269. Number of licenses.
- 270. Restricting saloons to specified parts of a city.
- 271. License ordinance, when not invalid.
- 272. Discriminating ordinance, when not unconstitutional.

#### SECTION.

- 273. Exacting license, requirement when not discriminating.
- 274. Bond of licensee.
- 275. Municipal power to prohibit.
- 276. Power to prohibit includes power to license.
- 277. Prohibitory ordinance, not in violation of common law rights.
- 278. Regulation and prohibition distinguished.
- 279. Limitation on power of city to enact ordinance.
- 280. Power to regulate sale of liquor—Valid ordinance.
- 281. Power to regulate sale of liquors — Invalid ordinance.
- 282. Amount of license fees or taxes.
- 283. License fees, limitation.
- 284. Right of different jurisdictions to exact license.
- 285. License, different jurisdictions may require.
- 286. United States license, effect.
- 287. Keeping liquors for sale or saloon open.
- 288. Ordinance, when not conflicting with statute — Keeping liquor for unlawful sale.
- 289. Prohibiting owner to enter saloon on Sunday.

## SECTION.

- 290. Declaring sale of liquors a nuisance.
- 291. Regulating days and hours.
- 292. Sales on Sundays, election days or holidays.
- 293. Sales at prohibited hours.
- 294. Picnic and social gatherings.
- 295. Physician's prescriptions.
- 296. Sales to minors and drunkards.
- 297. Prohibiting sales in State having local option laws.
- 298. Women not licensing—Constitutional law.
- 299. Women in saloons.
- 300. Wine rooms.
- 301. Requiring a county license.
- 302. Repeal of statute by implication, when not accomplished.
- 303. Regulation of saloon room—Location of saloon.
- 304. Lights burning in saloon.

## SECTION.

- 305. Screens—Exposure of room to view.
- 306. Prohibiting the carriage of liquors.
- 307. Police visiting saloon.
- 308. Penalties essential—Heavier for subsequent offense.
- 309. Penalties, greater and additional—Infliction.
- 310. Revocation of license—Conditional ordinance.
- 311. Ordinance annulled by subsequent statute.
- 312. Exceptions to prohibitory ordinances.
- 313. Ordinance in part void.
- 314. Ordinance in conflict with Constitution.
- 315. City conducting a dispensary.
- 316. Appointment of liquor agents.
- 317. Duties and powers of liquor agents.

**Sec. 255. Creation of public corporations—Ordinances.**

Public or municipal corporations are established for the local government of towns, cities or particular districts. The special powers conferred upon them are not vested rights as against the State, being wholly political rights existing only during the will of the Legislature of the State; for otherwise there would be numberless petty governments existing within the State forming a part of it, yet independent of the control of the sovereign power. Such powers may at any time be repealed or abrogated by the Legislature, either by a general law operating upon the whole State, or by a special act altering the powers of the corporation.<sup>1</sup> If the legislative action

<sup>1</sup> Barnes v. District of Columbia, 91 U. S. 510; Laranne Co. v. New Albany Co., 92 U. S. 307; State v. Jennings, 27 Ark. 419; San Francisco v. Canaran, 42 Cal.

541; Granbury v. Thurston, 23 Conn. 416; People v. Power, 24 Ill. 187; Sloan v. State, 8 Blackf. (Ind.) 35L; Langworthy v. Dubuque, 16 Ia. 271; Atchinson v.

in such cases operates injuriously to the municipalities or to individuals, the remedy is not with the courts. The courts have no power to interfere and the people must be looked to, to right through the ballot box all such wrongs.<sup>2</sup> Being created by the Legislature, ordinances of such corporations must not conflict with the general laws of the State, and powers conferred upon them in reference to the traffic in intoxicating liquors must be exercised in conformity to such laws unless exclusive control over the subject is granted to them. The granting authority of such a corporation to pass ordinances in relation to such traffic, in and of itself, will not by implication repeal the general laws of the State upon the same subject;<sup>3</sup> nor will a clause in the charter of such a corporation in general terms to pass By-Laws not consistent with the Constitution and laws of the State confer power upon the municipal authorities to pass an ordinance making it a penal offense to sell intoxicating liquors in quantities of a quart or more to be drank on the premises, where there is a statute of the State which, in effect, declares that every citizen may sell such liquors in quantities of a quart or more;<sup>4</sup> nor to punish a person for selling such liquors, the sale of which is already prohibited by the statute of the State, unless specially authorized to do so.<sup>5</sup> In other words, where authority is conferred upon a municipal corporation to regulate the traffic in intoxicating liquors such power does not enable the corporation to nullify or abrogate the general laws of the

Bartholow, 4 Kan. 124; Goff v. Frederick, 44 Md. 67; Martin v. Dix, 52 Miss. 53; State v. Cowan, 29 Mo. 330; Bradshaw v. Omaha, 1 Neb. 16; Hess v. Pegg, 7 Nev. 23; Patterson v. Society, etc., 24 N. J. L. 385; People v. Tweed, 63 N. Y. 202; Mills v. Williams, 11 Ired. (N. C.) 558; Hawkins v. Commonwealth, 76 Pa. St. 151; Blessing v. Galveston, 42 Tex. 641; Kuhn v. Board, etc., 4 W. Va. 499; Weeks v. Milwaukee, 10 Wis. 242; Harrison, etc., v. Holland, 3 Grat. (Va.) 247; State

v. Haines, 35 Ore. 379; 58 Pac. 39.

<sup>2</sup> City of St. Louis v. Allen, 13 Mo. 414; Bronson v. Oberlin, 41 Ohio St. 476; 52 Am. Rep. 90; State v. Columbia, 17 S. C. 80.

<sup>3</sup> Gardner v. Morris, 20 Ill. 431; Harrington v. State, 9 Wend. (N. Y.) 525; Rochester v. Harrington, 10 Wend. (N. Y.) 547; People v. Morris, 13 Wend. (N. Y.) 325; State v. Witter, 107 N. C. 792.

<sup>4</sup> Adams v. Albany, 29 Ga. 56.

<sup>5</sup> Loeb v. City of Attica, 82 Ind. 175.



State.<sup>6</sup> Where, however, the exclusive power to license, prohibit, or to regulate the traffic in intoxicating liquors is given to a municipal corporation by the Legislature, such corporation may license, regulate or partially or entirely prohibit the traffic as it may see proper to do without regard to the general laws of the State.<sup>7</sup> A city may be given the exclusive power to grant licenses to sell liquors within its boundaries;<sup>8</sup> and it may be authorized to require licenses from all who engage in the sale of liquors within its boundaries.<sup>9</sup> A city may be empowered to inflict a greater penalty for the same act than the State inflicts.<sup>10</sup>

### Sec. 256. Municipal power, how conferred and construed.

Municipal corporations have such powers only as are conferred upon them by the act of Legislature creating them, and such incidental powers as are implied by their creation and for their continued existence.<sup>11</sup> "It is a general and undisputed proposition of law," says Judge Dillon, "that a municipal corporation possesses and can exercise the following powers and no others: First, those granted in express words;

<sup>6</sup> Harris v. Town of Livingston, 28 Ala. 577; Huffsmith v. People, 8 Colo. 175; Foster v. Brown, 55 Ia. 686; Commonwealth v. Luck, 2 B. Mon. (Ky.) 296; State v. Langdon, 31 Minn. 316; State v. Nolan, 37 Minn. 16; Thompson v. City of Mt. Vernon, 11 Ohio St. 688; Augerhoff v. State, 15 Tex. App. 613; Craddock v. State, 18 Tex. App. 567; Corbett v. Territory, 1 Wash. Tr. 431;

<sup>7</sup> Perdue v. Ellis, 18 Ga. 586; Schwuchow v. Chicago, 68 Ill. 444; Harbaugh v. Munough, 74 Ill. 371; Gunnarsson v. Sterling, 92 Ill. 569; Phillip v. Tecumseh, 5 Neb. 305; Trustees v. Keating, 4 Den. (N. Y.) 341; St. Paul v. Troyer, 3 Minn. 291 (Gil. 200).

Cities and towns may be classi-

fied, and a city of one class be given greater powers than those given to another class. Bronson v. Oberlin, 41 Ohio St. 476; 52 Am. Rep. 90; Burekholter v. McConnellsville, 20 Ohio St. 308.

<sup>8</sup> State v. Dwyer, 21 Minn. 512; Wilson v. Whelan, 91 Ga. 461; 17 S. E. 906; Coulterville v. Gillam, 72 Ill. 599.

<sup>9</sup> Bronson v. Oberlin, 41 Ohio St. 476; 52 Am. Rep. 90; State v. Columbus, 17 S. C. 80; Moundsville v. Fountain, 27 W. Va. 182; Jelly v. Dils, 27 W. Va. 267; Glantz v. State, 38 Wis. 549.

<sup>10</sup> Pekin v. Smelzel, 21 Ill. 464; 74 Am. Dec. 105.

<sup>11</sup> Chambers v. Greencastle, 138 Ind. 339; 35 N. E. 14.

second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essentially to the declared purpose of the corporation—not simply convenient, but indispensable. Any fair, reasonable doubt concerning the existence of the power is resolved by the courts against the corporation, and the power is denied. Of every municipal corporation the charter or statute by which it is created is its organic act.”<sup>12</sup> It has been held that the ordinances of the corporation of the city of Washington cannot increase or vary the power given by the acts of Congress, or impose any terms or conditions not authorized by the act of Congress;<sup>13</sup> also, that the corporation of Washington cannot grant a license to retail intoxicating liquors where the general law is that such licenses are granted by the county courts exclusively.<sup>14</sup> In other words, the actions of such corporations are to be held strictly within the limits prescribed by their charters, these being their Constitutions. The courts will not infer that a Legislature intends to authorize a local departure from a general policy of the State unless the local exception is expressed in specific terms; and a general law of the State regulating its municipal corporations will give no authority to them to pass ordinances to license and regulate the sale of intoxicating liquors within their corporate limits. Within such limits such corporations are favored by the courts, and powers expressly granted to them or necessarily implied from their charters cannot be defeated by a strict construction; but acts authorized by them must be done in a manner provided by such statutes.<sup>15</sup>

<sup>12</sup> Dillon's *Munic. Cor.*, § 89; *Cook County v. McCrea*, 93 Ill. 236; *Heneke v. McCord*, 55 Ia. 378; *Smith v. Newburn*, 70 N. C. 14.

<sup>13</sup> *Thompson v. Lessee of Carroll*, 22 How. 422.

<sup>14</sup> *United States v. Kladenbach*, 1 C. C. 132.

<sup>15</sup> *Sanders v. Town Commissioners*, 30 Ga. 679; *Sullivan v. City of Oneida*, 61 Ill. 242; *Smith v.*

*City of Madison*, 7 Ind. 86; *Town of Martinsville*, 33 Ind. 507; *Commonwealth v. Voories*, 51 Ky. (12 B. Mon.) 361; *State v. Brittain*, 89 N. C. 574.

A statute specifically naming in what instances and for what purposes a city may exact a license and regulate the sale of liquors followed by a general clause that it “may make any other by-laws and regulations which may seem

# **Sec. 257. Municipal control—Legislative power—Police power.**

The municipal authorities of incorporated towns and cities may, in the absence of constitutional restrictions, be invested by the Legislature of the State with the power to license, regulate, prohibit or suppress the traffic in intoxicating liquors subject to the general laws of the State, and such traffic may be prohibited in one part of a town or city, and licensed in another part, as the public welfare may require. This is so because the towns and cities of a State are a part of the governmental frame work of the State, and such power may be delegated to them as a rightful legislative power, to be carried out by the enactment of proper By-Laws or ordinances.<sup>16</sup> And without the grant of such power, a municipal corporation may not legislate upon the subject, and it will not of itself authorize its authorities to issue a license. Such power in a municipal corporation is a dormant one and affords no authority to issue a license until called into life and put into operation by appropriate legislation by the proper municipal authorities.<sup>17</sup> When such power has been conferred upon a municipality, it is wholly discretionary with

for the well-being of the city, provided they be not repugnant to the Constitution or laws of the State" only empowers it to pass an ordinance upon the cases described in the specific provisions. *State v. Ferguson*, 33 N. H. 424.

<sup>16</sup> *Mayor v. Shattuck*, 19 Colo. 104; *Morris v. Rome*, 10 Ga. 532; *Denehy v. Chicago*, 120 Ill. 627; *City of Lawrenceburg v. Wuest*, 16 Ind. 337; *Wiley v. Owens*, 39 Ind. 429; *Crawfordsville v. Lutz*, 109 Ind. 466; 10 N. E. 411; *Mason v. Trustees*, 4 Bush (Ky.), 406; *State v. Harper*, 42 La. Ann. 312; 7 So. 446; *New Hampton v. Conroy*, 56 Ia. 498; 9 N. W. 417; *Commonwealth v. Fredericks*, 119 Mass. 199; *Wolf v. Lansing*, 53

*Mich.* 367; 19 N. W. 38; *Sherlock v. Stuart*, 96 Mich. 193; 55 N. W. 845; *St. Paul v. Troyer*, 3 Minn. 291; *State v. Dwyer*, 21 Minn. 512; *State v. Andrews*, 11 Neb. 523; *State v. Fay*, 44 N. J. L. (15 Vroom) 474; *Paul v. Gloucester*, 21 Vroom (N. J. L.), 585; 15 Atl. 272; *Riley v. Trenton*, 51 N. J. L. (22 Vroom) 498; 18 Atl. 116; *Burkhalter v. McConnellsville*, 20 Ohio St. 309; *Bronson v. Oberlin*, 41 Ohio St. 476; *Davis v. State*, 2 Tex. App. 425; *Moundsville v. Fountain*, 27 W. Va. 182; *Glentz v. State*, 28 Wis. 549.

<sup>17</sup> *People v. Crothy*, 93 Ill. 180; *Conley v. Rushville*, 60 Ind. 327; *Carr v. Fowler*, 74 Ind. 590.

its authorities to license and regulate or partially or wholly prohibit the liquor traffic, provided such municipal legislation is not in contravention of the Constitution, statutes and police power of the State.<sup>18</sup> Under the police power of the State, such municipal authorities may enact ordinances of wider scope and affixing greater penalties than are provided by the laws of the State for the violation of the laws, provided they are not prohibited from doing so by a statute of the State; and the enactment of laws by the State regulating the liquor traffic will not have that effect, nor prevent such municipal authorities from acting.<sup>19</sup> The acknowledged police power of the State extends even to the destruction of property. For this reason, even though the enforcement of an ordinance may operate to destroy a business theretofore lawful, and to seriously impair the value of property acquired under the sanction of a special law or charter, these considerations will not render the ordinance invalid or prevent its enforcement when the protection of the public health or promotion of the general welfare requires it.<sup>20</sup>

### **Sec. 258. Discretionary powers of municipal corporations.**

Where there is no constitutional inhibition, a Legislature has the right to confer upon the municipalities of the State the power of regulating any business which may act prejudicially upon the health, morals, and peace of the inhabitants. This regulation may be extended to the exercise of the dis-

<sup>18</sup> Schwuchow v. Chicago, 68 Ill. 444; Yunnarsohn v. Sterling, 92 Ill. 569; State v. Columbia, 17 S. C. 80.

<sup>19</sup> Pekin v. Smelzel, 21 Ill. 464; 74 Am. Dec. 105.

<sup>20</sup> License Case, 5 How. 504; Brewing Co. v. Mass, 97 U. S. 25; Fertilizing Co. v. Hyde Park, 97 U. S. 659; Mugler v. Kan. 123 U. S. 623; 8 Sup. Ct. 273;—L. Ed.

An ordinance in conflict with a State law is void. State v. Langston, 88 N. C. 682.

Where a Constitution prohibits the Legislature delegating the power to suspend the laws, it cannot delegate such power to a municipality to suspend a law; and a city charter providing that its provisions and an ordinance enacted in pursuance thereof shall supersede a State statute whenever there is conflict between them is void. Arroyo v. State (Tex. Cr. App.), 69 S. W. 503.



cretionary power by the municipal authorities, as to the person who is to be licensed and the place where the business is to be transacted; and a reasonable tax may be imposed for the privilege of embarking in, and carrying on, any such business. The right to regulate such matters is found in the first principles of good government and self-protection and the comprehensive police power of the State. The right to impose a tax upon a licensed business is largely supported by legislative and judicial sanction and recognition. That a very large discretion must be vested in the officers who are to grant or refuse the licenses in such cases is manifest from the nature of the subject to be regulated. In the matter of licensing tippling shops and saloons they must of necessity be the best, and generally the only, judges whether the establishment of such a place in any particular locality will affect or disturb the peace of the community, as each particular case must depend in a great measure upon its own circumstances and bearings. In such case there is no presumption that the persons charged with the duty of granting such licenses will not perform it or that they will abuse the discretion given them. Other considerations than the mere locality must often enter into the determination of the suitableness of the place for the saloon. If the building be so arranged as to render violations of the law easy, or if it is to be kept in connection with a house of prostitution, or if it be not situated upon a street or an alley, or if it be one of the upper stories of a building, or in a part of the city kept for residence only, or near a school, these would certainly afford good reasons for rejecting an application for such a license. The power to regulate and grant such a license necessarily involves the power to refuse to grant one, when, in the judgment of the municipal authorities, there are features connected with any particular application which would render the compliance unsafe or improper. Unless this power to refuse is admitted there could be no regulation, because if the authorities were obliged to license every applicant who has complied with a prescribed set of conditions, or who will pay a certain sum of money, the power would be changed from one of regulation into one of simple taxation, from a power, the judicious exercise of which



is essential to the very life of a municipal corporation, into one entirely at the mercy of individual citizens, and of no possible value to the municipal corporation, save in the paltry sums it might put into the treasury. When we speak of the discretion in municipal authorities, in the exercise of the power, we mean, of course, a legal discretion and not an arbitrary and uncontrollable sway. From the peculiarly democratic character of our municipal institutions such powers cannot become dangerous in the hands of our rulers except, perhaps, in the granting of such licenses with too much liberality.<sup>21</sup>

### Sec. 259. Exclusive municipal power—Effect.

If the Legislature of a State, having the power to do so, provides that the incorporated towns and cities of the State shall have the exclusive privilege of granting licenses to retail intoxicating liquors within their corporate limits, this will deprive the State and county officials of all authority to interfere in any manner whatever with the granting of such licenses.<sup>22</sup> A grant of such exclusive power and authority to

<sup>21</sup> *In re* Hoover, 30 Fed. 51; United States v. Ronan, 33 Fed. 117; Batters v. Dunning, 49 Conn. 479; Sherlock v. Stuart, 96 Mich. 193; 55 N. W. 845; St. Paul v. Froyer, 3 Minn. 200; State v. Ludwig, 21 Minn. 202; Perkins v. Ledvetter, 68 Miss. 327; 8 So. 507; Sparrow's Petition, 138 Penn. St. 116; 20 A. 711; Ailstock v. Page, 77 Va. 386; State v. Columbus, 17 S. C. 80.

Under a power to regulate the sale, an ordinance may vest discretionary power in the city as to the place or places where sales may be made. State v. Cheyenne, 7 Wyo. 417; 52 Pac. 975.

<sup>22</sup> Camp v. State, 27 Ala. 53; State v. Cochran (Ore.), 104 Pac. 419; Bennett v. People, 30 Ill.

389; Baton Rouge v. Butler, 118 La. 73; 42 So. 650; State v. Lindquist, 77 Minn. 540; 80 N. W. 701; Coulterville v. Gillen, 72 Ill. 599; State v. Binswanger, 122 Mo. App. 78; 98 S. W. 103; Edmonson v. Commonwealth, 110 Ky. 510; 62 S. W. 1018; 22 Ky. L. Rep. 1902; Commonwealth v. Luck, 2 B. Mon. (Ky.) 296; State v. Wheeler, 27 Minn. 76; Bergmeyer v. Greenup Co. (Ky.), 44 S. W. 82; Sharon Borough v. Mercer Co., 20 Pa. Ct. Rep. 507; State v. Nolan, 37 Minn. 16; Alexander v. State, 42 Miss. 316; Phillips v. Tecumseh, 5 Nob. 312; Cook v. Mercer Co., 51 N. J. L. 85; 16 Atl. 176; Raubold v. Commonwealth (Ky.), 54 S. W. 17; 21 Ky. L. Rep. 1125; Feather-

one jurisdiction, for instance, to a municipal corporation, to restrain or prohibit the sale of intoxicating liquors upon every day in the week, is irreconcilable with the existence of an antecedent power, for instance, in the State, to prohibit the exercise of the same upon a special day of the week;<sup>23</sup> and a general statute which empowers the county authorities of a State to grant licenses for the sale of intoxicating liquors at retail, but provides that it shall not apply to any town or city, which, by its charter has power to grant licenses for the sale of such liquors, provided the fees charged therefor are at least as much as those required by the county, will deprive the county authorities of jurisdiction to act in the premises and grant a license under the provisions of such general statute.<sup>24</sup> The fact that an incorporated town or city which has been granted the exclusive power to regulate the sale of intoxicating liquors within its corporate limits, sees proper not to grant an applicant a license for the sale of intoxicating liquors within its limits, will not confer upon the State and county authorities power to act in the premises, and if they do and issue a license to such applicant it will be void and afford him no protection. The effect of the granting of such exclusive power to a municipal corporation is to supersede or suspend the general law of the State upon the subject; and if a person in such case brings himself within the rules and regulations adopted by a municipal corporation to whom such exclusive privilege has been granted, he is not amenable to the general law, nor punishable for acts which, without the protection afforded by the license of such corporation, would be violations of the general laws of the State. But a statute which confers upon the municipal corporations within a State

stone v. Lambertville, 50 N. J. L. (21 Vroom) 507; 14 Atl. 599; Clintonville v. Keating, 4 Denio (N. Y.), 341; State v. Baker, 381 Ore. 50; 92 Pac. 1076; 13 L. R. A. (N. S.) 1040; Ward v. County Court, 51 W. Va. 102; 41 S. E. 154; Seattle v. Clark, 28 Wash. 717; 69 Pac. 407; *Ex parte* Simms, 41 Fla. 316; 25 So. 280;

Moskow v. Highlands (Colo.), 47 Pac. 846; Scherman v. Commonwealth, 99 Ky. 296; 38 S. W. 146; Commonwealth v. Helbeck, 101 Ky. 166; 40 S. W. 245.

<sup>23</sup> Hetzer v. Wheelan, 21 Ga. 461.

<sup>24</sup> State v. Andrews, 11 Neb. 523; Clintonville v. Keating, 4 Denio, 341.

the power to license or regulate the sale of intoxicating liquors within their corporate limits does not thereby confer the exclusive right to do so, but a right concurrent with that of the State and county authorities in regard to the same matter or subject. The exclusive right of municipal corporations to license and control the sale of intoxicating liquors within their corporate limits is unusual and not in harmony with the system of State legislation. Hence, the legislative intention of conferring such a power must be clear to that effect and susceptible of no other reasonable construction. The usual power conferred upon such a corporation to collect a license for the sale of such liquors within its limits will not be sufficient to confer the right of such exclusive control.<sup>25</sup> When a municipal corporation has the exclusive privilege of granting licenses to sell intoxicating liquors, and to prescribe the terms on which they may be sold within the limits of incorporation, it has the power to declare the sale of such liquors within its limits a nuisance and to punish it as such.<sup>26</sup>

<sup>25</sup> Territory v. Webster, 5 Dak. 351; 40 N. W. 535; Corbett v. Territory, 1 Wash. T. 431; Lutz v. Crawfordsville, 109 Ind. 466; 10 N. E. 411; State v. Gurlock, 14 Iowa, 444; Keokuk v. Dressell, 47 Iowa, 597; Ginnochio v. State, 30 Tex. App. 584; 18 S. W. 82.

<sup>26</sup> Bennett v. The People, 30 Ill. 394; Village of Coulterville v. Gillen, 72 Ill. 599.

There is no constitutional objection to a statute which turns over to cities the complete control over the liquor traffic within them. Davis v. State, 2 Tex. App. 425; Moundsville v. Fountain, 27 W. Va. 182; Paul v. Troyer, 3 Minn. 291; Commonwealth v. Fredericks, 119 Mass. 119; Mason v. Trustees, 4 Bush, 406; State v. Harper, 42 La. Ann. 312; 7 So. 446; *Ex parte* Cowert, 92 Ala. 94; 9 So. 225; State v. King, 37 Ala. 462.

Power once given to license may be taken away, even though the license fees had been used and the city would not return them to the licensees. Gutzwiller v. People, 14 Ill. 142.

A general statute prohibiting the opening of a saloon on Sunday does not prevent the Legislature authorizing a city "to pass all ordinances in relation to keeping open saloons on the Sabbath day in" the city. Hood v. Van Glahn, 88 Ga. 405; 14 S. E. 564.

Power given a city to enact ordinances regulating the liquor traffic within its boundaries does not repeal the general State liquor law so far as it relates to such city. Gardner v. People, 20 Ill. 430; State v. Langdon, 29 Minn. 393; 13 N. W. 187; and *vice versa*. Salina v. Seitz, 16 Kan. 143; Drysdale v. Pradot, 45 Miss. 445.

## Sec. 260. Powers delegated to and by municipal corporations.

A license is a privilege granted by the State usually on the payment of a valuable consideration, though this is not essen-

A statute prohibiting a city from punishing by ordinance an act for which a State law prosecutes a penalty does not prohibit a city passing an ordinance requiring a license to sell liquor and prescribing a penalty for a sale without it, although the same act of sale is a violation of a statute prohibiting such sale without a State license, and the accused has no such State license. *Clevenger v. Rushville*, 90 Ind. 258; *Zeller v. Crawfordsville*, 90 Ind. 262; *Lutz v. Crawfordsville*, 109 Ind. 466; 10 N. E. 411; *Ex parte Stephen*, 114 Cal. 278; 46 Pac. 86; *Von Der Leith v. State*, 60 N. J. L. 46; 37 Atl. 436; 60 N. J. L. 590; 40 Atl. 590; *Morganstern v. Commonwealth*, 94 Va. 787; 26 S. E. 402. *Contra*, *Foster v. Brown*, 55 Iowa, 686; 8 N. W. 654.

The fact that the State at large has adopted prohibition does not prevent a city adopting an ordinance regulating the liquor traffic within its boundaries. *In re Thomas*, 53 Kan. 659; 37 Pac. 171.

Although a State levies a tax upon the liquor traffic, it may authorize a city to levy an additional tax. *Wolf v. Lansing*, 53 Mich. 367; 19 N. W. 38; *Louisville v. Kean*, 18 B. Mon. 9.

In West Virginia a city has the exclusive power to determine whether a license shall be granted; and if it grant one, then the

county must and may be compelled to grant one. *Ward v. County Court*, 51 W. Va. 102; 41 S. E. 154.

In Kansas, cities of the second class have been held authorized to regulate the sale of liquors not intoxicating but which contain alcohol. *Eureka v. Jackson*, 8 Kan. App. 49; 54 Pac. 5.

A prohibitory statute may be repealed by the enactment of a city charter. *Pursifull v. Commonwealth (Ky.)*, 47 S. W. 772; 20 Ky. L. Rep. 863; *Douglass v. Commonwealth (Ky.)*, 47 S. W. 329; 20 Ky. L. Rep. 653.

A statute of Georgia incorporating the city of Swainsboro, empowering it to grant licenses to sell liquors, has been held not to repeal a special act prohibiting the sale of liquors within three miles of a particularly specified place in the city. *Pughsley v. State*, 4 Ga. App. 494; 61 S. E. 886; see also *Pacific University v. Johnson*, 47 Ore. 448; 84 Pac. 704.

As to power of Atlantic City, N. J., see *Conover v. Atlantic City*, 73 N. J. L. 596; 64 Atl. 146; reversing (N. J. L.) 60 Atl. 31. As to the town of Houma (La.), see *Houma v. Houma, etc., Co.*, 121 La. 21; 46 So. 42. See generally. *State v. Kesells*, 120 Mo. App. 233; 96 S. W. 494; *People v. Thornton*, 186 Ill. 162; 57 N. E. 841.

As to effect of granting a new



tial.<sup>27</sup> The grant of a license may be made by the State directly or it may be made indirectly through one of the municipal corporations of the State. Of the direct grant it is to be observed that a municipal corporation as such has no inherent power to grant licenses or exact license fees; it must derive all its authority in this regard from the State, and the power must come by direct grant and cannot be taken by implication.<sup>28</sup> A municipal corporation can no more exercise powers not conferred upon it than any other corporation. They are all creatures of the law and can exercise such powers only as are conferred upon them by it.<sup>29</sup> Where, however, such power has been conferred upon a municipal corporation, it may provide by ordinance duly passed, for a license system of its own, and enact penalties for its violation, and this it may do notwithstanding that the State has provided for a license system of its own and enacted penalties for its violation. The powers exercised by a municipal corporation in such case are superadded to those exercised by the State.<sup>30</sup> And likewise it may do so even though the State has not enacted any laws upon the sale of intoxicating liquors. This is so because the authority to pass By-Laws and to regulate the internal affairs of a municipal corporation is incident to its existence.<sup>31</sup> An ordinance by a municipal corporation for such purpose, although to some extent in restraint of trade, is not arbitrary, is incident to the exercise of a police power, and if authorized by a valid law of the State will not be unlawful or void.<sup>32</sup> Where power has been conferred upon a municipal

charter to a city, see *Brinkley v. State*, 108 Tenn. 475; 67 S. W. 796.

Local option and general local option and city charter construed. *Mullins v. Lancaster* (Ky.), 63 S. W. 475; 23 Ky. L. Rep. 436.

<sup>27</sup> *Cooley on Taxation*, p. 406; *Heise v. Columbia*, 6 Rich. (S. C. Law) 404.

<sup>28</sup> *Cooley on Taxation*, p. 408; 1 *Dillon Munic. Corp.*, § 89.

<sup>29</sup> *Martinsville v. Frieze*, 33 Ind. 507.

<sup>30</sup> *City of Elk Point v. Vaughn*, 1 Dak. 113.

<sup>31</sup> *Burlington v. Kellar*, 18 Ia. 59.

<sup>32</sup> *License Cases*, 5 How. (U. S.) 504; *City of St. Paul v. Upham*, 12 Minn. 49; *City of Rochester v. Upham*, 19 Minn. 78; *Presbyterian Church v. City of New York*, 5 Cow. (N. Y.) 540; *Stuyvesant v. Mayer, etc.*, 7 Cow. (N. Y.) 604; *McDermott v. Board, etc.*, 5 Abb. Pr. (N. Y.) 434.



corporation to regulate the sale of intoxicating liquors, it is so done with the intention that such power shall be exercised by such corporation, and in the mode prescribed, and it cannot delegate it to others or to an individual.<sup>33</sup> Until it by proper ordinance has either prohibited the sale of such liquors or provided for the regulation of their sale, and fixed a penalty for its violation, no prosecution can be maintained by the corporation against a person for selling such liquors. The power delegated to the corporation remains dormant until called into exercise in the mode provided for in its charters and by the laws of the State.<sup>34</sup>

### Sec. 261. Municipal regulation beyond corporate limits.

If there be no constitutional provision to the contrary, the power of the Legislature over the municipal corporations of the State is supreme and transcendent; it may direct, change, divide and abolish them at pleasure, as it deems the public good to require.<sup>35</sup> Having this power, it can designate the limits over which the jurisdiction of such corporations shall extend, and its judgment upon the question will be conclusive. It may declare that they may provide by ordinance that no unlicensed dramshop shall be kept within a designated distance of their corporate limits; for otherwise all that need be done to evade the law would be to keep a foot or two beyond the corporate boundaries.<sup>36</sup> Where a Legislature has done this, an ordinance passed by such a corporation with proper penalties affixed providing that the retail dealers in intoxicating liquors outside of and within the designated limits, shall obtain a license from the corporate authorities is a valid

<sup>33</sup> East St. Louis v. Wehring, 50 Ill. 28; Kimmundy v. Mahan, 72 Ill. 462; Darling v. St. Paul, 19 Minn. 389; *In re Wilson*, 32 Minn. 145; 19 N. W. 723; State v. Kantler, 33 Minn. 69; 21 N. W. 856; Wynants v. Bayonne, 44 N. J. L. (15 Vroom) 114.

<sup>34</sup> City of East St. Louis v. Wehring, 50 Ill. 28; People v. Village of Crotty, 93 Ill. 180.

<sup>35</sup> Dillon Munic. Corp., § 54.

<sup>36</sup> Lutz v. City of Crawfordsville, 109 Ind. 446; 10 N. E. 411; Falmouth v. Watson, 5 Bush, 660.

exercise of the power granted to it, and may be enforced.<sup>37</sup> The object of this clause of legislation is to restrict the business of selling, and not to secure to the vendor the protection of the municipal government. The liquor seller is compelled to pay a special tax in the form of a license fee in order that the business may be restricted to fewer persons, and not be open, like other pursuits, to every one without the payment of any special tax. The theory of such legislation is that the business requires restrictions because it is harmful to society. There is, therefore, no just reason for affirming that a person who could secure no benefit from the municipal government, because his place of business is outside of corporate limits, should be exempt from the special tax imposed upon those engaged in the business of selling liquor within the corporate limits.<sup>38</sup> In the Supreme Court of Nebraska it was contended that such a statute was within the interdiction of a clause of the State Constitution which provided that no man's property should "be taken or applied to public use without the consent of his representatives, and without just compensation being previously made to him." In answering this contention the court said: "Had the exercise of the power complained of been the imposition of an ordinary tax merely on the property of the appellee, situated without the limits of the town, for municipal purpose, we should not doubt the correctness of the objection; or even if the exclusion of the same in controversy in consideration of the trade license, had been made for local revenue purposes alone, though not in the usual form of taxation, we should regard it as within the constitutional prohibition; for the Legislature could not delegate to the corporation the right to either license for a compensation or tax, a privilege to be enjoyed beyond its limits, except as a police regulation, having reference to the comfort, safety and welfare of society within its local jurisdiction. But in our opinion the exaction of a fee of one hundred dollars for the priv-

<sup>37</sup> *Strauss v. Pontiac*, 40 Ill. 301; *Lutz v. Crawfordsville*, 109 Mo. 466; 10 N. E. 411; *Emerich v. Indianapolis*, 118 Mo. 279; 20

N. E. 729; *Board v. Watson*, 5 Bush (Ky.), 660.

<sup>38</sup> *Emerich v. City of Indianapolis*, 118 Mo. 279; 20 N. E. 729.

ilege of vending ardent spirits, in such proximity to the town as to render its exercise liable to effect the good order or peace of the local community did not infringe any constitutional right of the appellee.”<sup>39</sup> Subsequently in approving this statement of the law, the court said: “This provision violates no command of the Constitution. It is general in its application to all territory of the State falling within such description, and it is but an exercise of the police power intrusted to the Legislature. It is referable to that principle which enables the Legislature to prohibit liquor selling on Sundays and on days of election, or within the vicinity of fairs, camp-meetings, and other gatherings of the people.”<sup>40</sup> Likewise it has been held that a law prohibiting the sale of intoxicating liquors within two miles of the corporate limits of any municipality is not obnoxious to the constitutional provision requiring all laws to be uniform in their operation; nor does it violate the constitutional requirement that every act shall embrace but one subject and matters properly connected therewith.<sup>41</sup> While it is true that the enacting of necessary by-laws for the regulation of municipal corporations is an incidental power essential to their continued existence, it is also true that such by-laws must not be inconsistent with their charters. These are the fundamental laws of their creation; and, in effect, are the Constitutions to such petty legislative bodies to whom the power to enact by-laws is delegated. Such corporations therefore cannot give to their ordinances extra territorial effect except so far as they may be clearly authorized so to do by their charters, and an ordinance passed without such authority is void.<sup>42</sup>

<sup>39</sup> Pleuler v. State, 11 Neb. 547; 10 N. W. 481.

<sup>40</sup> Hunzinger v. State, 39 Neb. 653; 58 N. W. 194.

<sup>41</sup> State v. Shroeder, 51 Ia. 197; 1 N. W. 431.

<sup>42</sup> Gabel v. Houston, 29 Tex. 335. It would seem that one amount may be charged for a license within a city and another beyond

its limits. *Ex parte Stephen*, 114 Cal. 278; 46 Pac. 86.

In Colorado it is held that a person selling liquor within a mile of a town may be punished, though the place where he made the sale is within a mile of another town or towns. *Meekew v. Highlands*, 9 Colo. App. 255; 47 Pac. 846.

If the limitation distance runs

### Sec. 262. Reasonableness of ordinances.

In the United States the courts have often affirmed general incidental power of municipal corporations to make ordinances, but have always declared that ordinances passed by virtue of an implied power must be reasonable, consonant with the general powers and purposes of the corporation, and not inconsistent with the laws or policy of the State.<sup>43</sup> It has always been held that the courts will review the question as to reasonableness of ordinances passed under a grant of power, general in its nature or under incidental or implied municipal powers, and if any given ordinance is found unreasonable will declare it void as a matter of law.<sup>44</sup> The grounds on which an ordinance may be declared void for unreasonableness have been said to be two: First, where it is oppressive, unequal and unjust; and second, where it is altogether unreasonable.<sup>45</sup> But the question whether an ordinance is reasonable cannot be raised to affect its validity, where the power

into another county in which the city is not located, the city may as to such of its territory as lies in such other county exact a license. *Gower v. Agee* (Mo. App.), 107 S. W. 999. See also *Mason v. State*, 1 Ga. App. 534; 58 S. E. 139.

The question of the jurisdiction of a city over the place where the illegal sale took place cannot be raised in a prosecution because of such sale, where it is admitted that the city had assumed to exercise jurisdiction with respect to the place. *Allode v. Nylin*, 139 Ill. App. 527.

<sup>43</sup> *Dillon's Munic. Corp.*, § 253; *Waters v. Leech*, 3 Ark. 110; *In re Frank*, 52 Cal. 606; *Tugman v. City of Chicago*, 78 Ill. 405; *Champer v. City of Greencastle*, 138 Ind. 339; *Commonwealth v. Steffee*, 7 Bush (Ky.), 161; *Com-*

*monwealth v. Robertson*, 5 Cush. (Mass.) 438; *Paris v. Graham*, 33 Mo. 94; *Kipp v. Patterson*, 2 Dutch. (N. J.) 298; *Dayton v. Quigley*, 29 N. J. Eg. 77; *State v. Freeman*, 38 N. H. 426; *People v. Throop*, 12 Wend. (N. Y.) 183; *Commissioner v. Gas Co.*, 2 Grant (Pa.), 291; *Mayor, etc., v. Beasley*, 1 Humph. (Tenn.) 232; *White v. Mayor, etc.*, 2 Swan (Tenn.), 364; *Chason v. City of Milwaukee*, 30 Wis. 316; *State v. McCannon*, 111 Mo. App. 626; 86 S. W. 510.

<sup>44</sup> *McQuillin Munic. Corp.*, § 182; *Yates v. City of Milwaukee*, 1 Wall. (U. S.) 497; *Lanar v. Weidman*, 57 Mo. App. 507; *Springfield v. Starke*, 93 Mo. App. 70; *Livingston v. Wolf*, 136 Pa. St. 519; 20 Atl. 551; *State v. Calaway*, 11 Idaho, 719; 84 Pac. 27.

<sup>45</sup> *McQuillin Munic. Corp.*, § 182;



to enact the particular ordinance is specifically conferred upon the municipal corporation. When the legislative power has been thus extended, its exercise necessarily involves the authority to determine whether the results are reasonable or unreasonable, and, if the judiciary assumes to pass upon the reasonableness of the results which follow from the exercise of that power, it departs from its function as one of the independent, co-ordinate branches of the government. It would result in the greatest confusion of decisions to permit, in any case, the introduction of evidence as to the effect of an ordinance upon a business, trade or occupation. The jury would, in the one case, hold that under the facts proven, the ordinance was invalid, while in another case, with more or less evidence of its hurtful consequences, the ordinance would be held valid; nor would it be more just to permit the reasonableness of an ordinance to be determined by the court as a question of law arising upon the face of the ordinance and from the general knowledge of its harmful effects. To do so would be to deny the right of the legislative branch of the government, whether local or general, to judge of the wisdom and prudence of its own enactments, or it would result in the coexistence of power in the legislative and judicial departments to judge of that wisdom or prudence which would invite endless conflict of decision between the departments.<sup>46</sup> Where the authority has been conferred upon a municipal corporation to suppress and prohibit the sale of intoxicating liquors as well as to license the sale, an ordinance which imposes a penalty for selling such drinks without a license, where the penalty exceeds that imposed by general law of the State, is reasonable.<sup>47</sup>

State v. Beattie, 16 Mo. App. 131;  
Kansas City v. Cork, 38 Mo. App.  
666; Plattsburg v. Riley, 42 Mo.  
App. 18; Cape Girardeau v. Riley,  
72 Mo. 220.

<sup>46</sup> Steffy v. Monroe City, 135  
Ind. 466; 35 N. E. 121; Shelby-  
ville v. Cleveland, etc., R. Co.,  
146 Ind. 66; 44 N. E. 929; Shea  
v. Muncie, 148 Ind. 14; 46 N. E.  
138.

<sup>47</sup> Deitz v. Centrai, 1 Colo.  
323.

In determining whether an ordinance is reasonable, the court may consider its provisions in connection with the legislative policy as disclosed in its enactments on the subject-matter of the ordinance. Chicago v. Slack, 121 Ill. App. 131.



### Sec. 263. Extent of power of municipality to grant licenses.

The power to license places for the sale of intoxicating liquors granted to a municipal corporation where such places are unrestrained by the general law of the State, coupled with the general power to pass ordinances for promoting the peace and good order of such corporation, will justify an ordinance which forbids sale of such liquors in unlicensed places.<sup>48</sup> In such case the power to license implies the power of such a corporation to determine the amount to be exacted as a license fee, subject only to a restriction that it shall not be so large as to show an evident intention to prohibit altogether acts to be licensed, the rule being that the power to regulate, license and tax the traffic does not include the power to pass ordinances prohibiting it.<sup>49</sup> Authority given to such a corporation "to license saloons, taverns and eating houses" will not authorize the granting of the right to sell intoxicating liquors.<sup>50</sup> The words used in conferring such authority will not warrant such construction. It is not possible to contend that "saloons, taverns and eating houses" are, in contemplation of law, inseparable from the sale of intoxicating liquors. The power, however, "to license, tax, regulate and restrain bar-rooms and drinking shops" does confer the power to license the business of keeping or conducting a place in which to sell intoxicating liquors. In so deciding it was said that a "bar-room and a dramshop" signify a place where intoxicating liquors can be had.<sup>51</sup> In a measure a general State law may

<sup>48</sup> *Vinson v. Town of Monticello*, 118 Ind. 103; *Clintonville v. Keating*, 4 Denio (N. Y.), 341; *Hershoff v. Beverly*, 45 N. J. L. (16 Vroom) 288; *Schlachter v. Stokes*, 62 N. J. L. 138; 43 Atl. 571; *State v. Haines*, 35 Ore. 379; 58 Pac. 39.

<sup>49</sup> *In re Stuart*, 61 Cal. 374; *Ex parte Wolters*, 65 Cal. 269; *City of Portland v. Schmidt*, 13 Ore. 17; *Provo, City of Schurtleff*, 4 Utah, 15.

<sup>50</sup> *Mount Pleasant v. Vansice*,

43 Mich. 361; 5 N. W. 378; 38 Are. Rep. 193.

<sup>51</sup> *Beiser v. State*, 79 Ga. 326; 43 S. E. 257; *In re Schneider*, 11 Ore. 288; 8 Pac. 289.

Power to pass an ordinance requiring a dealer to take out a license cannot be delegated by a city. *State v. Milwaukee*, 129 Wis. 562; 109 N. W. 421; but it may be if the statute expressly authorizes it. *In re Bight*, 12 Can. Prac. 433.

come to the aid of powers illy conferred upon a town, or indistinctly given. Thus, where a general statute prohibited the sale of liquors throughout a county except in a certain town therein, and that town had the power to pass an ordinance "for the preservation of good order, decency and decorum within its limits," it was held that this special charter should be construed in the light of the passage of the general law in order to ascertain the intent of the Legislature in the use of the words quoted; and as thus considered the town could prohibit the sales of liquors within her boundaries.<sup>52</sup> And where a general city law authorized the city to enact an ordinance requiring all persons selling liquors within its boundaries under a county license to take out a city license, it was held that a defendant who had sold liquor in the city without having a city license could not escape the penalty of the ordinance by showing that he had no county license, admitting at the same time that if he had a county license he would be amenable to the city ordinance.<sup>53</sup>

#### **Sec. 264. Power to license, use and grant.**

When an express authority to license is given, it may be a question whether it is intended for the purpose of revenue or regulation. Since a municipal corporation has no authority to impose a tax otherwise than in pursuance of an express grant of power to that effect, or a clear and necessary implication from an express grant, a power to license should be used only for regulation, unless there is something in the language of the grant, or the circumstances of the case, clearly indicating that it was also intended to be used for the purpose of revenue. When the power to license is not especially given, but only implied as a means of regulating the subject, it cannot be used for anything else; in other words, while the power to license may be inferred from the power to regulate, the power to tax cannot.<sup>54</sup> As a means of regulating the business

<sup>52</sup> Fortner v. Duncan, 91 Ky. 171; 15 S. W. 55.

<sup>53</sup> Lutz v. Crawfordsville, 109 Ind. 466; 10 N. E. 411.

<sup>54</sup> Laundry License Case, 22

Fed. Rep. 701; State v. Herod, 29 Ia. 123; City of Burlington v. Putnam, 31 Ia. 102; Copeland v. Sheridan, 152 Ind. 107; 51 N. E.

474.

it implies the power to charge a fee therefor sufficient to defray the expense of issuing the license; and to compensate the corporation for any expense incurred in maintaining such regulation.<sup>55</sup> The terms in which a municipality is empowered to grant licenses will be expected to indicate with sufficient precision whether the grant is conferred for the purpose of revenue, or whether on the other hand, it is given for regulation merely. It is perhaps impossible to lay down any rule for the construction of such grants that shall be general and at the same time safe.<sup>56</sup> The appropriate word to confer the power to regulate a vocation is "license," but the use of it is not absolutely essential. For instance, in California it was held that the provision, "Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with the general laws," conferred the power to regulate the sale of intoxicating liquors within either of such corporations, by imposing a license tax.<sup>57</sup> In other States it has been held that the power to "restrain and prohibit," "regulate and prohibit" and to prohibit the sale of such liquor included the power to license the traffic and to fix a penalty for pursuing the business without such license.<sup>58</sup> And in others it has been held that the power to "tax" or to "restrain" carries with it the power to license the traffic.<sup>59</sup> On the other hand it has been held that the power to tax does not confer the authority to license,<sup>60</sup> and that the right granted to a city "to tax or entirely suppress all petty groceries" does not confer upon the corporation the power to grant licenses for retailing.<sup>61</sup>

<sup>55</sup> *Laundry Case*, 22 Fed. Rep. 701; *Colusa County v. Seube* (Cal.), 53 Pac. 1128; affirming (Cal.) 53 Pac. 654.

<sup>56</sup> *Cooley on Taxation*, p. 408.

<sup>57</sup> *Ex parte Wolters*, 65 Cal. 269.

<sup>58</sup> *Wiley v. Owens*, 39 Ind. 429; *City of Keokuk v. Dressell*, 47 Ia. 597; *City of Emporia v. Volmer*, 12 Kan. 623; *City of St. Louis v. Smith*, 2 Mo. 113.

<sup>59</sup> *Town of Mt. Carmel v. Wa-*

*bash Co.*, 50 Ill. 69; *In re Schneider*, 11 Ore. 288.

<sup>60</sup> *City of Burlington v. Bumgardner*, 42 Ia. 102.

<sup>61</sup> *Leonard v. City of Canton*, 35 Miss. 189.

If there be neither express nor implied power given to a city to require a license, it cannot exact one. *Deutschman v. Charlestown*, 40 Ind. 449; *Steinmetz v. Versailles*, 40 Ind. 249; *Martinsville*

## Sec. 265. Power to require a license—Instances.

Unless expressly or impliedly empowered by the Legislature a city has no power to require a license to sell intoxicating liquors.<sup>62</sup> A provision of a Constitution that a city "may make and enforce within its limits all such local, police, sanitary and other regulations as are not in conflict with the general laws," empowers it to adopt an ordinance requiring a license;<sup>63</sup> and

v. Frieze, 33 Ind. 507; Walker v. McNelly, 121 Ga. 114; 48 S. E. 718.

Where a statute empowers a city to issue a liquor license and exact a fee therefor, and a subsequent statute gives it a part of the county license fee, the prior statute will be held repealed. *Altoona v. Stehle*, 21 Pa. Co. Ct. Rep. 395; 8 Pa. Dist. Rep. 25.

An ordinance is not void because it discriminates in favor of spirituous and vinous and against malt liquors. *Grabbs v. Danville*, 63 Ill. App. 590.

A statute authorizing a "town" to issue a license means an incorporated town and not a township organization, although townships are called "towns." *People v. Thornton*, 186 Ill. 162; 57 N. E. 841.

A city may exact a license of one who has a county license to sell in its limits. *Ex parte Hinkle*, 104 Mo. App. 104; 78 S. W. 317.

So a city may classify licenses and fix one rate for one kind and another rate for another; and a dealer falling in the class of the lower rate cannot complain of it because there is a class of a higher rate provided for in it. *Petitfils v. Jeanerette*, 52 La. Ann. 1005; 27 So. 358.

A city may require a common

carrier to deliver liquor at a particular depot and nowhere else. *Barrett v. Rickard* (Neb.), 124 N. W. 153.

Under a power to regulate or prohibit, a city may prohibit soliciting of orders. *Braunstein v. People* (Colo.), 105 Pac. 857.

<sup>62</sup> *United States v. Kaldenbach*, 1 Cranch C. C. 132; Fed. Cas. No. 15504; *Cowley v. Rushville*, 61 Ind. 327; *Walter v. Columbia*, 61 Ind. 24; *McFee v. Greenfield*, 62 Ind. 21; *Carr v. Fowler*, 74 Ind. 590; *Burlington v. Kellar*, 18 Iowa, 59; *Commonwealth v. Voorhies*, 12 B. Mon. 361; *Commonwealth v. Locke*, 114 Mass. 288; *Hamel v. St. Jean Deschaillons*, Rap. Jud. Que. 20 Can. Sup. 301; *Houma v. Houma, etc., Co.*, 121 La. 21; 46 So. 42; *Mernaugh v. State*, 41 Fla. 433; 27 So. 34.

<sup>63</sup> *Ex parte Wolters*, 65 Cal. 269; 3 Pac. 894; *People v. Dwyer*, 4 Pac. 451; *Perdue v. Ellis*, 18 Ga. 586; *Douglassville v. Johns*, 62 Ga. 423; *Lawrenceburg v. Wuest*, 16 Ind. 337; *Meyer v. Bridgeton*, 37 N. J. L. 160; *Hershoff v. Beverly*, 45 N. J. L. 288; *Heisembrittle v. Charleston*, 2 McM. 233; *Portland v. Schmidt*, 13 Ore. 17; 6 Pac. 221; *Stokes v. Schlachter*, 66 N. J. L. 247; 49 Atl. 556; *Hoboken v. Goodman*, 68 N. J. L. 217; 51 Atl. 1092.



such ordinance may provide for certain requisities before the license is granted.<sup>64</sup> Power to license, regulate and prohibit sales or gifts of liquors authorizes the adoption of an ordinance requiring a license for sales in quantities of one gallon or over.<sup>65</sup> Under such a power a city may prohibit sales in one part of a city and require a license in the other part.<sup>66</sup> Under a power to exact a license from persons licensed by State or county authority, it may punish those selling liquor without a city license, even though he has no State or county license.<sup>67</sup> As a prerequisite to obtaining a license a city may require an applicant to first obtain a county license.<sup>68</sup> Under a power to "regulate or prohibit" the sale of liquors a city may require a license for their sale;<sup>69</sup> but it has been held that under a power to license "saloons, taverns and eating houses," a license could not be imposed for the sale of liquor;<sup>70</sup> and one "to tax or entirely suppress all petty groceries" not to license retail liquor dealers.<sup>71</sup> A resolution of Congress authorizing the Commissioners of the District of Columbia to enforce police regulations for the safety of the "lives, health, comfort and quiet" of the inhabitants of such District, was held not to authorize them to punish a person for selling liquor without a license.<sup>72</sup> And power authorizing a city to

<sup>64</sup> *Foster v. San Francisco*, 102 Cal. 483; 37 Pac. 763; 41 Am. St. 194; *Wells v. Torrey*, 144 Mich. 689; 108 N. W. 423; 13 Detroit Leg. N. 378.

<sup>65</sup> *Dennehy v. Chicago*, 120 Ill. 627; 12 N. E. 227; *Ammon v. Chicago*, 26 Ill. App. 641; *Miller v. Ammon*, 145 U. S. 421; 12 Sup. Ct. 884; 36 L. Ed. 759; *Commonwealth v. Turner*, 1 Cush. 493; *Clintonville v. Keating*, 4 Denio, 341.

<sup>66</sup> *People v. Cregier*, 138 Ill. 401; 28 N. E. 812.

<sup>67</sup> *Lutz v. Crawfordsville*, 109 Ind. 466; 10 N. E. 411; *Frankfort v. Aughe*, 114 Ind. 77, 600; 15 N. E. 802, 804.

<sup>68</sup> *Wagner v. Garrett*, 118 Ind. 114; 20 N. E. 706; *Linkenhelt v. Garrett*, 118 Ind. 599; 20 N. E. 708; see also *Territory v. Robertson*, 19 Okla. 149; 92 Pac. 144; *Gale v. Moscow*, 15 Idaho, 332; 97 Pac. 828.

<sup>69</sup> *Keokuk v. Dressell*, 47 Iowa, 597; *State v. Stevens*, 114 N. C. 873; 19 S. E. 861; *In re Schneider*, 11 Ore. 288; 8 Pac. 289.

<sup>70</sup> *Mt. Pleasant v. Vanice*, 43 Mich. 361; 5 N. W. 378; 38 Am. Rep. 193.

<sup>71</sup> *Leonard v. Canton*, 35 Miss. 189.

<sup>72</sup> *In re Sullivan*, 21 D. C. 139.



license, regulate and restrain the sale of liquor is broad enough to authorize the adoption of an ordinance requiring a license for selling, bartering or giving it away.<sup>73</sup> Under its general power to exact a license a city may provide that no one shall receive a license except his application be accompanied by a recommendation signed by a specified number of respectable citizens who state that the applicant has a good reputation;<sup>74</sup> and it may require a grocer selling liquor to take out a license,<sup>75</sup> and, under a proper power conferred, may require a wholesaler to take out a license.<sup>76</sup> An ordinance which provides that "no person" shall sell or give away any intoxicating or malt liquors to be drunk on the premises applies to the keeper of a restaurant;<sup>77</sup> but power to exact a license from houses of public entertainment only will not authorize the enactment of a license from the keeper of an inn.<sup>78</sup> An

<sup>73</sup> *Vinson v. Monticello*, 118 Ind. 103; 19 N. E. 734; *Gertz v. Monticello*, 118 Ind. 600; 19 N. E. 735.

<sup>74</sup> *Wells v. Torrey*, 144 Mich. 689; 108 N. W. 423; 13 Detroit Leg. N. 378; *People v. Mount*, 186 Ill. 560; 58 N. E. 360; affirming 87 Ill. App. 194; *State v. Kessells*, 120 Mo. App. 233; 96 S. W. 494. Held otherwise under a constitutional provision. *State v. McCammon*, 111 Mo. App. 626; 86 S. W. 510.

An ordinance requiring two-thirds of a majority of the voters to annually sign the petition for a license is void, because unreasonable. *State v. McCammon*, 111 Mo. App. 626; 86 S. W. 510; but not one requiring two-thirds of the voters in the block where the saloon is to be located. *Martens v. People*, 186 Ill. 314; 37 N. E. 871; affirming 85 Ill. App. 66.

<sup>75</sup> *Chicago v. Slack*, 121 Ill. App. 131.

<sup>76</sup> *Confer v. Elizabethtown (Ky.)*, 99 S. W. 608; 30 Ky. L.

Rep. 706; *Spira v. State*, 146 Ala. 177; 41 So. 465 (a brewery); *State v. Calloway*, 11 Idaho, 719; 84 Pac. 27 (by statute); *Joseph Schlitz Brewing Co. v. Superior*, 117 Wis. 297; 93 N. W. 1120; *Cofer v. Commonwealth (Ky.)*, 87 S. W. 264; 27 Ky. L. Rep. 934; *Cooper v. Hot Springs*, 87 Ark. 12; 111 S. W. 997.

A license to retail and one to wholesale may be combined. *Strauss v. Galesburg*, 203 Ill. 234; 67 N. E. 836; affirming 89 Ill. App. 504.

<sup>77</sup> *Scanlon v. Denver*, 38 Colo. 401; 88 Pac. 156; *Conover v. Gregson*, 72 N. J. L. 103; 60 Atl. 31.

<sup>78</sup> *In re Barclay*, 11 Up. Can. 470.

The grant of the license and payment of the fee is no defense where no license was actually issued; for the license is the only defense allowed on the charge of a sale without a license. *Jordan v. Bespole*, c. 8 Minn. 441; 90 N. W. 1052.

ordinance may forbid a person having an interest in more than one license or in more than one place for the sale of liquors at the same time.<sup>79</sup> An ordinance providing that "every person who sells intoxicating liquors must have a license does not impose a license tax on each sale instead of on the business of selling such liquors, where the entire ordinance shows it was the intention not to impose a tax on each sale, but on the entire business of selling."<sup>80</sup> Under a power to grant licenses without restriction, except as the Constitution of the State forbids, the city may provide for the issuance of licenses generally, although State licenses are graduated.<sup>81</sup> So under a power to exact a license a city may provide a penalty if a sale be made without it.<sup>82</sup> An ordinance which requires an applicant for a license in a block where no saloon has been established to present the written consent of two-thirds of the property owners in the block, is reasonable, and does not so discriminate between the blocks and the several parts of the city, nor between persons owning the same property interests so as to be void. The ordinance is uniform in its operation.<sup>83</sup>

<sup>79</sup> *Swift v. Klein*, 163 Ill. 269; 45 N. E. 219.

<sup>80</sup> *Ex parte Seube*, 115 Cal. 629; 47 Pac. 596.

<sup>81</sup> *New Iberia v. Moss Hotel Co.*, 112 La. 525; 36 So. 552; but see *Houma v. Houma, etc., Co.*, 121 La. 21; 46 So. 42.

<sup>82</sup> *Hoboken v. Goodman*, 68 N. J. L. 217; 51 Atl. 1092; *Warrensburgh v. McHugh*, 122 Mo. 649; 27 S. W. 523; *Emporia v. Volmer*, 12 Kan. 622.

As to rule concerning the repeal of conflicting ordinances, see *In re Bailey*, 64 Kan. 887; 68 Pac. 53; *People v. Mount*, 186 Ill. 560; 58 N. E. 360; affirming 87 Ill. App. 194.

In the granting of licenses by a city, the members of a licensing board do not act as the agents of the city, but as its public officers;

and the city is not liable for their acts, if there be no statute expressly making it liable. *McGinnis v. Medway*, 176 Mass. 67; 57 N. E. 210.

A citizen and taxpayer of a town cannot enjoin the issuance of a license on the ground that the ordinance permitting its issuance is void. *Marshall v. Marksville*, 116 La. 746; 41 So. 57.

<sup>83</sup> *Martens v. People*, 186 Ill. 314; 57 N. E. 871; affirming 85 Ill. App. 66.

Mandamus lies to compel a chief of police to prosecute persons who sell liquor without a license, where a city ordinance requires him to carry its provisions into effect. *Goodell v. Woodbury*, 71 N. H. 378; 52 Atl. 855.

A city may be empowered to exact a license for each pool or

### Sec. 266. Power to grant a license—What includes.

The power to license, tax, regulate and restrain the sale of intoxicating liquors at retail carries with it, without any express provision, authority to provide by ordinance the terms and conditions upon which such license shall be issued, the amount of tax to be imposed and the mode of collecting it, and to establish reasonable rules to be observed in conducting the business, provided the ordinance does not contravene any of the statutory provisions of the State upon the subject, and the license fee required is not an unreasonable one, and such an ordinance may be amended so as to increase the tax or fee required to be paid for it, and made to apply to licenses already granted as well as to those to be granted thereafter, and will not be subject to the objection that it is an *ex post facto* ordinance.<sup>84</sup> It is abundantly settled that a license, or permit, issued in pursuance of a mere police regulation, has none of the elements of a contract, and that it may be changed or entirely revoked, even though based upon a valuable consideration, and that in accepting such a license the licensee takes it with the knowledge that if the public good requires that the ordinance authorizing the issuance shall be changed, modified

billiard table kept and used in a saloon. *Bailey v. Opelika*, 146 Ala. 171; 40 So. 968.

Under a power to license and regulate and control places where liquors are kept and sold, and declaring that "no license for the sale or disposal of spirituous or intoxicating liquors as a beverage shall be granted for a longer period than a municipal year," a city may regulate the sale of liquors and require a license, and is not confined to licensing and regulating barrooms and drinking houses and places where liquors are sold. *Houck v. Ashland*, 40 Ore. 117; 66 Pac. 697.

An ordinance requiring a saloon keeper to have a license and pay

a fee for it, and forbidding any one to conduct a saloon without a license, is not repealed by a subsequent ordinance providing regulations that must be complied with by anyone desiring a license. *Ex parte Hinkle*, 104 Mo. App. 104; 78 S. W. 317.

It has been held that a city cannot exact any requirements beyond those required by the State. *Evans v. Redwood Falls*, 103 Minn. 314; 115 N. W. 200; *Territory v. Robertson*, 19 Okla. 149; 92 Pac. 144.

<sup>84</sup> *In re Stuart*, 61 Cal. 374; *Ex parte Wolters*, 65 Cal. 269; 3 Pac. 894; *Moore v. Indianapolis*, 120 Ind. 483; 22 N. E. 424; *Portland v. Schmidt*, 13 Ore. 17.

or repealed, no incidental inconvenience which he may suffer can stay the hand of the municipal corporation in changing, modifying or repealing the ordinance.<sup>85</sup> Even if it were conceded that a permit to sell intoxicating liquors was possessed of some of the characteristics of property, or that it was a thing of value, in the eye of the law, it would still offer no impediment against the exertion of the police power of the State. "The acknowledged police power of the State extends often to the destruction of property."<sup>86</sup>

<sup>85</sup> *Moore v. City of Indianapolis*, 120 Ind. 483; 22 N. E. 424.

<sup>86</sup> *License Cases*, 5 How. (U. S.) 504, 577; *Mugler v. Kansas*, 123 U. S. 623, 658; 8 Sup. Ct. 273.

Under a power to exact a license, a city may prescribe what kind of a person is entitled to take out a license. *Rochester v. Upman*, 19 Minn. 108; *Cheney v. Shelbyville*, 18 Ind. 84; *Lawrenceburg v. Wuest*, 16 Ind. 337; *Ex parte Schneider*, 11 Ore. 288; 8 Pac. 289; *Whitten v. Covington*, 43 Ga. 421.

We append a digest of a number of decisions. A charter empowering a city to levy taxes, to provide for licensing retailers, taverns and billiard tables, authorizes a city to impose a fine for keeping a tippling house without a license. *St. Louis v. Smith*, 2 Mo. 113.

An ordinance requiring saloon keepers to take out a license is not void because in restraint of trade. *Kitson v. Ann Arbor*, 26 Mich. 325.

An ordinance regulating the sale of liquors will be construed, if reasonably possible, in conformity with the statutes of the

State. *Vidalia v. Falkenheine* (La.), 49 So. 217.

Under a statute restricting towns in the imposition of licenses to a sum not exceeding the amount levied for State purposes, and providing that the license fee shall not be less than \$15 nor more than \$100 for every period of six months, the amount of the tax to be determined by the court or clerk granting the license, a town cannot fix the tax at \$60 for every saloon, although the town's charter grants it authority to tax, license, and regulate saloons without limitation as to the amount of the tax. *Paris v. Graham*, 33 Mo. 94.

Where constitutional prohibition exists, but a city, in consideration of sums of money paid it from time to time in the form of simulated fines, permits persons to carry on the liquor traffic and have immunity from prosecutions, *quo warranto* lies to oust it from the exercise of such unwarranted corporate powers. *State v. Coffeyville*, 78 Kan. 599; 97 Pac. 372. Officers who fail to carry out the laws enforcing prohibition may be removed from office. *State v. Wilcox*, 78 Kan. 597; 97 Pac. 372.



### Sec. 267. Ordinance necessary to exaction of a license.

A power given a city to regulate the sale of liquors can only be exercised through the medium of a duly enacted ordinance, and the officers of a city, in the absence of such an ordinance, cannot require dealers to take out a license or pay a license fee.<sup>87</sup> This is accomplished by a general ordinance, which remains in force until repealed, even though it be a revenue measure.<sup>88</sup> If a city annex territory, and in this territory an ordinance regulating the liquor traffic is in force, as a general rule it remains in force until repealed by the city making the annexation.<sup>89</sup> Where a statute provided that no license should extend beyond the first Monday in the June next after it was granted, it was held that a newly incorporated town could not adopt an ordinance providing for the payment of an annual license fee on or before the first day of the next May of the year for which the license was granted.<sup>90</sup>

<sup>87</sup> *People v. Crotty*, 93 Ill. 180; affirming 3 Bradw. (Ill.) 465; *Hurdland v. Hardy*, 74 Mo. App. 614; *Malken v. Chicago*, 217 Ill. 471; 75 N. E. 548; affirming 119 Ill. App. 542; *People v. Mount* (Ill.), 58 N. E. 360; affirming 87 Ill. App. 194; *Backus v. People*, 87 Ill. App. 173. A mere violation is not sufficient. *In re Wilson*, 32 Minn. 145; 19 N. W. 723; *State v. Andrews*, 11 Neb. 523; 10 N. W. 410.

<sup>88</sup> *Canova v. Williams*, 41 Fla. 509; 27 So. 30.

<sup>89</sup> *People v. Harrison*, 191 Ill. 257; 61 N. E. 99; affirming 92 Ill. App. 643.

Occasionally statutes provide for fixing the amount of liquor license fees by popular vote. *Seattle v. Clark*, 28 Wash. 717; 69 Pac. 407.

<sup>90</sup> *Albion v. Boldt*, 145 Mich. 285; 108 N. W. 703; 13 Detroit Leg. N. 430.

If an ordinance requires the

chief of police to enforce its provisions, mandamus lies to compel him to do so. *Goodell v. Woodbury*, 71 N. H. 378; 52 Atl. 855.

A city's new charter providing that all existing ordinances in effect at the date of its adoption shall continue in force, continues in force a liquor tax levied under an ordinance in force at the time such new charter was adopted. *Ex parte Abrams* (Tex.), 120 S. W. 883; *Ex parte Clark* (Tex.), 120 S. W. 892.

The removal of constitutional prohibition against licensing the sale of liquor does not authorize a town to license saloons under a statute adopted before the adoption of constitutional prohibition. *Dewar v. People*, 40 Mich. 401; 29 Am. Rep. 545.

Occasionally the statute is so broad that no ordinance providing for a license is necessary. *Ashton v. Ellsworth*, 48 Ill. 299.



**Sec. 268. Delegation by city of power to require a license.**

In keeping with the rule that a city cannot exact a license except in pursuance of a duly adopted ordinance is the further rule that the city itself through its council must fix and determine the right to exact a license and the amount to be paid therefor, and incidentally to whom it may be issued; and it cannot delegate this power to any of its officers or to any official body of its organization;<sup>91</sup> and the council must enact the ordinance and not some other integral part of the city government.<sup>92</sup> A city endowed with power to exact or require a license is not bound to do so;<sup>93</sup> and if it refuse to do so, although prohibition within its borders will exist if it do not, yet the county or State authorities cannot for that reason authorize sales within such boundaries by issuing a county or State license.<sup>94</sup> A statute may, however, authorize a city to appoint a committee for the purpose of granting licenses.<sup>95</sup>

**Sec. 269. Number of licenses.**

A city, unless especially empowered to do so, cannot limit the number of licenses to be granted by it.<sup>96</sup> But the Legislature may empower it to so limit the number,<sup>97</sup> usually according to the population; and in that event the ordinance need not state the number of inhabitants in the city so as to show upon its face that the number of licenses fixed is within the statute; nor need it be stated in the ordinance under what statute it is passed.<sup>98</sup> And a city may be empowered to grant

<sup>91</sup> *Riley v. Trenton*, 51 N. J. L. 498; 28 Atl. 116; 5 L. R. A. 352; *East St. Louis v. Wehring*, 50 Ill. 28; *Darling v. St. Paul*, 19 Minn. 389; *In re Wilson*, 32 Minn. 145; 19 N. W. 723; *Kinmundy v. Mahan*, 72 Ill. 462; *State v. Kantler*, 32 Minn. 69; 21 N. W. 856.

<sup>92</sup> *Featherstone v. Lambertville*, 50 N. J. L. 507; 14 Atl. 599; *Glantz v. State*, 38 Wis. 549; *Winants v. Bayonne*, 44 N. J. L. 114.

<sup>93</sup> *Schwuchow v. Chicago*, 68 Ill. 444.

<sup>94</sup> *Coulterville v. Gillan*, 72 Ill. 599.

<sup>95</sup> *In re Bight*, 12 Can. Prac. 433; see also *Williams v. State*, 52 Tex. Cr. App. 371; 107 S. W. 1121.

<sup>96</sup> *In re Gifford*, 35 Up. Can. 285; *In re Greystock*, 12 Up. Can. 458; *Regina v. Gamble*, 8 Up. Can. 263.

<sup>97</sup> *In re Boylan*, 15 Ont. 13.

<sup>98</sup> *In re Groome*, 6 Ont. 188; *In re Goulden*, 28 Ont. 387.

more than one license to the same person or to the same brewery;<sup>99</sup> so it may provide that a licensee shall not keep or be interested in a saloon at more than one place at the same time.<sup>1</sup>

### **Sec. 270. Restricting saloons to specified parts of the city.**

Statutes occasionally provide that municipalities may prescribe the territory in them within which saloons shall not be located, and also where they must be located. A statute of Indiana declared that cities might "exclude such sales [of intoxicating liquors] from the suburban or residence portion" of the city, "and confine the places where such sales may be made to the business portion of such city."<sup>2</sup> Of this statute the Supreme Court of that State said: "The statute did not require the common council to fix the boundaries of the business portions of the city; neither did it prohibit them from doing so. It may have been thought by the Legislature that, in some cases, it would be practicable to define such boundaries, and that in others it would not. Very good reasons may be given in support of each of these methods. It may be said that the question of the boundaries of the business district should be left to the determination of the courts as a question of fact. Or, with equal force, it may be contended that greater certainty and uniformity in the enforcement of the ordinance can be secured where such boundaries are previously established and made known. Neither of these methods seems to be objectionable upon any legal ground, and the common council of Greencastle, in the exercise of its discretion, had the right to adopt either. It saw fit to fix and declare the boundaries of the business portion of Greencastle, and confine the places where intoxicating liquors might be kept for sale, to be used upon the premises, within such boundaries, excluding them from both the suburban and the residence parts of the city. But while the ordinance adopted by the common council of the city of Greencastle was valid,

<sup>99</sup> *In re Pittsburg Brewing Co.*,  
16 Pa. Super. Ct. 215.

<sup>1</sup> *Swift v. Klein*, 163 Ill. 269;  
45 N. E. 219.

<sup>2</sup> Acts 1895, p. 180, sec. 13.

and, *prima facie*, rendered unlawful the maintenance of all shops, etc., kept for the sale of intoxicating liquors to be used upon the premises, outside of the business portion of the city, as defined by the ordinance, yet, we think, that such declaration of the boundaries of the business portion of the city was not conclusive. The statute authorized the common council to confine such places to the business portion of the city and to exclude them from the suburban and residence portions. But that body could not, without exceeding its statutory authority, exclude such places from those portions of the city which were, in fact, neither suburban nor residence districts. Declaring them to be suburban or residence portions would not make them such. Proof of the passage of the ordinance and that the appellant's room or saloon was within the prohibited district was sufficient to make a *prima facie* case against him, but he had the right to show that his room or saloon was, in fact, in the business part of the city, and not in either the suburban portion or the residence portion. It is proper to suggest," continued the court, "in this connection, that the words 'residence' and 'suburban,' as used in the statute and ordinance, do not mean the same thing. The suburban portion of the city is the outlying part, that portion which is remote from the center of trade and population, where the houses are generally more or less scattered, and where many of the improvements and advantages enjoyed by the central and more densely populated parts of the city are wanting. The suburban part of a city may be used for business, or it may be occupied by residences, or it may be used both for residence and business purposes. But in either case police surveillance and protection are usually less thorough and efficient than in the central parts of the city, and, however occupied, the same reasons exist for excluding from such portion of the city places of resort and offensive occupations which may breed disorder and threaten the quiet and safety of the neighborhood." Another statute involved in this same case was one providing that a city "in regulating, restraining, and licensing such inns, taverns, shops, or places aforesaid, they shall have the power to designate the room, building or structure where such liquors may be sold;" and it was claimed

that this statute enabled a city "to fix, conclusively, the location in which intoxicating liquors may be kept for sale, to be used on the premises." But this claim the court denied, the court saying that this statute, following the course of legislation for more than fifty years, was intended "to restrict the business of the person to whom the license was issued to a single room, in a particular structure or building." "The construction contended for by the appellee," said the court, "would authorize the adoption of an ordinance requiring all intoxicating liquors kept and sold for use on the premises by all persons engaged in the business to be so kept and sold in one or more designated rooms, buildings, or structures in the city, not owned by, or accessible to, such persons. An ordinance of this character would operate, not to regulate or restrain the traffic, but to prohibit it, and this the common council, in this manner, cannot do."<sup>3</sup> In a Minnesota case power to confine the sale of liquors to a certain portion of the city was held to be given under the power to regulate. "We have no doubt whatever of the power of the city council to determine where, and within what portions of the city, the business of selling and dealing in intoxicating liquors may be carried on. This right is implied and included in the power to regulate. And if they deem that the good order of the city requires that this traffic shall be excluded from the suburbs and residence portions of the city, and confined to the more central and business portions, where it can be kept under more effectual police surveillance, their power to do so is, in our judgment, undoubted. Under a grant of police power to regulate, the right of municipal authorities to determine where and within what limits a certain kind of business may be conducted, has often been sustained. For example, the place where markets might be held; where butchers' stalls or meat shops may be kept; where hay or other produce shall be weighed; where auctions may be held; the limits within which certain kinds of animals shall not be kept; within which the

<sup>3</sup> Rowland v. Greencastle, 157 Ind. 591; 62 N. E. 474; Rowland v. Greencastle, 157 Ind. 707; 62 N. E. 1103; Shea v. Muncie, 148 Ind.

14; 46 N. E. 138; Johnson v. Bessemere, 143 Mich. 313; 106 N. W. 652; 12 Detroit Leg. N. 981.



business of tallow chandler shall not be carried on; within which gunpowder shall not be stored; within which slaughter houses shall not be kept; the distance from a church within which liquor shall not be sold. Such cases might be multiplied almost indefinitely. If under the general police power to regulate, this can be done as to such kinds of business, on what principle can it be claimed that similar regulations may not be adopted as to the sale of intoxicating liquors—a traffic which all civilized communities deem necessary to place under special police regulations and restraints.”<sup>4</sup> An ordinance prohibiting sales in a residence portion of the city may also provide that the license shall be no defense, and that the payment of the license fee and its retention shall not estop the city to enforce its provisions.<sup>5</sup> Where an ordinance permits the granting of a license for the business portion of a city, and a portion of a city is used both for residence and business, such portion is not in the business portion of the city; and the use of a dwelling house in part by boarders, using it with the family, does not render it a “business house.”<sup>6</sup> A city may also limit sales of liquor to houses of public entertainment.<sup>7</sup>

<sup>4</sup> *In re Wilson*, 32 Minn. 145; 19 N. W. 723; *Portland v. Schmidt*, 13 Ore. 17; 6 Pac. 221; *State v. Schroeder*, 51 Iowa, 197; 1 N. W. 431; *DeBois v. State*, 34 Ark. 381; *State v. Rauscher*, 1 Lea (Tenn.), 96; *Commonwealth v. Jones*, 142 Mass. 573; *Mayor v. Shattuck*, 19 Colo. 104; 34 Pac. 947; 41 Am. St. 208; *People v. Cregier*, 138 Ill. 401; 28 N. E. 812; *Martens v. People*, 85 Ill. App. 66; affirmed 186 Ill. 314; 57 N. E. 871; *Churchill v. Detroit*, 153 Mich. 93; 116 N. W. 558; *Straus v. Galesburg*, 203 Ill. 234; 67 N. E. 836; affirming 89 Ill. App. 504; *State v. Cheyenne*, 7 Wyo. 417; 52 Pac. 975; *Swift v. People*, 63 Ill. App. 453; *Gorrell v. Newport*, 1 Tenn. Ch. App. 120; *Sherlock v. Stuart*, 96 Mich. 123;

55 N. W. 845; 21 L. R. A. 580; *Minden v. Silverstein*, 36 La. Ann. 912; *People v. Bloom*, 120 Mich. 45; 78 N. W. 1015; *State v. Franklin Co.*, 49 Wash. 268; 94 Pac. 1086; *State v. Cain*, 78 S. C. 348; 58 N. E. 937; *Cohen v. Rice* (Tex. Civ. App.), 101 S. W. 1052; *Endsley v. State* (Ind.), 88 N. E. 62; *Mills v. Ludington* (Mich.), 122 N. W. 1082; *Ritz v. Lightson* (Cal.), 103 Pac. 303; *Andreas v. Beaumont* (Tex. Civ. App.), 113 S. W. 614; *Swift v. People*, 63 Ill. App. 453.

<sup>5</sup> *Shea v. Muncie*, 148 Ind. 14; 46 N. E. 138.

<sup>6</sup> *Shea v. Muncie*, 148 Ind. 14; 46 N. E. 138.

<sup>7</sup> *In re Slavin*, 36 Up. Can. 159.

An ordinance providing that no license shall be granted for a



### Sec. 271. License ordinance, when not invalid.

An ordinance which provides that it shall be unlawful for any person, firm, association, company or corporation to establish, conduct or maintain within a city any brewery, distillery or depot or agency of any brewery or distillery without complying with the provisions of the ordinances, and that an annual license fee of \$1,000 shall be charged and paid for each brewery, distillery, depot or agency so established, conducted or maintained, is not subject to the objection that it is a taxing ordinance, and that police regulations embodied in it are a mere cloak to conceal its true character and object.<sup>8</sup> Ordinances enacted in relation to the comfort, health, convenience, good order, morality, security and general welfare of the inhabitants are comprehensively known as police regulations. Where a fee is imposed for the purpose of such regulation and the ordinance requires compliance with prescribed conditions in addition to the payment of the fee, such sum is a license proper imposed by virtue of the police power; but, where the fee is imposed solely for revenue purposes, and payment thereof gives the right to carry on the business without the performance of any further conditions, it is a tax. In general it may be said that license fees imposed upon useful occupations, not hurtful or pernicious to society, and not calling for regulation by the sovereign power, are in fact taxes enacted under the revenue power; while licenses imposed on the liquor traffic and such other occupations as call for regulation by the State, are none the less licenses proper, because they

place within certain limits is self-executing, so as to authorize the council to refuse to approve the bond of a liquor dealer who intends to open a saloon at a place within such limits. *Johnson v. Bessemer*, 143 Mich. 313; 106 N. W. 852; 12 Detroit Leg. N. 981.

A statute authorizing a city to adopt an ordinance restricting saloons to a certain district, but preventing it passing an ordinance prohibiting sales on lands

in the district owned by the city, is valid. *Garzonzik v. State*, 50 Tex. Cr. App. 533; 100 S. W. 374.

The business of selling "near beer" may be limited to certain territory of a city; but such limits must be fairly extensive and not arbitrarily narrow. *Campbell v. Thomasville (Ga.)*, 64 S. E. 815.

<sup>8</sup>*Schmidt v. Indianapolis*, 168 Ind. 631; 80 N. E. 632.

yield a revenue in excess of that required for the purpose of regulation.<sup>9</sup> Where a municipal regulation is adopted, which would be lawful if intended for one purpose, and unlawful for another, the presumption is that the purpose was lawful, unless the contrary clearly appears.<sup>10</sup> The theory of legislation upon this subject is that the business of handling and selling intoxicating liquors is one which requires restraint, because it is harmful to society and the license fee is exacted for the purpose of restraining the business. This necessity for regulation and restriction in the interests of peace and good order and for the promotion of public morals distinguishes the liquor business from useful and harmless occupations. It is well settled that the legislative power to deal with this subject, whether it be to license, regulate, restrain or prohibit the sale of such liquors, is unlimited. All such restrictive measures, taken either by the State or by virtue of authority delegated to municipalities, are upheld as a proper exercise of the police power. Because of this fact such an ordinance is not an unlawful interference with interstate commerce, in violation of the Constitution of the United States. By an act approved August 8, 1890, Congress expressly subjected intoxicating liquors, when transported as articles of interstate commerce and

<sup>9</sup> *Royall v. Virginia*, 116 U. S. 572; *In re Nichols*, 48 Fed. Rep. 164; *Long v. State*, 27 Ala. 164; *Long v. State*, 27 Ala. 32; *Arkadelphia v. Lumber Co.*, 56 Ark. 370; *People v. Martin*, 60 Cal. 153; *Matter of Guerro*, 69 Cal. 68; *Merced County v. Helm*, 102 Cal. 159; *Kiowa County v. Dunn*, 21 Colo. 185; *Burch v. Savannah*, 42 Ga. 576; *Schmidt v. Indianapolis*, 168 Ind. 631; 80 N. E. 632; *State v. Wagener*, 77 Minn. 488; 77 Am. St. Rep. 681; *State v. Adler*, 68 Miss. 487; *Rinehart v. Long*, 95 Mo. 396; *Kansas City v. Grash*, 151 Mo. 128; *St. Louis v. Knox*, 6 Mo. App. 247; *German American F. Ins. Co. v. Minden*,

51 Neb. 870; *State v. O'Connor*, 5 N. Dak. 629; *Mays v. Cincinnati*, 1 Ohio St. 269; *Oil City v. Oil City Trust Co.*, 151 Pa. St. 454; 31 Am. St. Rep. 770; *Commonwealth v. Muir*, 180 Pa. St. 47; *State v. Foster*, 22 R. I. 163; *Baker v. Panola County*, 30 Tex. 87; *Fire Department v. Helfenstein*, 16 Wis. 136.

<sup>10</sup> *Ivey v. State*, 112 Ga. 175; 37 S. E. 398; *Hannon v. Chicago*, 140 Ill. 398; 29 N. E. 732; *Robson v. Doyle*, 191 Ill. 566; 61 N. E. 435; *Schmidt v. City of Indianapolis*, 168 Ind. 631; 80 N. E. 632; *State v. Capdeville*, 104 La. 561; 29 So. 515; *Johnson v. Philadelphia*, 60 Pa. 445.

delivered to the consignee, to the police regulations of the several States and Territories.<sup>11</sup> Nor is such ordinance subject to the objection that the license fee is excessive. It is true that as a general principle the amount which may be exacted for a license proper under the police power must be limited and reasonably measured by the cost of the issuance of the license, and the regulation and inspection for which provision is made, while a wider latitude is allowed in imposing a special tax upon a particular occupation or business as a source of revenue. This general doctrine, however, properly applies only to useful occupations which, being not detrimental to the public, cannot be unduly restricted or substantially prohibited under the guise of a police regulation. On the other hand, the courts now quite generally recognize that as to those lines of business which are hurtful to public morals, productive of disorder or injurious to the public, but nevertheless tolerated, the police power may be rightfully exercised in the levy of such a license tax as will limit and discourage the business.<sup>12</sup> The power and authority to license necessarily implies the right to fix the amount of the license fee.<sup>13</sup> The power to license and to fix the fee charged being lodged in the municipality, the amount to be exacted is not strictly a judicial question, and the action of the municipal body in fixing the license fee will be disturbed only in case of manifest abuse of its power.<sup>14</sup>

<sup>11</sup> *In re Raher*, 140 U. S. 545; 11 Sup. Ct. 865; *Pabst Brewing Co. v. Crenshaw*, 198 U. S. 17; 25 Sup. Ct. 552; *Foppiano v. Speed*, 199 U. S. 501; 26 Sup. Ct. 138; *Pabst Brewing Co. v. City of Terre Haute*, 98 Fed. 330; *Indianapolis v. Bieler*, 138 Ind. 30; 36 N. E. 587; *Schmidt v. Indianapolis*, 168 Ind. 631; 80 N. E. 632.

<sup>12</sup> *Gray on Limitations of Taxing Power*, § 1452; *Tiedeman on Limitations of Police Power*, pp. 273, 277, 278; *Cooley on Taxation* (3d Ed.), pp. 1142, 1143;

*Bartemeyer v. Iowa*, 18 Wall. (U. S.) 133; *Beer Company v. Massachusetts*, 97 U. S. 33; *Duluth Brewing Co. v. City of Superior*, 123 Fed. 356; *Meyer, Josen & Co. v. City of Mobile*, 147 Fed. 843; *Schmidt v. Indianapolis*, 168 Ind. 631; 60 N. E. 632; *State ex rel. v. Hudson*, 78 Mo. 302.

<sup>13</sup> *Schmidt v. Indianapolis*, 168 Ind. 631; 80 N. E. 632; *Portland v. Schmidt*, 13 Ore. 18; 6 Pac. 221.

<sup>14</sup> *Matter of Guerrero*, 69 Cal. 95; 10 Pac. 261; *Schmidt v. Indianapolis*, 168 Ind. 631; 80 N.

**Sec. 272. Discriminating ordinance, when not unconstitutional.**

The power granted to the common council of a municipal corporation to fix the rates for the privilege of transacting business is a branch of the taxing power which is not affected by a constitutional requirement that taxes shall be uniform. The council, therefore, in fixing such rates, may discriminate and impose a larger license tax upon one class of business, such as retailing intoxicating liquors, than on another.<sup>15</sup> Accordingly, it has been held that a county ordinance fixing a less rate for selling intoxicating liquors at a wayside tavern than in a village or city was not invalid;<sup>16</sup> that a city ordinance dividing liquor dealers into different classes, according to the amount of their sales and imposing a license tax varying in amount according to the class was constitutional;<sup>17</sup> that the fact that the same license fee, as a tax, is not required by all cities in the State, is no valid objection to a law conferring power on the common council to pass such an ordinance or to the ordinance itself;<sup>18</sup> and that within the same city an ordinance may properly impose different rates according to the locality in which such liquors are to be sold, provided it does not discriminate between persons.<sup>19</sup> In other words, such an ordinance may be differential in its character if it does not discriminate between persons having equal facilities for profit.<sup>20</sup> Where the law of the State or the charter of the mu-

E. 632; *Dennehy v. Chicago*, 120 Ill. 627; 13 N. E. 227; *Spiegler v. City of Chicago*, 216 Ill. 114; 74 N. E. 718.

If an ordinance be regular on its face, purporting to have been adopted by the common council and duly published, a license issued thereunder and paid for is a defense to a prosecution for selling without a license, although it was not legally passed. *Hanks v. People*, 39 Ill. App. 223.

<sup>15</sup> *Ex parte Hurl*, 49 Cal. 557.

<sup>16</sup> *Amador Co. v. Kennedy*, 70 Cal. 458; 11 Pac. 757.

<sup>17</sup> *Gross v. Allentown*, 132 Pa. St. 319; 19 Atl. 269.

<sup>18</sup> *Wiley v. Owens*, 39 Ind. 429.

<sup>19</sup> *East St. Louis v. Wehrung*, 46 Ill. 392.

<sup>20</sup> *People v. Thurber*, 13 Ill. 554; *Tulloss v. Sedan*, 31 Kan. 165; 1 Pac. 285; *State v. Rolle*, 30 La. Ann. 991; *Mayor, etc., v. Beasley*, 1 Humph. 232; 34 Am. Dec. 646; *Texas B. and Ins. Co., 42 Tex. 636; Slaughter v. Commonwealth*, 13 Gratt. (Va.) 767.



municipal corporation does not limit the amount that may be charged for a license to carry on such business, the amount to be charged must be determined by the circumstances, and can be changed by the common council of the corporation where the business is to be carried on much better than authority remote therefrom, and if the ordinance is not prohibitory in its character it will be sustained by the courts.<sup>21</sup> But an ordinance which makes the granting of a license to rest upon the arbitrary will of the council or city officer, is void.<sup>22</sup> And so is an ordinance which discriminates in favor of two classes of persons, each of whom are exempted from its operation.<sup>23</sup> Under the usual powers given a city it may charge one amount for a license for a saloon and another amount for a tavern license; <sup>24</sup> but it cannot charge one amount for one locality and another amount for another.<sup>25</sup> An ordinance providing that liquor in certain parts of a city can be sold only at a bar in a hotel is valid, being based upon a proper classification.<sup>26</sup> So an ordinance limiting saloons to certain portions of a city, but providing that those outside the limits may continue in business until their licenses expire, is likewise valid.<sup>27</sup>

### **Sec. 273. Existing license requirement, when not discriminating.**

As it is competent for a State to confer upon its municipal corporations the power to regulate and restrain the traffic in intoxicating liquors, then when this has been done such corporations may by duly enacted ordinances determine what shall be required of an applicant for a license to sell such liquors within the corporate limits. Under such authority such a corporation may require an applicant to hold an unexpired license issued by the Board of Commissioners of the county

<sup>21</sup> *Wiley v. Owens*, 39 Ind. 429.

<sup>22</sup> *Ex parte Theisen*, 30 Fla. 529; 11 So. 901; 32 Am. St. 36; *State v. D'Alemberte*, 30 Fla. 545; 11 So. 905.

<sup>23</sup> *Popel v. Monmouth*, 81 Ill. App. 512.

<sup>24</sup> *In re Grand*, 27 Up. Can. 46.

<sup>25</sup> *In re Donnelly*, 38 Up. Can. 599.

<sup>26</sup> *Ritz v. Lightson* (Cal.), 103 Pac. 303.

<sup>27</sup> *Andreas v. Beaumont* (Tex. Civ. App.), 113 S. W. 614; *Mills v. Ludington* (Mich.); 122 N. W. 1082.



in which the municipality is located. Such a requirement is not an arbitrary one nor is it subject to the objection that it discriminates against women and non-residents where, under the laws of the State, male inhabitants only can obtain a license from the Board of County Commissioners of the State. Persons who have obtained licenses from such county boards will be presumed to have shown their fitness to be trusted with the sale of such liquors before a tribunal where the right of remonstrance is secured. As a rule such corporations are not provided with the machinery for prosecuting inquiries into the character and fitness of such applicants. Hence, such a requirement is a reasonable exercise of the power to regulate and restrain the traffic.<sup>28</sup>

#### **Sec. 274. Bond of licensee.**

It is not necessary that a city be expressly empowered to require a bond from a licensee to retail intoxicating liquors in order to enable it to require the giving of a bond as a prerequisite to the issuance of a license. Thus, under a power to license, tax and regulate the liquor traffic within the limits, it has been held that a city may require a bond in a specified sum, with good and approved sureties, conditioned that the licensee will conduct his liquor business according to law. Such a requirement has a tendency to compel an observation of the law, and is reasonable and proper.<sup>29</sup>

#### **Sec. 275. Power to prohibit.**

In the absence of constitutional provisions to the contrary, it is competent for a Legislature to delegate to the municipalities of a State the power to prohibit the traffic in intoxicating liquors.<sup>30</sup> Accordingly it has been held that a general power in a city or town charter to prohibit the sale of such

<sup>28</sup> *Wagner v. Garrett*, 118 Ind. 114; 20 N. E. 706; *Likenhelt*, 118 Ind. 599; 20 N. E. 145.

<sup>29</sup> *Paducah v. James* (Ky.), 104 S. W. 971; 31 Ky. L. Rep. 1203; *Campbell v. Thomasville* (Ga. App.), 64 S. E. 815.

<sup>30</sup> *Harris v. Livingston*, 28 Ala. —; *Ex parte Sikes*, 102 Ala. 173; 15 So. 522; *Paul v. Washington*, 134 N. C. 363; 47 S. E. 793; 65 L. R. A. 902; *Perdue v. Ellis*, 18 Ga. 586.

liquors is sufficient to authorize the adoption of an ordinance for a total or partial prohibition of their sale; and that where such power is conferred it is wholly discretionary with the municipality to license, regulate, partially or entirely prohibit the traffic, and that if a municipality adopts an ordinance prohibiting the sale of any such liquors within its limits, if sales are made within the corporate limits of the municipality for a lawful purpose, the burden is upon the seller to prove such fact.<sup>31</sup> And the same is true where the power conferred upon the corporation is "to license and regulate the retailing of intoxicating liquors within their corporate limits, to revoke licenses by them issued for good cause shown, to close up retail establishments for such time as they may deem necessary, and to prevent the selling of such liquors within their corporate limits whenever they may deem it expedient;" and the same will be true if such a corporation is authorized "to license, regulate and prohibit" the sale of such liquors, or if a like prohibitory clause be included in the grant of authority.<sup>32</sup> But power to entirely prohibit such sales is not conferred if the grant is to "license, regulate and restrain" the traffic. The intention to prohibit the traffic must be expressly granted to it, or the terms used in the charter must be such as plainly to indicate that the Legislature intended to confer the power. Such an intention cannot be inferred when the controlling words used in the grant are "license," "regulate" and "restrain." These words are not synonymous with the word "prohibit." In such a connection, to license a business is to grant a formal permission from the proper authorities to perform or carry it on when, without such permission, it would be illegal; to regulate it is to adjust it by rules or method; to direct it, to put it into good order, to govern it; and to restrain it is to hold it back or keep it in check.<sup>33</sup> Such

<sup>31</sup> *Gunnarsohn v. City of Sterling*, 92 Ill. 569; *Ex parte Russellville*, 95 Ala. 19; 11 So. 18; *State v. Bolt*, 31 La. Ann. 663; 33 Am. Rep. 224; *Litch v. People*, 19 Colo. App. 435; 75 Pac. 1079.

<sup>32</sup> *In re Jones*, 78 Ala. 419; and

see *State v. Gill*, 89 Minn. 502; 95 N. W. 449.

<sup>33</sup> *Miller v. Jones*, 80 Ala. 89; *Ex parte Reynolds*, 87 Ala. 138; 6 So. 335; *Ex parte Anniston*, 90 Ala. 516; 7 So. 779; *Ex parte Florence*, 78

terms, however, will warrant the adoption of an ordinance providing for a partial prohibition; that is, to encumber such sales with such conditions and limitations as will hinder and prevent in some degree the sale of such liquors.<sup>34</sup> The power to prohibit is not included in the power to license.<sup>35</sup> It may prohibit the keeping of liquor in a restaurant.<sup>36</sup> But a statute authorizing a town to prohibit saloons does not empower it to prohibit sales in any quantity or for any purpose.<sup>37</sup> Un-

Ala. 419; *Ex parte* Sikes, 102 Ala. 173; *Harris v. Livingston*, 28 Ala. 577; *Tuck v. Waldron*, 31 Ark. 462; *Hill v. Commissioners*, 22 Ga. 203; *Pekin v. Smelzel*, 21 Ill. 464; 74 Am. Dec. 105; *Sweet v. City of Wabash*, 41 Ind. 7; *Loeb v. City of Attica*, 82 Ind. 175; *Emporia v. Volmer*, 12 Kan. 622; *State v. Harper*, 42 La. Ann. 312; 7 So. 446; *Lincoln Parish v. Harper*, 42 La. Ann. 776; 7 So. 716; *Portland v. Schmidt*, 13 Ore. 17; *Woods v. Town, etc.*, 19 Ore. 108; *Logan City v. Buck*, 3 Utah, 307; 5 Pac. 564; *Hayes v. Thompson*, 9 B. C. Rep. 249; *In re-Frawley* [1907], 14 Ont. App. L. R. 99; *Marnaugh v. Orlando*, 41 Fla. 433; 27 So. 34; *Moran v. Atlanta (Ga.)*, 30 S. E. 298; *Duran v. Stephens*, 126 Ga. 496; 54 S. E. 1045; *State v. McCammon*, 111 Mo. App. 626; 86 S. W. 510; *Shreveport v. P. Draiss & Co.*, 111 La. 511; 35 So. 727; *Bennett v. Pulaski (Tenn. Ch.)*, 52 S. W. 913; 47 L. R. A. 278; *State v. Franklin Co.*, 49 Wash. 268; 94 Pac. 1086; *Concord v. Patterson*, 53 N. C. 182; *State v. Hudson*, 11 Mo. App. 590; *Campbell v. Thomasville (Ga.)*, 64 S. E. 815.

<sup>34</sup> *Provo City v. Shurtliff*, 4 Utah, 15; 4 Pac. 302.

<sup>35</sup> *Miller v. Jones*, 80 Ala. 89;

*Ex parte* Reynolds, 87 Ala. 138; 6 So. 335; *Ex parte* Anniston, 90 Ala. 516; 77 So. 779; *Hood v. Von Glahn*, 88 Ala. 405; 14 S. E. 564; *Tuck v. Waldron*, 51 Ark. 462; *Hill v. Decatur*, 22 Ga. 203; *Sweet v. City of Wabash*, 41 Ind. 8; *Rossell v. Garm*, 50 N. J. L. 358; 13 N. E. 26; *Portland v. Schmidt*, 13 Ore. 17. But it is under the power to "restrain." *Smith v. Warrior*, 99 Ala. 481; 12 So. 418. *Contra*, *Portland v. Schmidt*, 13 Ore. 17; 6 Pac. 221. Under a power to make all local police, sanitary and other regulations, not inconsistent with the State laws, a city may prevent sales of liquor without a license, prohibit sales in dance houses, places where musical and theatrical entertainments are given, and where females attend as waitresses. *Ex parte* Hayes, 98 Cal. 555; 33 Pac. 337; 20 L. R. A. 701; *Ex parte* Smithy, 33 Pac. 338.

<sup>36</sup> *State v. Clark*, 28 N. H. 176; 61 Am. Dec. 611; *Nashville v. Linck*, 12 Lea, 499; *Gabel v. Houston*, 29 Tex. 335.

<sup>37</sup> *Straus v. Pontiac*, 40 Ill. 301; *State v. Harper*, 42 La. Ann. 312; 7 So. 446; *Lincoln Parish v. Harper*, 42 La. Ann. 776; 7 So. 716; *Rossell v. Garon*, 50 N. J. L.

der a statute empowering a city to regulate, restrain and prohibit ale, beer and porter houses or shops and places of resort for intemperance, it may adopt an ordinance making it unlawful to keep in the city a house, shop, booth or place where ale or beer is habitually sold.<sup>38</sup> Power "to provide by ordinance against the evils resulting from the sales of intoxicating liquors" does not authorize an ordinance prohibiting all sales except for medicinal and mechanical purposes.<sup>39</sup> One empowered to prohibit saloons and dramshops and abate nuisances does not authorize it to adopt an ordinance prohibiting persons from soliciting, receiving or transmitting orders for liquors.<sup>40</sup> Under a power to suppress saloons for the sale of liquors, a city may suppress a room at a hotel set apart for their sale at retail;<sup>41</sup> and so under a power to prevent and remove nuisances, to suppress and prohibit saloons, a city may declare any place to which people are permitted to resort to drink liquors shall be deemed a nuisance.<sup>42</sup> If a city be empowered to pass all by-laws respecting its police as it shall deem necessary for its security, welfare, good government and for the preservation of its health, peace and good order, it may prohibit the sale of intoxicating liquors.<sup>43</sup> An ordinance inflicting a penalty on anyone selling liquor is not invalid on the ground that it does not expressly prohibit the sale of liquor.<sup>44</sup> A city cannot, however, prevent the sale of liquor which is not intoxicating, or which contains so little alcohol that if drunk in ordinary quantities it will not intoxicate.<sup>45</sup> If

358; 13 Atl. 26; *State v. Britain*, 89 N. C. 574; *Staats v. Washington*, 44 N. J. L. 605; 43 Am. Rep. 402; *Piqua v. Zimmerlin*, 35 Ohio St. 507.

<sup>38</sup> *Burkholter v. McConnellsville*, 20 Ohio St. 308.

<sup>39</sup> *Bronson v. Oberlin*, 41 Ohio St. 476; 52 Am. St. 90; *Piqua v. Zimmerlin*, 35 Ohio St. 507; *State v. Roush*, 47 Ohio St. 478; 25 N. E. 59.

<sup>40</sup> *Homer v. Brown*, 117 La. Ann. 425; 41 So. 711.

<sup>41</sup> *Rattenbury v. Northville*, 122 Mich. 158; 80 N. W. 1012.

<sup>42</sup> *Topeka v. Raynor*, 8 Kan. App. 279; 55 Pac. 509.

<sup>43</sup> *Bailey Liquor Co. v. Austin*, 82 Fed. 785.

<sup>44</sup> *Arcola v. Wilkinson*, 233 Ill. 250; 84 N. E. 264.

<sup>45</sup> *Fontana v. Grant*, 6 Kan. App. 462; 50 Pac. 104; *State v. Dannanburer* (N. C.), 63 S. E. 946. But see *Eureka v. Jackson*, 8 Kan. App. 49; 54 Pac. 5.

See *Lincoln Center v. Linker*,



the general statutes permit sales for medicinal and mechanical purposes a town cannot restrict the sales to medicinal purposes only.<sup>46</sup> But a city may prohibit sales of liquors "in connection with drugs or in drug stores" under an authority to regulate the sale of them.<sup>47</sup> If a statute forbid the sale of liquors, an ordinance cannot authorize their sale.<sup>48</sup> But if it is the policy of a general State law that liquors may be sold under a license, a municipality cannot prohibit their sale within its limits.<sup>49</sup>

### Sec. 276. Power to prohibit includes power to license.

It has been said that under the police power, license fees may be imposed: 1. For regulation. 2. For revenue. 3. To give monopolies. 4. For prohibition. The fourth purpose is entirely admissible in the case of pursuits or indul-

7 Kan. App. 282; 51 Pac. 807, holding that a city could require the removal of obstructions to the view of a room where non-intoxicating liquors were sold.

An ordinance "to prohibit the keeping and selling of intoxicating liquors, except for medicinal, scientific and mechanical purposes," applies to saloons. *Holton v. Bimrod*, 8 Kan. App. 265; 55 Pac. 505.

Where a statute defines sales at retail, an ordinance prohibiting sales at retail need not define a retail sale. *Brunker v. Tp. of Mariposa*, 22 Ont. Rep. 120.

A city which attempts to license the sale of liquors in violation of a prohibitory clause in the State Constitution, may be ousted of its powers by an action in the nature of a *quo warranto*. *State v. Topeka*, 31 Kan. 586; 3 Pac. 320; *State v. Topeka*, 31 Kan. 452; 2 Pac. 593; *State v. Leavenworth*, 36 Kan. 314; 13 Pac. 591.

Under a power to prohibit the sales of liquor, a city may exempt from the provisions of an ordinance forbidding sales physicians who use liquors in good faith in their practice as medicine. *Carthage v. Carlton*, 99 Ill. App. 338.

<sup>46</sup> *Hundland v. Hardy*, 74 Mo. App. 614.

<sup>47</sup> *Jacobs Pharmacy Co. v. Atlanta*, 89 Fed. 244.

As to power in the Province of Quebec to authorize a city to prohibit the sales of liquor, see *St. Aubin v. Lafrance*, 8 Quebec L. R. (Can.) 190. *Contra*, *Huntingdon v. Moir*, 20 Rev. Leg. 684, and *Compton v. Simoneau*, 21 Rev. Leg. 265.

<sup>48</sup> *Shelton v. State*, 89 N. E. 860.

<sup>49</sup> *Parker v. Griffith* (N. C.), 66 S. E. 565.

Under a power to regulate and prohibit, a city may prohibit the solicitation or receiving of orders for liquors. *Braunstein v. People* (Colo.), 105 Pac. 857.



gences which in their general effect are believed to be more harmful than beneficial to society, and that it is often found that prohibition of an occupation which excites or gratifies the vices or passions of large numbers of people, is met by a resistance so steady and powerful as to render the law wholly ineffectual, when a heavy tax might lessen the evils and possibly in the end make the occupation unprofitable.<sup>50</sup> Accordingly it has been held that under a power given to a municipal corporation to "regulate or prohibit the sale of intoxicating liquors," the corporation may, by a duly enacted ordinance, authorize the granting of licenses to dealers in such liquors. Authority to prohibit, as we have seen, implies the power to interdict, hinder and prevent. Whatever will hinder or prevent the full exercise of a pursuit has the effect of prohibition in a degree. There may be the exercises of power under authority to prohibit which results only in partial prohibition; or it may be more wisely and effectively exerted in a manner that will result in total prohibition. Whether the prohibition be partial or total, it is exercised under the same authority. The licensing of intoxicating liquors hinders and prevents in a degree the traffic in those liquors. So far as a license restricts the free sale of such liquors, it that far operates to hinder and prevent the traffic. Therefore, as we have already said, a license may be imposed under the authority to prohibit.<sup>51</sup>

**Sec. 277. Prohibitory ordinance, not in violation of common law rights.**

The Legislature of a State where there is no constitutional provision inhibiting it from doing so may prohibit the traffic in intoxicating liquors, and having such power the Legislature may, by proper legislation, empower the municipal corporations within the State with a like power. In a case where the

<sup>50</sup> Cooley on Taxation, p. 403.

<sup>51</sup> Keokuk v. Dressell, 47 Ia. 595; Mt. Carmel v. Wabash Co., 50 Ill. 69; see Burlington v. Bumgardner, 42 Iowa, 673.

In the State of New Jersey,

however, under a power to "prohibit" the sale of liquors, it is held that a power to regulate is not given. State v. Fay, 44 N. J. L. 474.

power has been conferred upon such corporation to license, regulate, or prohibit the traffic in such liquors, it is in the discretion of the corporation to do either of such things; and therefore an ordinance which provides for the prohibition of the sale by retail of such liquors within the corporate limits will be valid and not subject to the objection that it is contrary to the common law. The right to engage in such a business and to be protected by law in its prosecution can no longer be claimed as a common law right, but is a right which can be exercised only in the manner and on the terms which the statute prescribes. The refusal to license a man to conduct the business does not deprive him of any personal or property right, but merely deprives him of a privilege which it is in the discretion of the municipal authorities to grant or withhold.<sup>52</sup>

### Sec. 278. Regulation and prohibition distinguished.

“To regulate” is the expression most frequently used to define the power delegated to municipal corporations in reference to the traffic in intoxicating liquors, and the meaning of the phrase has been fully determined by many well-adjudicated cases. In these cases, the phrase, “to regulate,” is distinguished from “to prohibit,” it being held that they have different and distinct meanings, whether understood in their ordinary and common signification or as defined by the courts in construing them. Power granted to a municipal corporation to grant licenses to retailers of intoxicating liquors, and to regulate them, does not confer power to prohibit, either directly or by a prohibitory charge for a license fee. Regulate and prohibit are not synonymous.<sup>53</sup> To regulate the sale of

<sup>52</sup> *People v. Cregier*, 138 Ill. 401; 28 N. E. 812.

<sup>53</sup> *Marion v. Chandler*, 6 Ala. 895; *Ex parte Burnett*, 30 Ala. 461; *Miller v. Jones*, 80 Ala. 89; *Tuck v. Waldron*, 31 Ark. 462; *Duckwall v. New Albany*, 25 Ind. 283; *Sweet v. City of Wabash*, 41 Ind. 7; *Cantrill v. Sainer*, 59 Ia. 26; 12 N. W. 753; *State v. Mott*,

61 Md. 297; *Austin v. Murray*, 33 Mass. (16 Pick.) 121; *People v. Gadway*, 61 Mich. 285; 28 N. W. 101; *In re Hauck*, 70 Mich. 396; *McConville v. Mayor, etc.*, 39 N. J. L. 38; *State v. Fay*, 44 N. J. L. 474; *State v. Garm*, 50 N. J. L. 358; 13 Atl. 26; *Bronson v. Oberlin*, 41 Ohio St. 478.

liquor implies *ex vi termini*, that the business may be engaged in or carried on, subject to established rules or methods. Prohibition is to prevent the business being engaged in, or carried on, entirely or partially. The two purposes are incongruous.<sup>54</sup> To regulate does not mean to annihilate or suppress, or to prohibit under all circumstances. No regulation or rules are necessary concerning an evil absolutely prohibited.<sup>55</sup> The power to license, tax, regulate and restrain barrooms and drinking shops carries with it, without any express provision, authority to provide by ordinance the terms and conditions upon which such license shall be issued, the amount of tax to be imposed (if it be reasonable and not prohibitory), and the mode of conducting the business, and implies the power to inhibit the carrying on that kind of business without such license.<sup>56</sup> While the power "to regulate" does not authorize prohibition in a general sense, because the very essence of regulation is the existence of something to be regulated, yet the weight of authority, is to the effect that this power does confer the authority to confine the business hours of the day, to certain localities or buildings in a city, and to the manner of its prosecution within those hours, localities and buildings, providing such regulations do not conflict with the statutes of the State.<sup>57</sup>

### Sec. 279. Limitation of power of city to enact ordinance.

If, by the provisions of a city charter, power is conferred upon a city council to make and establish ordinances and by-laws for numerous purposes, specifically set forth in the charter, among which are ordinances and by-laws "to prohibit the selling or giving away any ardent spirits by any store-keeper, trader or grocer, to be drunk, except by innkeepers duly licensed," and "to forbid the selling or giving away of

<sup>54</sup> *Miller v. Jones*, 80 Ala. 89; *Schwuchow v. City of Chicago*, 68 Ill. 444.

<sup>55</sup> *State v. Clark*, 54 Mo. 1, 34; *State v. Vic. De Bar*, 18 Mo. 395.

<sup>56</sup> *Portland*, 13 Ore. 1; *Provo City v. Shurtliff*, 4 Utah, 15.

<sup>57</sup> *In re Wilson*, 32 Minn. 145; *Livery Stables v. State*, 16 Mo. App. 131; *Cronin v. People*, 82 N. Y. 318; *Piqua v. Zimmerlin*, 35 Ohio St. 17.

ardent spirits or other intoxicating liquors to any child, apprentice or servant without the consent of his parent, master or guardian;" and such specific enumerations are followed by a provision in the charter that the city council "may make any other by-laws and regulations which may seem for the well-being of the city, provided they be not repugnant to the Constitution or laws of the State," the power of such city council to pass ordinances on the subject of the sale of ardent spirits or other intoxicating liquors is limited to the cases described in the specific provisions. In such cases the general provision is to be construed as referring to other matters, more properly the subjects of police regulation than those specifically enumerated. Consequently an ordinance prohibiting the sale of intoxicating liquors to any person without a license from the mayor and aldermen will be unauthorized by such charter and void.<sup>58</sup> The rule in such cases is that the power to make by-laws, when not expressly given, is implied as incident to the very existence of a corporation; but in the case of the express grant of the power to enact by-laws limited to certain specified cases and for certain purposes, the corporate power of the legislation is confined to the objects specified, all others being excluded by implication. To hold in such case that such a general clause confers the power to pass an ordinance prohibiting the sale of intoxicating liquors to any person without a license would in effect be to expunge the special provisions from the charter; and not these only, but all the numerous clauses which go to limit and define the precise boundaries of a power to be exercised by the city in the various cases specified for the enacting of by-laws and ordinances.<sup>59</sup>

#### **Sec. 280. Power to regulate sale of liquors—Valid ordinance.**

Under a power to require a license for the sale of liquors, a municipality has the right to provide that no license shall be granted an applicant unless he "produce the written recom-

<sup>58</sup> *State v. Ferguson*, 33 N. H. 424.

<sup>59</sup> *Kyd on Corp.*, 102; *Angel*

and *Ames on Corp.*, 177; *Child v. Hudson's Bay Co.*, 2 P. Williams,

207.



mentation of four of his nearest neighbors.”<sup>60</sup> And although the statute conferring the power to require a license says nothing about the right to require the licensee to furnish a bond conditioned that he will obey the ordinance of the municipality, yet as incident to the licensing power it may require him to furnish such a bond with surety to be approved by it.<sup>61</sup> Under such a power it may provide that a sale of liquor without a license shall render the seller liable to a prescribed penalty.<sup>62</sup> Under its power to license, regulate and restrain the traffic it may prohibit the giving away or bartering of liquors.<sup>63</sup> A statute prohibiting the sale of unfermented cider in less quantities than a gallon, or forbidding its being drunk on the premises where sold, is not so unreasonable as to be void.<sup>64</sup> Under a power to license a particular place a city may impose a penalty for a sale made at an unlicensed place.<sup>65</sup> A city may declare that liquors shall not be kept in restaurants or like places;<sup>66</sup> or that druggists shall only sell for medicinal purposes.<sup>67</sup> But under such a power it may not prohibit sales at saloons in any quantities or for any purpose unless they be for medicinal purposes.<sup>68</sup> Punishment for a sale of liquors without

<sup>60</sup> Whitten v. Covington, 43 Ga. 421; *In re* Indiana County Licenses, 2 Pa. Dist. Rep. 358.

<sup>61</sup> *Ex parte* Schneider, 11 Ore. 288; 8 Pac. 289.

<sup>62</sup> Schweitzer v. Liberty, 82 Mo. 309; Mayson v. Atlanta, 77 Ga. 662.

<sup>63</sup> Vinson v. Monticello, 118 Ind. 103; 19 N. E. 734. “The substantive grant contained in the statute is the power to license, regulate and restrain the sale of intoxicating liquor, but as a necessary incident to the power to restrain and regulate the sale, and to prevent the evasion of any ordinance against selling without license, is included the power to prohibit the bartering or giving away of any intoxicating liquor. This is upon the principle that a grant carries with it by implica-

tion all that is necessary to make the power granted effectual. The ordinance is, therefore, valid as a whole.” Citing *State v. Adamson*, 14 Ind. 296; *Williams v. State*, 48 Ind. 306.

<sup>64</sup> *Lawrence v. Monroe*, 44 Kan. 607; 24 Pac. 1113.

<sup>65</sup> *State v. Beverly*, 45 N. J. L. 288.

<sup>66</sup> *State v. Clark*, 28 N. H. 176.

<sup>67</sup> *Provo City v. Shurtliff*, 4 Utah, 15; 5 Pac. 302; *Selma v. Brewer*, 9 Cal. App. 70; 98 Pac. 61.

<sup>68</sup> *Strauss v. Pontiac*, 40 Ill. 301.

Municipalities have some latitude in cases of violations of its ordinances, so long as they do not run counter to State statutes on the same subject. *Jackson v. Boyd*, 53 Iowa, 536; 5 N. W. 734.



a license may be had, although the State inflicts a punishment for the same sale.<sup>69</sup> After issuing a license a city may adopt an ordinance regulating the sale under it, not essentially impairing the right to retail liquors authorized by it to be sold.<sup>70</sup> So a city may regulate the sale of liquors in greater quantities than the State regulates it.<sup>71</sup> Under its general power to enact ordinances for the regulation of the sale of liquors, such as it deems desirable, a city may require an applicant for a license to state in his application such facts as will show the suitability of the place for the saloon as where it is to be located.<sup>72</sup> The selling of "near beer" is a business which from its nature admits of strict regulations. It stands in a different class from selling drugs, soda water and similar liquids. Therefore regulations may be upheld which would be arbitrary and unreasonable if applied to other business.<sup>73</sup> So that an ordinance forbidding the sale of it in a less quantity than a pint at a time is valid; but one forbidding a sale of more than one quart to one person in a day is unreasonable. But an ordinance requiring a dealer to furnish samples to be tested to ascertain the amount of alcohol in the liquor he is selling or offering for sale is valid. So an ordinance requiring bottles and barrels containing it to be plainly stamped, so as to show their contents with the names of the manufacturers is reasonable. But in the absence of an express provision in its charter, a city may not prohibit its sale.<sup>74</sup> It has been held that a city under its general power to regulate the sale of liquors may prohibit screens, blinds and stained windows, or any other device to obscure the view of the interior of the room where liquors are sold, even though non-intoxicating, in order to pre-

<sup>69</sup> *State v. Harris*, 50 Minn. 128; 152 N. W. 387.

<sup>70</sup> *Morris v. Rome*, 10 Ga. 532.

<sup>71</sup> *Dennehy v. Chicago*, 120 Ill. 627; 12 N. E. 227.

<sup>72</sup> *Sherlock v. Stuart*, 96 Mich. 193; 55 N. W. 485; 21 L. R. A. 580.

<sup>73</sup> *Campbell v. Thomasville* (Ga.), 64 S. E. 815; *Baker v. Griffith* (N. C.), 66 S. E. 565;

*State v. Dannenberg* (N. C.), 66 S. E. 301.

This is a malt liquor which contains so little alcohol that it will not produce intoxication, though drunk to excess. In Georgia it includes all malt liquors not within the purview of the general prohibition law.

<sup>74</sup> *Campbell v. Thomasville* (Ga.), 64 S. E. 815.

vent a surreptitious sale of intoxicating liquors.<sup>75</sup> Under a power to exact a license of retailers a city may impose a fine upon all persons keeping tippling houses without a license.<sup>76</sup> So under a power given a city to declare by ordinance what shall constitute a nuisance, a city may declare the maintenance of a house for unlawful sale of liquors or the carrying on of such business shall be a nuisance.<sup>77</sup> If especially authorized by statute, a city may prohibit the sale of intoxicating liquors.<sup>78</sup> Under the general welfare clause a city may provide that it shall be unlawful to keep a "blind tiger" or keep for illegal sale intoxicating liquors.<sup>79</sup> The exemption of Weiss beer from a prohibitory ordinance does not render the ordinance void.<sup>80</sup>

### Sec. 281. Power to regulate sale of liquor—Invalid ordinance.

An ordinance which makes the granting of a license to rest upon the arbitrary will of the common council or municipal officers is void.<sup>81</sup> So is an ordinance authorizing any person to bring an action in the name of a city to recover damages for its violation and giving him a reward if he be successful.<sup>82</sup> And an ordinance prohibiting sales to a certain class of persons on Sunday is void when the State law permits them;<sup>83</sup> or prohibiting sales in certain quantities when a State law permits such sales.<sup>84</sup> An ordinance if not authorized by

<sup>75</sup> *Campbell v. Thomasville* (Ga.), 64 S. E. 815.

<sup>76</sup> *St. Louis v. Smith*, 2 Mo. 113.

<sup>77</sup> *Mayhew v. Eugene* (Ore.), 104 Pac. 727; *Ruston v. Fountain*, 118 La. 53; 42 So. 644.

<sup>78</sup> *Ruston v. Fountain*, 118 La. 53; 42 So. 644; *Gale v. Moscow*, 15 Idaho, 332; 97 Pac. 828; *Searcy v. Turner* (Ark.), 114 S. W. 472; *Selma v. Brewer*, 9 Cal. App. 70; 98 Pac. 61; *Campbell v. Thomasville* (Ga.), 64 S. E. 815.

<sup>79</sup> *Coggins v. Griffin*, 5 Ga. App. 1; 62 S. E. 659.

<sup>80</sup> *Kiel v. Chicago*, 176 Ill. 137; 52 N. E. 29; reversing 69 Ill. App. 685.

<sup>81</sup> *Ex parte Theisen*, 30 Fla. 529; 11 So. 901; 32 Am. St. 36; *State v. D'Alemberte*, 30 Fla. 545; 11 So. 905; *Chute v. Van Camp* (Wis.), 117 N. W. 1012.

<sup>82</sup> *Oechslein v. Passaic*, 2 N. J. Law J. 85.

<sup>83</sup> *Wood v. Brooklyn*, 14 Barb. 425.

<sup>84</sup> *Thompson v. Mt. Vernon*, 11 Ohio St. 688.

some statute is void.<sup>85</sup> Under a power authorizing a city to pass an ordinance making a sale or gift of liquor a nuisance, it cannot enact an ordinance making the keeping of it a nuisance.<sup>86</sup> Under a power "to regulate or prohibit" the sale of liquor a town cannot provide that liquors kept for sale in violation of an ordinance shall be destroyed.<sup>87</sup> Under a power "to make such by-laws, rules and regulations for the better government of the town, as they may deem necessary," an ordinance cannot be passed making it "unlawful for any bar-keeper, clerk or agent or any person whatever to keep open, or be or remain in, a barroom or other place where spirituous or intoxicating liquors are sold, between the hours of 10 o'clock P. M. and 4 o'clock A. M." <sup>88</sup> And under a somewhat similar principle, sales of liquors by wholesale cannot be interdicted nor druggists be compelled to keep a list of all persons to whom they sell liquors on prescriptions.<sup>89</sup> Under a general power to make by-laws and punish those violating them, a city cannot enact a by-law regulating the sale of liquors.<sup>90</sup> An ordinance forbidding the sale of more than one quart a day of "near beer" <sup>91</sup> to one person is void.<sup>92</sup>

### Sec. 282. Amount of license fees or taxes.

A State may, for revenue purposes and as a police regulation, impose a license for the carrying on of particular branches

<sup>85</sup> *Columbus v. Schaerr*, 5 Ohio S. & C. P. Dec. 100; *State v. Topoka*, 31 Kan. 452; 2 Pac. 593.

<sup>86</sup> *Sullivan v. Oneida*, 61 Ill. 242.

<sup>87</sup> *Henke v. McCord*, 55 Iowa, 378; 7 N. W. 623.

<sup>88</sup> *State v. Thomas*, 118 N. C. 1221; 24 S. E. 535.

<sup>89</sup> *McCrea v. Washington*, 10 Ohio Dec. 29; 19 Wkly. L. Bull. 66.

<sup>90</sup> *McMullen v. Charleston*, 1 Bay (S. C.), 46; *Zylstra v. Charleston*, 1 Bay (S. C.), 382; *Schroeder v. Charleston*, 2 Const. Rep. 726.

<sup>91</sup> A non-intoxicating malt liquor.

<sup>92</sup> *Campbell v. Thomasville* (Ga.), 64 S. E. 815.

A city cannot adopt an ordinance prohibiting the drinking of liquor "in any quantity in any stairway, areaway, street or alley, or on any sidewalk," because it is unreasonable, depriving a person of his personal liberty; though it would seem that it can prohibit the drinking of liquor in the street or on the sidewalk. *Carthage v. Block* (Mo. App.), 123 S. W. 482.

of business, including that of retailing intoxicating liquors, and may confer the right upon a municipal corporation within its jurisdiction, though the payment of the license fee operates incidentally as a tax upon the dealer or consumer.<sup>93</sup> A law conferring such a power and an ordinance passed under it will not be unconstitutional, nor can it be objected to on the ground that the same license fee is not required by all of the cities and towns of the State; for though taxes must be uniform throughout the city or town levying them, they need not be the same throughout the different cities and towns.<sup>94</sup> It has also been held that a municipal corporation cannot be required to tax all vocations or pursuits alike, but may discriminate against such as are hurtful or dangerous to the community.<sup>95</sup> If the law authorizing such a municipal corporation to require a license from a retail dealer does not limit the amount to be paid therefor, such corporation in the exercise of a reasonable discretion may determine the amount, provided it will not be prohibition in effect.<sup>96</sup> What will amount to a prohibiting tax is a question of fact, and not one of which the courts will take judicial notice.<sup>97</sup> As to what would be a prohibitory tax, reference must be had to the population, character and peculiar circumstances of the municipality, and the

<sup>93</sup> 2 Dillon Munic. Corp., § 793; Cooley's Const. Lim., § 201; Mobile v. Yerville, 3 Ala. 113; City of Elk Point v. Vaughn, 1 Dak. 113; Morris v. City of Rome, 10 Ga. 532; Douglasville v. Johns, 62 Ga. 423; Brown v. State, 79 Ga. 473; Bennett v. People, 30 Ill. 389; Coulterville v. Gillon, 72 Ill. 599; Denneberg v. Chicago, 120 Ill. 627; 12 N. E. 227; Sweet v. City of Wabash, 41 Ind. 71; City of Frankfort v. Aughe, 114 Ind. 77; Emerich v. Indianapolis, 118 Ind. 279; 20 N. E. 795; Shea v. City of Muncie, 148 Ind. 14; 46 N. E. 138; Keokuk v. Dressell, 47 Ia. 597; State v. City of Leavenworth, 36 Kan. 314; State v. Pfeifer, 26

Minn. 175; *In re Mundy*, 59 How. (N. Y.) Pr. 359; Commissioners v. Patterson, 8 Jones (N. Car.), Law, 182; Portland v. Schmidt, 13 Ore. 17; Morrill v. State, 38 Wis. 428; State v. Plainfield, 44 N. J. L. 118.

<sup>94</sup> Wiley v. Owens, 39 Ind. 429; Wells v. Torrey, 144 Mich. 689; 108 N. W. 423; 13 Det. L. N. 378.

<sup>95</sup> *Ex parte Hurl*, 49 Cal. 557; Mayor, etc., v. Beasley, 1 Humph. (Tenn.) 232.

<sup>96</sup> Wiley v. Owens, 39 Ind. 429; Van Hook v. Selma, 70 Ala. 361;

<sup>97</sup> Wiley v. Owens, 39 Ind. 429; Sweet v. City of Wabash, 41 Ind. 7.



general policy of the State with reference to its liquor legislation.<sup>98</sup> The amount that may be exacted in such case for a license is not to be confined to the mere expense of issuing the license, but may be for a sum which will in some measure realize a reasonable compensation for the additional expense of police supervision of the business.<sup>99</sup> In Indiana it is held that a city ordinance fixing the fee for a retail liquor dealer's license at \$500 is not unreasonable nor objectionable;<sup>1</sup> but in other States it has been held that a fee of \$1,000 is too great and amounts in effect to prohibition.<sup>2</sup> In California it has been adjudged that it cannot be assumed judicially that city ordinances requiring the payment of \$50 every ninety days for the privilege of retailing intoxicating liquors in quantities less than one quart is virtually a prohibition of the sale of such liquors; nor is an ordinance providing for a license tax of \$25 per month,<sup>3</sup> nor is one providing for a tax

<sup>98</sup> *Elk Point v. Vaughn*, 1 Dak. 113; *Perdue v. Ellis*, 18 Ga. 586; *Wiley v. Owens*, 39 Ind. 429; *Sweet v. City of Wabash*, 41 Ind. 7.

<sup>99</sup> *Van Hook v. Selma*, 70 Ala. 361.

<sup>1</sup> *Wiley v. Owens*, 39 Ind. 429; *Sweet v. City of Wabash*, 41 Ind. 7.

<sup>2</sup> *Ex parte Hurl*, 49 Cal. 557; *Perdue v. Ellis*, 18 Ga. 586; *Elk Point v. Vaughn*, 1 Dak. 113; 46 N. W. 577; *Marion v. Chandler*, 6 Ala. 899; *United States Distilling Co. v. Chicago*, 112 Ill. 19; *Mayor, etc., v. Beasley*, 1 Humph. (Tenn.) 232. *Contra, Ex parte Burnett*, 30 Ala. 461; *Craig v. Burnett*, 32 Ala. 728.

A \$2,000 license fee has been upheld. *Ex parte Sikes*, 102 Ala. 173; 15 So. 522; 24 L. R. A. 774; see *Kitson v. Ann Arbor*, 26 Mich. 325.

A power given to exact a license

fee from brewers of "not less than \$50, nor more than \$500," and to "grade, class and fix the rate of license within the minimum and maximum amounts designated," will not authorize the passage of an ordinance requiring brewers to pay "one-tenth of one per cent. on the amount of liquor manufactured," but requiring them to pay at least \$15 a year regardless of the amount manufactured. *Kniper v. Louisville*, 7 Bush, 599.

The city may provide to whom the license fees shall be paid, under its power to license. *Ex parte Lawrence*, 69 Cal. 608; 11 Pac. 217.

The Legislature may divert part of the charges into the county treasury, by amending the city's charter or the general law. *Winona v. Whipple*, 24 Minn. 61.

<sup>3</sup> *Ex parte Benninger*, 64 Cal. 291; 30 Pac. 846; *In re Guerrero*, 69 Cal. 88; 10 Pac. 361.



of \$50 per quarter or \$200 per year void because unreasonable and oppressive and in restraint of trade.<sup>4</sup> In fixing such fees a classification of population has been recognized as valid<sup>5</sup> and in Wisconsin where a statute thus fixing the license fees and providing that the population of any city or village shall be determined by the last preceding enumeration by the State or general government, it was held that the method of ascertaining the population thus pointed out was exclusive of any other, and could not be proved by parol or by application for a new census.<sup>6</sup> In other words, that the method prescribed by statute must be followed. The Legislature may authorize a city to exact a higher license fee than the State exacts for its license for the same locality.<sup>7</sup> The presumption is that the ordinance is valid and the amount of the fee not prohibitive until its invalidity or prohibitive character is established by proper evidence.<sup>8</sup> The fact that a liquor license fee is higher than the tax on dealers on other commodities cannot be construed as a discrimination.<sup>9</sup>

<sup>4</sup> *Ex parte McNulty*, 73 Cal 632; 15 Pac. 368.

<sup>5</sup> *Foster v. Burt*, 76 Ala. 229; *Commonwealth v. Miller*, 126 Pa. St. 137; 17 Atl. 623; *Commonwealth v. Smoulter*, 126 Pa. St. —; 137 Atl. 532.

<sup>6</sup> *State v. Keaough*, 68 Wis. 135; 31 N. W. 723.

<sup>7</sup> *Petitfills v. Jeanerette*, 52 La. Ann. 1005; 27 So. 358.

An ordinance prescribing what steps must be taken to secure a license, and providing that the licensee should pay for it at a rate that might from time to time be established, though expressly repealing an ordinance in relation to its subject-matter or inconsistent with its terms, does not repeal a prior ordinance fixing the amount of the fee to be paid yearly for the license. *People v. Mount*, 186 Ill. 560; 58 N. E. 360; affirming 87 Ill. App. 194.

<sup>8</sup> *Johnson v. Fayette*, 148 Ala. 497; 42 So. 621. In this case, in a town of 700 people, there were four saloons operating under licenses of \$500 each. Three of these saloons made a net profit from \$460 to \$800 yearly; while the remaining one was closed because the profit was not satisfactory. The license fee was raised to \$750, as the statute authorized. It was held that this was not prohibitory.

Recovery by city of fees from county in Pennsylvania. *Commonwealth v. Schadt*, 214 Pa. 592; 64 Atl. 320; *Commonwealth v. Seranton*, 214 Pa. 595; 64 Atl. 321.

<sup>9</sup> *Lackman v. Walker*, 52 Fla. 297; 42 So. 461.

A city can not adopt an ordinance providing that if there be a dispute as to the amount of fees to be paid, it shall be re-

**Sec. 283. License fee, limitation.**

Where, by an act of the Legislature, a municipal corporation has the power and authority to license and regulate the

ferred to the nearest justice of the peace. *Baker v. Paris*, 10 Up. Can. 26.

An ordinance relating to the granting of licenses does not repeal one fixing the rate for a license. *People v. Mount*, 186 Ill. 560; 58 N. E. 360; affirming 87 Ill. App. 194.

Where a statute forbids the issuance of a license until \$500 has been paid into the city treasury and as much more as the city may exact, the city cannot authorize the issuance of a license on the payment of less than \$500; and it may exact a sum in excess of \$500. *Kelly v. Faribault*, 83 Minn. 9; 85 N. W. 720.

A tax on the general business conducted in a store may be levied, and an additional tax if liquor be sold therein. *San Luis Obispo Co. v. Greenberg*, 120 Cal. 300; 52 Pac. 797.

Under a power to regulate the sale of liquors, a city may raise the amount of the license fee after it has granted a license and require the licensee to pay the increase. *Wallace v. Cubanola*, 70 Ark. 395; 68 S. W. 485; *Moore v. Indianapolis*, 120 Ind. 483; 22 N. E. 424.

In Louisiana, the statute requiring the publication of the estimates of expenditures by the police jury applies to liquor license fees. *Swords v. Daigle*, 107 La. 510; 32 So. 94.

A failure of an ordinance to prohibit a licensee from "engag-

ing in the business of selling intoxicating liquors to be drunk in or about the premises where sold," but requiring him to pay a certain license fee per annum for each place where he retails liquors, is valid; and a person selling without such a license may be fined. *Centerville v. Gayken*, 20 S. D. 82; 104 N. W. 910.

Where a statute requires a liquor license fee to be fixed by ordinance, an ordinance which provides that in case an amendment to the city charter shall carry at an election, the fees shall be as therein so fixed is a compliance with such statute. *Seattle v. Clark*, 28 Wash. 717; 69 Pac. 407.

Under a power to exact a license for the business of retailing liquor, either as a police regulation or for revenue, or even for both, an ordinance exacting it as a revenue will be construed as a police regulation in order to uphold it, where if it was held to be a revenue measure, it would be void for want of notice. *Swords v. Daigle*, 107 La. 510; 32 So. 94.

The imposition of a tax of \$50 for peddling beer is not authorized where a statute limits the license fee for the sale of beer to \$20. *Hamel v. St. Jean Deschailons*, Rap. Jud. Que. 20 C. S. 301.

A city, by its charter, was empowered to levy taxes on property and exact a license fee from saloon keepers; a general statute provided for taxes on property

traffic in intoxicating liquors within the corporate limits and "to fix the price or tax on all licenses," the only limitation on the power and discretion of the municipality in fixing the price of the licenses is that the price fixed shall not be so excessive as to be prohibitory; and whether the price fixed by an ordinance of the municipality is so excessive as to be prohibitory must be determined by the facts and particular circumstances of each case. In so determining the populousness of the municipality, the profitableness of the business, the character of the business proposed to be licensed and its effect upon the community, the additional expense necessarily entailed by a police supervision of the business, are all proper subjects of inquiry in arriving at a legal and just conclusion in fixing a price which will not be prohibitory. In such case the price of a corporation license need not be limited to the sum fixed by the law of the State on a license to retail. As one of the incidental powers of a municipal corporation the council may transcend that limit, provided the ordinance is not in its nature prohibitory.<sup>10</sup>

#### Sec. 284. Right of different jurisdictions to exact licenses.

Under a general power to license, regulate or prohibit the sale of intoxicating liquors, a municipal corporation may regu-

and authorized towns to levy taxes on business carried on within their limits, not in excess of fifty per cent. of the State tax, but provided that its provisions should not abridge their privilege to exact licenses that had been or might have been granted them by charter or special act. It was held that their powers to tax liquor dealers was not limited to 50 per cent. of the State tax. *Canova v. Williams*, 41 Fla. 509; 27 So. 30.

Difference between exacting a license for selling and for carrying on the liquor business. *Colusa County v. Seube* (Cal.), 53 Pac. 654.

<sup>10</sup> *Town of Marion v. Chandler*, 6 Ala. 899; *Ex parte Burnett*, 30 Ala. 461; *Craig v. Burnett*, 32 Ala. 728; *Miller v. Jones*, 80 Ala. 89; *Ex parte Mayor of Anniston*, 90 Ala. 516; 7 So. 779; *Ex parte Cowert*, 92 Ala. 94; 9 So. 225; *Ex parte Sikes*, 102 Ala. 173; 15 S. E. 522; *Staats v. Washington*, 45 N. J. L. 318.

Amount of fee allowable in Missouri. *Warrensburg v. McHugh*, 122 Mo. 649; 27 S. W. 523.

An ordinance in case of a delinquency to pay a fee may provide that interest and an attorney fee for collection shall be added. *New Iberia v. Moss Hotel Co.*, 113 La. 1022; 37 So. 913.

late such sales in quantities larger than those for which provision is made by the general law of the State;<sup>11</sup> and such a corporation, with the necessary power in its charter, may regulate to the extent of prohibiting such sales by persons who are not licensed therefor, though the sale of such liquors be not prohibited by the laws of the State.<sup>12</sup> Such corporations, unless debarred by statute from doing so, have the power to exact licenses from persons who have State and county licenses, as well as other persons who keep shops for the sale of such liquors.<sup>13</sup> The obtaining of a license from a city or town does not relieve a liquor dealer of the necessity of obtaining a State and county license where the city or town charter contains nothing which excludes the right of the State or county to demand a license to make such sales;<sup>14</sup> on the other hand, the grant of a license by a State or county does not interfere with the powers of another jurisdiction, such as that of an incorporated city or town, to exact a license, the enactment being in the nature of a restraint upon the traffic. The powers exercised by municipal corporations in such cases are superadded to those exercised by a State or county.<sup>15</sup>

<sup>11</sup> *Denneby v. Chicago*, 120 Ill. 627; 12 N. E. 227; *Miller v. Ammon*, 145 U. S. 421; 12 Sup. Ct. 884; 36 L. Ed. 759.

<sup>12</sup> *City of Davenport v. Kelly*, 7 Ia. 103; *City of Burlington v. Kellar*, 18 Ia. 59; *Nightengale, Petitioner*, 11 Peck, 167; *Bush v. Seabury*, 18 Johns, 418; *Elk Point v. Vaughn*, 1 Dak. 113; 46 N. W. 577.

<sup>13</sup> *Lutz v. Crawfordsville*, 109 Ind. 466; 10 N. E. 411; *State v. Cheyenne*, 7 Wyo. 417; 52 Pac. 975.

<sup>14</sup> *State v. Eastbrook*, 6 Ala. 653; *Page v. State*, 11 Ala. 849; *Matter of Lawrence*, 69 Cal. 608; *State v. Sherman*, 50 Mo. 265; *State v. Harper*, 58 Mo. App. 26; *State v. Propst*, 87 N. Car. 560; *State v. Cheyenne*, 7 Wyo. 417; *Mobile v. Rouse*, 8 Ala. 515.

<sup>15</sup> *Elk Point v. Vaughn*, 1 Dak. 108; *Cuthbert v. Conley*, 32 Ga. 211; *McKinney v. Town of Salem*, 77 Ind. 213; *Warden v. Louisville*, 11 Ky. L. Rep. 179; *Commonwealth v. Helbeck*, 101 Ky. 166; 40 S. W. 245; *Independence v. Noland*, 21 Mo. 394; *Bailey v. State*, 30 Neb. 855; 47 N. W. 208; *State v. Frances*, 95 Mo. 44; 8 S. W. 1; *State v. Langdon*, 31 Minn. 316; 17 N. W. 859; *Ambrose v. State*, 6 Ind. 351; *Wightman v. State*, 10 Ohio, 452; *Cohoes v. Moran*, 25 How. Pr. 385; *Thon v. Commonwealth*, 31 Gratt. 887; *Angerhoffer v. State*, 15 Tex. App. 613; *Craddock v. State*, 18 Tex. App. 567; *West v. Greenville*, 39 Ala. 69; *Eppenhimer v. Commonwealth*, 7 Ky. L. Rep. (abstract) 223.



Though a statute prohibit the sale of liquor without a license, yet a city may adopt an ordinance prohibiting the sale of the same liquor as a beverage.<sup>16</sup> So a statute forbidding sales on certain hours of a day creates one offense, while an ordinance preventing the keeping open of a saloon on another hour of the same day creates a distinct offense.<sup>17</sup> A State may impose one tax on the liquor trade and a city another if it be empowered by the Legislature to do so.<sup>18</sup> An ordinance preventing sales from 10:30 P. M. to 5 A. M. is valid, notwithstanding a general statute forbids the keeping of liquor for sale or the keeping open any place on Sunday where liquors are kept or sold.<sup>19</sup>

**Sec. 285. Licenses by different jurisdictions may be required.**

A municipal corporation, if authorized by its charter or by law so to do, may require a dealer in intoxicating liquors to obtain a license from the municipal authorities and pay a fee therefor, notwithstanding he may have paid for and obtained licenses from the United States and the State. And in the event that such a license is not procured, or for valid and legal cause is refused to an applicant, he will not be authorized to sell such liquors, and may be prosecuted for violating an ordinance providing for the issuing of the license.<sup>20</sup> The contrary of this might be true if a license were a contract and conferred a vested right to continue the trade without further hindrance or imposition; but such is not the case. A license

<sup>16</sup> Hill v. Dalton, 72 Ga. 314; State v. Langdon, 31 Minn. 316; 17 N. W. 859.

<sup>17</sup> Cohoes v. Moran, 25 How. Pr. 385.

<sup>18</sup> Wolf v. Lansing, 53 Mich. 367; 19 N. W. 38.

<sup>19</sup> State v. Welch, 36 Conn. 215.

Effect in Kentucky where a town grants a license and the county refuses one. Koch v. Commonwealth, 119 Ky. 476; 84 S. W. 533; 27 Ky. L. Rep. 122.

<sup>20</sup> State v. Eastbrook, 6 Ala. 653; *Ex parte* Lawrence, 69 Cal. 608; Elk Point v. Vaughn, 1 Dak. 113; Cuthbert v. Conly, 32 Ga. 211; McKinney v. Town of Salem, 77 Ind. 213; Mason v. Trustees, etc., 67 Ky. (4 Bush) 406; State v. Clark, 54 Mo. 17; State v. Harper, 58 Mo. 17; Furnan v. Knapp, 19 Johns. 248; State v. Probst, 87 N. Car. 560; Commonwealth v. Sweitzer, 129 Pa. St. 644; State v. Mancke, 18 S. C. 81.



is not a contract; it is a restrictive special tax, imposed for the public good and in the exercise of the police power of the State. As the power to grant, withhold or annul licenses to sell intoxicating liquors is an exercise of the police power, it follows that no limitation can be placed upon its exercise by any statutory provision. It is a power incapable of surrender or annihilation.<sup>21</sup> Such a license is a restriction upon the traffic, and the grant of a license by one jurisdiction will not authorize the person to whom it is granted to violate the laws of another jurisdiction. In imposing one restriction there is neither an express nor an implied undertaking that no other jurisdiction shall refrain from imposing a restriction, in the form of a license, upon those who are engaged in selling intoxicating liquors. One who accepts such a license from the United States does it with the understanding and implied consent that an additional license may be required by the State; and the same is true in reference to the municipal corporations within the State if he holds licenses from the United States and the State. Not only may such corporations exact licenses from persons who have such government and State licenses, but also of "all other persons who keep shops for the sale of intoxicating liquors to be used on the premises."<sup>22</sup>

#### **Sec. 286. United States license, effect.**

A receipt of a United States internal revenue collector for a tax on the business of a retail or wholesale dealer of intoxicating liquors or a license issued thereunder is no authority to sell intoxicating liquors in violation of the laws of a State or the ordinances of a municipal corporation. The granting of such a license is regarded as nothing more than a mere form of imposing a tax, and of implying nothing except that the licensee shall be subject to no penalties under the laws of the

<sup>21</sup> *Mugler v. Kansas*, 123 U. S. 623; 8 Sup. Ct. 273; *Emrich v. City of Indianapolis*, 118 Ind. 279; 20 N. E. 795; *State v. Bonnell*, 119 Ind. 494; 22 N. E. 301; *State v. Mullenhoff*, 74 Ia. 271;

39 N. W. 394; *Burnside v. Lincoln County Court*, 86 Ky. 423.

<sup>22</sup> *Stone v. Mississippi*, 10 U. S. 814; *Lutz v. Crawfordsville*, 109 Ind. 466; 10 N. E. 411; *Frankfort v. Aughe*, 114 Ind. 77; 15 N. E. 802.

United States provided he pays the tax.<sup>23</sup> Such a license gives no authority. It is a mere receipt for taxes. In such cases the general Government very properly recognizes the power of State governments to regulate their internal police, but when a State has conferred the authority to sell intoxicating liquors, then the general Government claims the right to tax the exercise of the business thus authorized. When a State in the exercise of an undoubted power has, however, prohibited a business, Congress disclaims all intention to confer the right to authorize the exercise of such prohibited business in opposition to the State laws. But when the sale of intoxicating liquors is not prohibited by State authority, the general Government then claims the right to impose this revenue tax upon the exercise of the occupation. Otherwise there would be necessarily a conflict in the jurisdiction of the two governments that would lead to confusion, if not to conflict of jurisdiction. Such power has never, since the organization of the Government, been claimed or exercised. It has been admitted in the past by statesmen of every class, as well as of eminent jurists, that each State has the sole power to regulate its own internal police; to defend and punish crime; to declare and enforce the rights of its citizens; and to establish the relations and prescribe the duties of its citizens. It has never been suggested that Congress could interfere with or exercise such a power. And to hold that Congress could license citizens of a State to violate its laws would be an invasion of the constitutional power of the State that would be subversive of our republican form of government.<sup>24</sup> Accordingly, it has been held that a United States license to sell intoxicating liquors is no defense to an indictment for unlawfully selling such liquors in a State where the

<sup>23</sup> *McGuire v. Commonwealth*, 7 U. S. (3 Wall.) 387; *License Tax Cases*, 72 U. S. (5 Wall.) 462; *In re Jordan* (D. C.), 49 Fed. 238; *Commonwealth v. Thornley*, 88 Mass. (6 Allen) 445; *Commonwealth v. O'Donnell*, 90 Mass. (8 Allen) 548; *Commonwealth v.*

*Holbrook*, 92 Mass. (10 Allen) 200; *Commonwealth v. McNamee*, 113 Mass. 12; *Commonwealth v. Sanbourn*, 116 Mass. 61; *State v. Funk*, 27 Minn. 318; 7 N. W. 359.  
<sup>24</sup> *Block v. Town of Jacksonville*, 36 Ill. 301.

sale of such liquors is entirely prohibited by law;<sup>25</sup> nor in a State governed by a local option;<sup>26</sup> nor in a State where such sales are unlawful without first having obtained a State or municipal license to sell them.<sup>27</sup> In a criminal prosecution under the laws of a State or the ordinances of a municipal corporation for unlawfully selling intoxicating liquors, the holding of a United States license by the offender does not raise a presumption of guilt.<sup>28</sup>

### Sec. 287. Keeping liquor for sale or saloon open.

The usual general welfare clause of a city charter has been held sufficient to authorize the city to adopt an ordinance prohibiting the keeping of liquors for unlawful sales within its corporate limits.<sup>29</sup> But it cannot prohibit the keeping of liquor whose sale it cannot prohibit.<sup>30</sup> A city may require saloons to be closed certain hours of the night, notwithstanding a statute provides "that, in granting licenses, corporation authorities shall comply with whatever general law of the State may be in force relative to granting licenses," and that no State statute prescribes hours for closing.<sup>31</sup> But

<sup>25</sup> State v. McCleary, 17 Ia. 44; State v. Stutz, 20 Ia. 488; State v. Baughman, 20 Ia. 497; State v. Stommel, 84 Ia. 751; 52 N. W. 557; State v. Delano, 54 Me. 501.

<sup>26</sup> Territory v. O'Connor, 5 Dak. 397; 41 N. W. 746.

<sup>27</sup> Pierson v. State, 39 Ark. 219; Commonwealth v. Scheckles, 78 Va. 36.

<sup>28</sup> State v. Stutz, 20 Ia. 488.

<sup>29</sup> Brown v. Social Circle, 105 Ga. 834; 32 S. E. 141; Papworth v. Fitzgerald, 105 Ga. 491; 32 S. E. 363; Moran v. Atlanta, 102 Ga. 840; 30 S. E. 298; Cunningham v. Griffin, 107 Ga. 690; 33 S. E. 664; Robinson v. Americus, 121 Ga. 180; 48 S. E. 924; Paulk v. Sycamore, 105 Ga. 501; 31 S. E. 200. The ordinance is constitutional. Osburn v. Marietta, 118 Ga. 53; 44 S. E. 807; Hen-

derson v. Heywood, 109 Ga. 373; 34 S. E. 590; Papworth, 106 Ga. 378; 32 S. E. 363; Little v. State, 123 Ga. 503; 51 S. E. 501; Reese v. Newnan, 120 Ga. 198; 47 S. E. 560; Alexander v. Atlanta (Ga.), 64 S. E. 1105; Athens v. Atlanta (Ga. App.), 64 S. E. 71.

<sup>30</sup> Duren v. Stephens, 126 Ga. 496; 54 S. E. 1045; Fontana v. Grant, 6 Kan. App. 462; 50 Pac. 104.

<sup>31</sup> *In re Wolf*, 14 Neb. 24; 14 N. W. 660; Commonwealth v. Matthews, 129 Mass. 485; Platteville v. Bell, 47 Wis. 488; Jordan v. Nicolin, 84 Minn. 367; 87 N. W. 915. *In re Greystock*, 12 Up. Can. 458; *In re Bright*, 12 C. P. (Ont.) 433; Croker v. Board (N. J. Ch.), 63 Atl. 901. *Contra*, Hayes v. Thompson, 6 Can. Cr. Cas. 227.

an ordinance prohibiting sales between 6 P. M. and 6 A. M. has been held void, on the ground that it was unreasonable;<sup>32</sup> and so was one prohibiting sales during the hours on the first three days court was in session in the town.<sup>33</sup> Yet an ordinance closing saloons from 10 P. M. to 4 A. M. is valid.<sup>34</sup> Under a power to regulate and control the liquor traffic for the preservation of peace, good order, public safety, improve the morals, order, comfort and convenience of a city, it may pass an ordinance compelling saloons to close on election days.<sup>35</sup> But an ordinance cannot be adopted compelling saloons to be closed at times the State statutes permit them to be kept open for sales of liquors.<sup>36</sup>

**Sec. 288. Ordinance, when not conflicting with statute—  
Keeping liquor for unlawful sale.**

As long as the owner of intoxicating liquors retains possession of them, intending to deliver them on an unlawful con-

<sup>32</sup> Ward v. Greenville, 8 Baxt. 228; 35 Am. Rep. 700.

<sup>33</sup> Grills v. Jonesboro, 8 Baxt. 247.

<sup>34</sup> Staats v. Washington, 45 N. J. L. 418; Morganstern v. Commonwealth, 94 Va. 787; 26 S. E. 402; Von Der Leith v. State, 60 N. J. L. 46; 37 Atl. 436; *Ex parte* Stephen, 114 Cal. 278; 46 Pac. 86.

<sup>35</sup> Iowa City v. McInnery, 114 Iowa 586; 87 N. W. 498.

<sup>36</sup> *In re* Brodie, 38 Up. Can. 580; Baker v. Paris, 10 Up. Can. 621; *In re* Arkell, 38 Up. Can. 594; *In re* Barclay, 12 Up. Can. 86; Daniels v. Burford, 10 Up. Can. 478; McGill v. License Commissioners, 21 Ont. Rep. 665.

In Illinois a city cannot recover both the penalty prescribed by the ordinance requiring saloons closed on Sundays and maintain an action on the saloon keeper's bond for same violation.

Jenkins v. Danville, 79 Ill. App. 339.

In order to uphold an ordinance forbidding a liquor dealer to keep any part of his house open on Sunday, it was held that it should be construed so as to prevent the keeping open any part of the division, apartments or connected section of the house used for the liquor business. Orme v. Tuscumbia, 150 Ala. 520; 43 So. 584.

Under a power to suppress a saloon a city cannot pass an ordinance declaring that every sale of liquor made in the city shall be deemed to have been made in a saloon. Sparta v. Boorum, 129 Mich. 555; 89 N. W. 435; 8 Det. L. N. 1100.

Under its usual powers, a city may even forbid a saloon to be kept open at prohibited times for the sale of cigars and non-intoxicating liquors. Croker v. Board (N. J. Ch.), 63 Atl. 901.



tract of sale, such possession is within a municipal ordinance which prohibits the keeping of such liquors for unlawful sale. Such an ordinance will not conflict with a statute of the State making it an offense to sell such liquors. While it hovers on the margin of such a statute, it does not overlap it. If there is a keeping for unlawful sale the ordinance is violated, whether any sale is made or not. In case such a sale ensued, the statute is violated; but this does not cancel the relation of the ordinance. An offense against one jurisdiction cannot be wiped out by committing another against another jurisdiction. The only effect of such an ordinance is to prevent preparation for violating the statute. That an offender will be liable to prosecution under the statute for unlawful selling when a sale is consummated, will not hinder his being punished under ordinance against keeping for unlawful sale. The two offenses are distinct and independent.<sup>37</sup>

### **Sec. 289. Prohibiting owner to enter saloon on Sunday.**

An ordinance is unreasonable and void which undertakes to prevent the owner of a saloon and his agents, clerks or employes entering his saloon on Sunday without first obtaining a written permission from the city authorities wherein is stated the length of time he or they may remain therein.<sup>38</sup> In North Carolina a similar ordinance, with many additional restrictions, was held valid. This ordinance required a view of the interior of the saloon from the exterior to be given;

<sup>37</sup> *Mayson v. City of Atlanta*, 77 Ga. 662; *Menkin v. City of Atlanta*, 78 Ga. 668; 2 S. E. 559.

<sup>38</sup> *Newbern v. McCann*, 105 Tenn. 159; 58 S. W. 114; 50 L. R. A. 476. [Citing *Breyer v. State*, 102 Tenn. 110; 50 S. W. 769; *Judefind v. State*, 78 Md. 510; 28 A. 405; 23 L. R. A. 721; *McNeill v. State*, 92 Tenn. 720; 23 S. W. 52; *McKinney v. Nashville*, 96 Tenn. 79, 81; 33 S. W. 724; *Johnson v. City of Chattanooga*, 97 Tenn. 248; 36 S. W.

1092; *Smith v. Mayor, etc.*, 3 Head 245; *Maxwell v. Jonesboro Corp.*, 11 Heisk. 257; *Ward v. Mayor, etc.*, 8 Baxt. 228; *Richmond v. Dudley*, 129 Ind. 112; 28 N. E. 312; 13 L. R. A. 587; *Yick Wo v. Hopkins*, 118 U. S. 356; 6 S. Ct. 1064; 30 L. Ed. 220; *Mayor v. Rodecke*, 49 Md. 217.] See also *State v. Thomas*, 118 N. C. 1221; 24 S. E. 535; *Chicago v. Netcher*, 183 Ill. 104. 55 N. E. 307; *Eureka v. Jackson*, 8 Kan. App. 49; 54 Pac. 5.



required all liquors to be served at a counter; forbade chairs and tables; forbade the use of side, rear or trap doors, elevators or stairways, or the keeping open the saloon from 8 P. M. to 6 A. M.; prohibited pool and billiard tables, tenpin alleys, gaming, or other devices; forbade the maintenance of a restaurant or other room connected with the barroom, or in the same building, unless separated by solid perpendicular walls in which were no openings; and authorized a revocation of a license for the violation of its provisions.<sup>39</sup> In Idaho it was held to be a reasonable ordinance which forbade the proprietor of a saloon to permit anyone, himself and family excepted, to enter it on hours during which sales could not be made.<sup>40</sup>

#### **Sec. 290. Ordinance declaring sale of liquor a nuisance.**

A town ordinance which declares the selling of intoxicating liquors a nuisance and imposes a fine for the offense is valid if the corporate powers conferred upon the town are broad enough to authorize the ordinance. Such an ordinance may not be defeated upon the ground that intoxicating liquors are property, that the right of acquiring, holding, using and disposing of them is both a natural and constitutional right, and that such right cannot be invaded by declaring it to be an offense; that the right may be regulated but not destroyed. Some of our natural rights we must and do surrender or modify in entering into the social state, and in like manner a part of both our natural and social rights in entering into the political state. The surrender and modification of these are such as become indispensable to the good government, the due regulation, and well-being of society, and so paramount to the individual good, and are comprehended under the police powers of government so far as criminal justice is administered. In such case the act and the thing with its use must be judged and characterized by its effect; and when these bring it within the reason and mischiefs of the law,

<sup>39</sup> Paul v. Washington, 134 N. C. 363; 47 S. E. 793; 65 L. R. A. 902.

<sup>40</sup> State v. Calloway, 11 Idaho 719; 84 Pac. 27. *Contra*, Regina v. Belmont, 35 Up. Can. 298.

though it be of a new class of acts or things, or uses, it must fall under the power of government to regulate or suppress, as the public good may require the one or the other; and of these lawgivers must be the judge. It will not do to say, as we may, that under the police power we may carefully protect the public morals and the profligate from the evils of gaming, horse racing, cock fighting; from obscenity of prints and pictures; from horses and exhibitions of mountebanks and rope dancers; from the offensive smells of useful trades and hog pens; from the manufacture and exhibition of fireworks and squibs; from rogues, idlers, vagabonds and vagrants; and from the dangers of pestilence, contagion and gunpowder; and yet that the right to sell a slow and sure poison, as a common beverage, must remain intact and not amenable to police regulations for its suppression, although all the other evils together will not destroy a tithe of the human lives, nor produce more moral degradation, or suffering, wretchedness, and misery in the social relation of society; or pauperism, vagrancy and crime in the political community, or pecuniary destitution of individuals and families, than will the constitutionally protected right of destroying our neighbors and fellows, for the selfish end of our individual private gains.<sup>41</sup>

### Sec. 291. Regulating days and hours.

It is now well established by the authorities that in the interest of public safety and of good morals, the Legislature of a State, as a police regulation, has the power to prohibit the sale of intoxicating liquors during certain prescribed days<sup>42</sup> and hours,<sup>43</sup> and by the exercise of such power may require the proprietor of a saloon or place where intoxicating liquors are sold as a beverage to securely close the same during

<sup>41</sup> Yodlard v. Jacksonville, 15 Ill. 588.

<sup>42</sup> Quintard v. Corcoran, 50 Conn. 34; Thomasson v. State, 15 Ind. 449; Decker v. Sargent, 125 Ind. 404; Reithmiller v. People, 44 Mich. 280; 6. N. W. 667; State v. Amba, 20 Mo. 214; State v.

Welch, 36 Conn. 215; Kerwisch v. Atlanta, 44 Ga. 204; Schwuchow v. Chicago, 68 Ill. 444.

<sup>43</sup> Baldwin v. Chicago, 68 Ill. 418; Hedderich v. State, 101 Ind. 564; State v. Gerhardt, 145 Ind. 439; 44 N. E. 469.

such prescribed days or hours, and permit no one to enter therein during the times when the sale of such liquors is thus forbidden, and that it may delegate such power to the municipal corporations within the State.<sup>44</sup> Independently of such legislative authorization, such corporations may, in the exercise of their police power, provide by ordinance that all places in which intoxicating liquors are sold as a beverage be closed at a certain hour in the evening and not opened until a certain hour the next morning; that during such time the doors shall be securely locked, all screens removed from them and the windows, and that no person shall be permitted to enter or remain therein except those living and employed therein; and the same rules and regulations may be extended to Sundays, legal holidays and election days.<sup>45</sup> Such police power, however, cannot be exercised in an arbitrary way by such corporations, but must be in every case reasonable in the restraints put upon those who are acting by legislative or legal authority in the business of selling such liquors. They may not make police regulations that will, in effect, prohibit such sales, or unreasonably interfere with them, but they may impose reasonable regulations for the peace and good order of the community. The reasonableness of such an ordinance or regulation must depend on the fact of each case. An ordinance closing all bars for the sale of such liquors at an early hour might be reasonable in a small retired town where the public travel and convenience would not require accommodation, and the only purpose in keeping them open after that time would be to encourage tippling, drunkenness, disorder, and other vices; while such an ordinance would be unreasonably restricted in cities or thoroughfares where public travel demands that places be kept open for refreshment at later

<sup>44</sup> State v. Welch, 36 Conn. 215; Morris v. Rome, 10 Ga. 532; State v. Clark, 28 N. H. 176; State v. Freeman, 38 N. H. 426; Hudson v. Geary, 4 R. I. 485; Plattville v. Bell, 43 Wis. 488.

<sup>45</sup> Lutz v. Crawfordsville, 109 Ind. 466; 10 N. E. 41; Davis v.

Basig, 128 Ind. 271; Staats v. Washington, 36 La. Ann. 912; *Ex parte Wolfe*, 14 Neb. 24; Staates v. Washington, 44 N. J. L. 605; Staates v. Washington, 45 N. J. L. 318; Cabel v. Houston, 29 Tex. 335.

hours. In every case a large discretion must be given to the governing body who are charged with the responsibility of maintaining the peace and good order of the community; but in no case will it be free from the supervision of the courts, which must conserve individual rights, while those of the public are carefully guarded. Both are effected by keeping all municipal bodies within the terms of their charters.<sup>46</sup> Such an ordinance will in no way infringe upon the business of one who holds a license from the State and county authorities to sell intoxicating liquors at retail, even though there may not be a like statute enacted by the State. A license to sell intoxicating liquors is a restriction upon the traffic, and the grant of a license by one jurisdiction does not authorize the person to whom it is granted to violate the law of another jurisdiction. In imposing one restriction there is neither an express nor implied undertaking that no other jurisdiction shall refrain from imposing a reasonable restriction, in the form of a license or otherwise, upon those engaged in selling intoxicating liquors. Thus, it is well settled that a grant of a license by the United States does not interfere with the right of the traffic by exacting a license fee or imposing other restraints.<sup>47</sup> There is no constitutional right, where a license is granted, to sell every day and every hour in the day.<sup>48</sup> The Supreme Court of Tennessee, however, has held that an ordinance of a municipal corporation forbidding licensed retailers of spirituous liquors to sell between the hours of 6 P. M. and 6 A. M. is invalid, because it is an unreasonable exercise of the police powers of the municipal corporation. The court said: "The State recognized the retail trade in liquors as legal on condition that the retailer pays for the privilege and procures a license. This license confers upon him the right to sell for one year, subject, of course, to the general laws of the State, declaring it unlawful to sell on specified days and at specified places. With these two exceptions the retailer has the authority of the State to follow his trade, day or night, for a year.

<sup>46</sup> *Staates v. Washington*, 44 N. J. L. 605; *Decker v. Sargent*, 125 Ind. 404; 25 N. E. 458.

<sup>47</sup> *Lutz v. Crawfordsville*, 109 Ind. 466; 10 N. E. 411.

<sup>48</sup> *Staates v. Washington*, 44 N. J. L. 615.



\* \* \* It must be borne in mind that the municipal corporation had no power, under the pretext of public regulation, to prohibit the exercise of a right conferred by the State. Whenever this is done, and whatever the extent, the prohibition merely is a prohibition, is unreasonable, oppressive and invalid. The only reason which we can see for restraining the trade for two hours before dark and for two hours after daylight is simply for the purpose of prohibition to that extent. The reason may be a sound one when viewed simply as a prohibitory measure; it might be equally sound if the prohibition was total and absolute. But the State has virtually forbidden a municipal corporation to exercise its police powers for purposes of prohibition merely. To be legitimate the prohibition must be so restricted as not to interfere unreasonably or oppressively."<sup>49</sup> There has been some diversity of decisions as to what will constitute a reasonable hour. Ordinances have been held valid which require saloons to be closed at 9 o'clock,<sup>50</sup> or at 10 o'clock,<sup>51</sup> or at 11 o'clock at night;<sup>52</sup> also at 10 o'clock at night until 5 o'clock in the morning.<sup>53</sup> But an ordinance requiring all saloons to be closed between certain hours, "unless by special leave of the president" of the town is void, because it is an attempt to confer arbitrary power on an executive officer to direct the enforcement of the ordinance or not, at his discretion.<sup>54</sup>

<sup>49</sup> Ward v. Mayor, etc. 67 Tenn. 228; Grille v. Mayor, etc., 67 Tenn. 247.

Under a power to close saloons "temporarily," the police cannot order that "be so temporarily closed until further notice," although the Legislature might have authorized the city to adopt an ordinance conferring such power. State v. Strauss, 49 Md. 288.

<sup>50</sup> Smith v. Knoxville, 3 Head 245.

<sup>51</sup> *Ex parte* Wolfe, 14 Nebr. 24; 14 N. W. 660; State v. Washing-

ton, 44 N. J. L. 318; 43 Am. Rep. 402; Platteville v. Bell, 43 Wis. 488.

<sup>52</sup> Decker v. Sargent, 125 Ind. 404; 25 N. E. 458.

<sup>53</sup> Morris v. City of Rome, 10 Ga. 532. See § 293.

<sup>54</sup> Little Chute v. Van Camp, 136 Wis. 526; 117 N. W. 1012.

A statute requiring saloons to close wherever "any denomination of Christian people are holding divine service" in the town is void. Gilhous v. Wells, 64 Ga. 192.



**Sec. 292. Sales on Sunday, election day or holidays.**

Under the general power to regulate the liquor traffic a city may prohibit sales on Sundays, election days or holidays.<sup>55</sup> But a statute empowering a city to regulate the "selling or giving away" of liquor on Sunday will not authorize the adoption of an ordinance forbidding anyone to "sell, give away, furnish, or cause to be furnished or delivered," any intoxicating liquor so far as it relates to one procuring liquor for one at his request, for the ordinance so far as it forbids a delivery is invalid except in connection with a sale or gift.<sup>56</sup> Under its power to restrain the sale a city cannot require a saloon to be closed or forbid sales when the State laws permit it to be open or sales to be made.<sup>57</sup> An ordinance is not void for uncertainty which provides that "no person or persons licensed to keep a restaurant or beer saloon, or either, within the limits of the city, shall keep open on the Sabbath;" for the meaning of the ordinance is that their proprietors shall temporarily cease to entertain the public, or cease to entertain the public on that day.<sup>58</sup>

**Sec. 293. Sales at prohibited hours.**

Under its general powers a city may prohibit sales after certain hours of the night; as from 10 P. M. to 4 A. M.;<sup>59</sup> or

<sup>55</sup> *State v. Ludwig*, 21 Minn. 202; *Cranor v. Albany*, 44 Ore. 144; 71 Pac. 1042; *Jordan v. Nicolin*, 84 Minn. 367; 87 N. W. 915; *State v. Maciniak*, 97 Minn. 355; 105 N. W. 965; *Edis v. Butler*, 8 Ohio N. P. 183; 11 Ohio St. & v. P. Dec. 245; *Richards v. Bayonne*, 61 N. J. L. 496; 39 Atl. 708.

<sup>56</sup> *Norris v. Oakman*, 138 Ala 411; 35 So. 450.

<sup>57</sup> *Moore v. Kelley*, 136 Mich. 139; 98 N. W. 989; 10 Detroit Leg. N. 1002; *Mueller v. People*, 24 Colo. 251; 48 Pac. 965; *People v. Rush*, 113 Mich. 539; 71 N. W. 863; *State v. Marciniak*, 97

Minn. 355; 105 N. W. 965; *In re Barclay*, 12 Up. Can. 86; *In re Ross*, 14 Can. Pac. 171.

<sup>58</sup> *Richards v. Bayonne*, 61 N. J. L. 496; 39 Atl. 708.

A city may authorize sales be made on Sunday; and a State may empower it to pass an ordinance permitting such sales within its boundaries, though if it had not passed it the sales would have violated a State law. *State v. Kessels*, 120 Mo. App. 233; 96 S. W. 494.

<sup>59</sup> *Staats v. Washington*, 45 N. J. L. 418; *McNulty v. Toopf*, 116 Ky. 202; 75 N. W. 258; 25 Ky. L. Rep. 430; *Bennett v. Pulaski*

between 8 P. M. and 6 A. M.;<sup>60</sup> but one prohibiting druggists selling at night, they, under a general law, not being permitted to dispense liquors at any time as drink, is invalid.<sup>61</sup> In Tennessee it has been held that an ordinance requiring saloons to close during the night time was valid, and that notwithstanding the town was situated on the State line and immediately across that line were saloons which were monopolizing the entire liquor traffic, both day and night, by reason of the fact that the saloon of plaintiff was closed at night.<sup>62</sup>

### Sec. 294. Picnic and social gatherings.

Where the charter of a city gives the common council power to pass ordinances to license and regulate or prohibit inns or taverns, restaurants and beer saloons to retail intoxicating liquors, the power thus granted to the common council cannot be delegated by ordinance to the mayor or anyone else. In such case the power of the common council is limited to licensing places occupied by the applicants in which the business of selling intoxicating liquors is to be carried on as a regular business; and the common council has no power, by a license or permit, to authorize the sale of such liquors at any other place than one regularly licensed. Hence, an ordinance au-

(Tenn. Ch. App.), 52 S. W. 913; 47 L. R. A. 278. [Citing Robinson v. Mayor, etc., 1 Humph. 156; 34 Am. Dec. 627; City of Memphis v. Memphis Water Co., 8 Baxt. 590; Ward v. Mayor, etc., Id. 229; Smith v. Mayor, etc., 3 Head, 245; Railroad Co. v. Berry (Ky.), 40 Am. St. Rep. 161, 10 S. W. 1026; Phillips v. City of Denver (Colo. Sup.), 41 Am. St. Rep. 230; 34 P. 902; City of Tarkio v. Cook (Mo. Supp.), 25 S. W. 202; Mayor, etc., v. Beasley, 1 Humph. 241; Anderson v. City of Wellington (Kan. Sup.), 19 P. 719; Mayor v. Dry Dock, etc., E. B. & B. R. Co. (N. Y. App.), 28 Am. St. Rep. 614; *note* (s. c. 30 N. E. 563); Peo-

ple v. Armstrong (Mich.), 16 Am. St. Rep. 584, *note* (s. c. 41 N. W. 275).] But not from 6 P. M. to 6 A. M. Ward v. Greeneville, 8 Baxt. 228; 35 Am. Rep. 700; nor during the first three days court is held in the town. Grills v. Jonesboro, 8 Baxt. 247. See § 291.

<sup>60</sup> Paul v. Washington, 134 N. C. 363; 47 S. E. 793; 65 L. R. A. 902.

<sup>61</sup> McNulty v. Toopf, 116 Ky. 202; 75 S. W. 258; 25 Ky. L. Rep. 430. In this case it was held that sales at wholesale could not be confined to certain hours of the day.

<sup>62</sup> Bradford v. Jellico, 1 Tenn. Ch. App. 700

thorizing the mayor, upon recommendation of a common council, to issue a permit for the sale of ale, beer, and other malt beverages, at picnics or social gatherings, for a license fee will be illegal and void.<sup>63</sup>

### **Sec. 295. Physician's prescription.**

Under a charter authorizing a town to license, regulate and suppress the sale of intoxicating liquors, an ordinance which provides, under penalty, that it shall be unlawful for any physician to give a prescription to any well person, or who is apparently in good health, to enable him to get any intoxicating liquor to be used as a beverage, is not unauthorized, unreasonable nor oppressive; neither does it discriminate against any class of persons. The object of such an ordinance is to suppress the evils of intemperance, but not to prohibit the use of intoxicating liquors for medical purposes. No physician is bound to act under the ordinance, but if he sees proper to avail himself of the privilege given by it he is bound by its terms, and can only give a prescription for the purpose named in the ordinance and for no other. Such a restriction is necessary to prevent fraud upon the law, and he who adopts the profession of a physician must conform to the reasonable requirements of the law in the discharge of his professional duties.<sup>64</sup>

### **Sec. 296. Sales to minors and drunkards.**

Under its general powers a city may adopt an ordinance prohibiting sales or gifts to habitual drunkards.<sup>65</sup> And so it may prohibit sales to minors.<sup>66</sup> Under its general powers to make such by-laws as it deem necessary, it may prohibit minors entering saloons without the consent of their parents

<sup>63</sup> *Winants v. Bayonne*, 44 N. J. L. 114.

<sup>64</sup> *Carthage v. Buckner*, 4 Ill. App. 317. See also *Selma v. Brewer* (Cal. App.), 98 Pac. 61.

<sup>65</sup> *Woods v. Pineville*, 19 Ore. 108; 23 Pac. 880; *In re Grey-stock*, 12 Up. Can. 458.

*Contra*, *Roberts v. Clinmire*, 46 Up. Can. 264; *In re Barclay*, 12 Up. Can. 86 (after notice given not to sell).

<sup>66</sup> *State v. Austin*, 114 N. C. 855; 19 S. E. 919; 25 L. R. A. 283; *In re Brodie*, 38 Up. Can. 580.

or guardians.<sup>67</sup> Under a power to regulate ordinaries and taverns it has been held that a town could prevent sales to free colored persons.<sup>68</sup> So under the general welfare clause a city may prohibit minors frequenting or loitering in saloons or procuring liquors.<sup>69</sup> An ordinance is not invalid which forbids sales to minors not having their parents' written permission, but permits sales to such as have.<sup>70</sup>

### **Sec. 297. Prohibiting sales in States having local option laws.**

In those States where local option laws are in force, whereby a city or town may prohibit sales of liquors within its boundaries, courts seem to be inclined to limit the power of a city to adopt a prohibition ordinance, or rather to deny the power unless it be clearly given in its charter or in the general law, leaving the question of prohibition to be decided by popular vote. Thus, where no election had been taken upon the question of local option it was held that a city had no authority to prohibit the sale of liquors.<sup>71</sup> But this statement must be received with caution, and its soundness cannot be assured. Thus, where a city charter required the question annually to be voted on whether a license should be issued for the sale of liquor during the ensuing year, and after the time the first vote had been taken an ordinance was adopted making it a misdemeanor to sell liquor without a license, it was held that the ordinance making it an offense to sell without a license, coupled with the failure to provide for the issuance of a license, effectually prohibited the sale of liquors and no prohibitory ordinance was necessary to prevent their sales.<sup>72</sup>

<sup>67</sup> *State v. Austin*, 114 N. C. 855; 19 S. E. 919; 25 L. R. A. 283.

<sup>68</sup> *Washington v. Lasky*, 5 Cranch C. C. 381; Fed. Cas. No. 17230. But not for selling to guests at the bar of a tavern. *Werner v. Washington*, 2 Hayw. & H. 175; Fed. Cas. No. 17416a.

<sup>69</sup> *Lewistown v. Fitch*, 130 Ill. App. 170.

A saloon keeper cannot attack

an ordinance making him liable if his servant sells liquor to a minor when the prosecution is for a sale he himself has made. *Arcola v. Wilkinson*, 233 Ill. 250; 84 N. E. 264.

<sup>70</sup> *Fitch v. Lewiston*, 137 Ill. App. 570.

<sup>71</sup> *Shreveport v. P. Draiss & Co.*, 111 La. 511; 35 So. 727.

<sup>72</sup> *Honeck v. Ashland*, 40 Ore. 117; 66 Pac. 697.



**Sec. 298. Women not licensing—Constitutional law.**

A statute providing that any male inhabitant having other specific qualifications may obtain a license by proceeding in the manner therein described, by implication prohibits women from obtaining a license.<sup>73</sup> It is a maxim of the law that the express mention of one person or thing is "the exclusion of another;"<sup>74</sup> or, as stated by another eminent author, "What is expressed makes what is silent to cease."<sup>75</sup> And a person answering the description required by such a statute, being prosecuted for selling without a license, cannot complain that an unjust discrimination is made by the statute against women and non-residents, for it is a well established principle that only those who are prejudiced by an unconstitutional act will be heard to make an objection to it. Courts will not listen to those who are not aggrieved by an invalid law.<sup>76</sup>

**Sec. 299. Women in saloons.**

An ordinance is valid which prohibits the assembling or employment of women in saloons.<sup>77</sup> Power to pass such an ordinance is given by an authority to prevent vice and immorality, to preserve public peace and good order, and to license and regulate saloons.<sup>78</sup> So a city may prohibit the employment of women in saloons, even though women may be licensed to sell liquors at retail, or that the wife of a licensed dealer may sell drinks in his saloon.<sup>79</sup> But under an ordinance preventing women being entertained in saloons, the proprietor of a saloon who serves women in his restaurant, located across a hall from his saloon, with food and wine does not violate its provisions.<sup>80</sup> An ordinance may even go so far

<sup>73</sup> Woodford v. Hamilton, 139 Ind. 481; 39 N. E. 47.

<sup>74</sup> Wharton's Legal Maxims, p. 11.

<sup>75</sup> Coke Litt., 210a.

<sup>76</sup> Wagner v. Town of Garrett, 118 Ind. 114; 20 N. E. 706.

<sup>77</sup> Greiner v. Hoboken (N. J. L.), 53 Atl. 693; Denver v. Domedian, 15 Colo. App. 36; 60 Pac. 1107; Cronin v. Adams, 192 U.

S. 108; 48 L. Ed. 365; 24 Sup. Ct. 219; affirming 29 Colo. 488, 503; 69 Pac. 590, 1125; Cronin v. Denver, 192 U. S. 115; 48 L. Ed. 368; 24 Sup. Ct. 220.

<sup>78</sup> People v. Case (Mich.), 16 N. W. 558.

<sup>79</sup> Hoboken v. Goodman, 68 N. J. L. 217; 51 Atl. 1092.

<sup>80</sup> Denver v. Domedian, 15 Colo. App. 76; 60 Pac. 1107.



as to prevent females entering saloons or wine rooms,<sup>81</sup> or a sale of liquor to them.<sup>82</sup>

### Sec. 300. Wine rooms.

The meaning of the words "wine rooms," as used in common parlance, is a room to which females resort to obtain intoxicating liquors. Usually they are resorts of lewd women who there seek opportunities to make the acquaintances of men. They are also frequently places into which young women are lured, not infrequently to their ruin, by designing men and women. In all instances they have direct connection with a saloon and are under the control of the saloon keeper. It has been found necessary to suppress them in many States, and cities have been empowered to do so.<sup>83</sup> It is often difficult to determine whether a particular room falls within the prohibitory provisions of a statute or ordinance. Sometimes these rooms are mere stalls opening off a larger room. Thus, where an ordinance prohibited the construction or maintenance of booths, stalls or other inclosures, with curtains, screens or partitions in or connected with a barroom, and the barroom was seventy-five feet long by nineteen feet wide, at the rear of which was cut off by partition a square division, nineteen feet square, in which were kept a table and chairs, a doorway being in the partition but having neither door nor curtain nor screens, it was held that such division fell within the prohibition of the ordinance, being an inclosure within the meaning of that word as used therein.<sup>84</sup> Such an ordinance is a reasonable regulation of the liquor traffic and is authorized by a grant of power to license and regulate all persons dealing in intoxicating liquors. The words "other inclosure" include only such inclosures as are of the same kind as stalls and booths.<sup>85</sup>

<sup>81</sup> State v. Nelson, 10 Idaho 522; 79 Pac. 79; 67 L. R. A. 808.

<sup>82</sup> Campbell v. Thomasville (Ga.), 64 S. E. 815.

<sup>83</sup> Denver v. Domedian, 15 Colo. App. 36; 60 Pac. 1107.

<sup>84</sup> State v. McGregor, 88 Minn. 74; 92 N. W. 509.

<sup>85</sup> State v. Barge, 82 Minn. 256; 84 N. W. 911; Cronin v. Adams, 192 U. S. 108; 24 Sup. Ct. 219; 48 L. Ed. 365; affirming 29 Colo. 488, 503; 69 Pac. 590, 1125; Cro-

**Sec. 301. Requiring a county license.**

A town has the right by an ordinance to limit the licenses issued by it for the sale of intoxicating liquors to such persons as have procured and hold a license from the board of county commissioners. Such an ordinance is a reasonable one. A person who obtains a license from such a board may be presumed to have shown his fitness to be trusted with the sale of such liquors, before a tribunal where the right of remonstrance is secured. Towns are not provided with the ample machinery for prosecuting inquiries into the character and fitness of applicants as are such boards, and so it is a reasonable exercise of the power to regulate and restrain to require that an applicant for a town license shall have complied with the law of the State by securing a license from the board of commissioners of the county in which the town is located.<sup>86</sup>

**Sec. 302. Repeal of statute by implication, when not accomplished.**

The fact that a municipal corporation is authorized by the Legislature to pass ordinances regulating the traffic in intoxicating liquors, and declaring the sale thereof without a municipal license a nuisance does not thereby repeal by implication a general law of the State upon the same subject. While a license from such corporation will protect the holder of it, yet if the corporation authorities fail or refuse to grant a license, the general law of the State would be violated by a sale within the corporate limits and the aggressor might be punished under it. The fixing the rates and granting a license by a municipal corporation excuses from liability to the municipal ordinances, but cannot excuse from liability to the penal ordinances of the State.<sup>87</sup> It is a maxim in the construction of statutes that the law does not favor a repeal by implication, and it has accordingly been held that where

*nin v. Denver*, 192 U. S. 115; 24 Sup. Ct. 220; 48 L. Ed. 368; *State v. Nelson*, 10 Idaho 522; 79 Pac. 79; 67 L. R. A. 868; *Endsley v. State* (Ind.), 88 N. E. 62.

<sup>86</sup> *Wagner v. Garrett*, 118 Ind.

114; 20 N. E. 706; *Linkenhelt v. Garrett*, 118 Ind. 599; 20 N. E. 708.

<sup>87</sup> *Gardner v. People*, 20 Ill. 431; *Sloan v. State*, 8 Blackf. (Ind.), 361.

two acts are seemingly repugnant, they must, if possible, be so construed that the latter may not operate as a repeal of the former; the repeal must be specific.<sup>88</sup> Nor will mere inconvenience, marked by the similarity of two statutes, justify the courts in declaring that the earlier is repealed by the latter.<sup>89</sup> It has also been held, in pursuance of this rule, that an act is not repealed by implication when the Legislature had no intention to repeal it.<sup>90</sup>

### Sec. 303. Regulation of saloon room—Location of saloon.

Under a power to regulate and license a city may require a licensee to carry on the business personally, and that the rooms in which he conducts his liquor traffic shall not be adjacent to any theater or place where variety show entertainments are conducted.<sup>91</sup> So it may require the saloon to be open to the public gaze.<sup>92</sup> So it may prevent all sales in any side, back or upper room, or in any alcove, booth or box connected with the saloon,<sup>93</sup> and may prohibit all communicating passage ways between a place where liquors are sold and billiard

<sup>88</sup> Dwarries on Statutes and their Construction, 674; Ledgwick's Stat. and Const. Law, p. 127; *Ex parte Yerger*, 8 Wall. (U. S.) 85, 105; *Bruce v. Schuyler*, 4 Gilm. (Ill.), 221; *Blain v. Bailey*, 25 Ind. 165; *Jeffersonville, etc. R. Co.*, 112 Ind. 93; 13 N. E. 403; *State v. Garlock*, 14 Iowa 444; *State v. Langden*, 29 Minn. 393; *Bowen v. Lease*, 5 Hill. (N. Y.), 221.

<sup>89</sup> *Mitchell v. Duncan*, 7 Fla. 13; *Robinson v. Riffey*, 111 Ind. 112; 12 N. E. 141; *State v. Berry*, 12 Iowa 58; *Wilson v. Shorick*, 21 Ia. 332; *Waldo v. Bell*, 13 La. Ann. 329.

<sup>90</sup> *Tyson v. Posttethwait*, 13 Ill. 728; *Coghill v. State*, 37 Ind. 111.

An ordinance prohibiting the sale of liquors, under a penalty,

is repealed by a later ordinance permitting a sale under an ordinance. *Barton v. Gadsden*, 79 Ala. 495.

An ordinance covering the entire subject matter of a prior ordinance repeals it. *State v. Brunswick*, 2 N. J. Law J. 240.

<sup>91</sup> *State v. Scatena*, 84 Minn. 281; 87 N. W. 764.

<sup>92</sup> *Lincoln Center v. Linker*, 360 Kan. App. 6; 51 Pac. 807; *Crocker v. Board* (N. J. Ch.), 63 Atl. 901. See *Mesken v. Highlands*, 9 Colo. App. 255; 47 Pac. 846; *Morganstern v. Commonwealth*, 94 Va. 787; 26 S. E. 402; but see section on "Screens" and "Wine Rooms."

<sup>93</sup> *Sandys v. Williams*, 46 Ore. 327; 80 Pac. 642.

tables kept;<sup>94</sup> or forbid gambling, profane swearing, blasphemous or insulting language, or any indecency or disorderly conduct therein.<sup>95</sup> But an ordinance that "every person receiving a *shop* license shall confine the business of his shop solely and exclusively to the keeping and selling of liquor," is void, because in restraint of trade.<sup>96</sup> And a city cannot compel persons not selling liquors to remove the saloon signs from over their doors;<sup>97</sup> but it may require a saloon to have a saloon sign over its entrance.<sup>98</sup> Under a power to regulate a city may forbid the use of tables and chairs in a saloon, excepting one for the bartender or proprietor to use.<sup>99</sup>

#### Sec. 304. Lights burning in saloon.

In Canada an ordinance prohibiting a light in a saloon from 12 o'clock midnight until 5 A. M., and requiring a saloon to be then closed and unoccupied except by the keeper and his family, has been held void;<sup>1</sup> but in New Jersey it has been held that an ordinance forbidding a light burning in the saloon between 7 A. M. and midnight on Sunday was valid.<sup>2</sup>

#### Sec. 305. Screens—Exposure of room to view.

Unless especially empowered a city cannot adopt an ordinance requiring the removal, from the doors or windows of a saloon, of all screens and other obstructions to the view of the interior of and business transacted in the saloon. Such an ordinance is prohibition of a lawful business and not a mere regulation of it.<sup>3</sup> So an ordinance prohibiting the exposure of liquors for sale where dry goods are kept or exposed for sale is void, not being an exercise of the police powers for the

<sup>94</sup> *In re Neilly*, 37 Up. Can. 289;  
*In re Arkell*, 38 Up. Can. 594.

<sup>95</sup> *In re Brodie*, 38 Up. Can.  
580 (a licensed inn).

<sup>96</sup> *In re Croome*, 6 Ont. Rep.  
188.

<sup>97</sup> *In re Bright*, 12 Can. Pac.  
433.

<sup>98</sup> *Regina v. Lennox*, 26 Up.  
Can. 141.

<sup>99</sup> *Pate v. Jonesboro*, 75 Ark.  
276; 87 S. W. 437.

<sup>1</sup> *Regina v. Belmont*, 35 Up.  
Can. 298.

<sup>2</sup> *Croker v. Board* (N. J. Ch.),  
63 Atl. 901.

<sup>3</sup> *Steffy v. Monroe City*, 135  
Ind. 466; 35 N. E. 121; 41 Am.  
St. 436; *Champer v. Greencastle*,  
138 Ind. 339; 35 N. E. 14; 24  
L. R. A. 768; 46 Am. St. 390.



protection of the public.<sup>4</sup> But an ordinance, enacted under a provision authorizing a city to regulate sales of liquors, requiring the removal of obstructions from the interior view of the room during the times sale may not be made, has been held valid.<sup>5</sup>

### **Sec. 306. Prohibiting the carriage of liquors.**

A city or town may not prohibit a carrier or its agent delivering liquors shipped to the consignee from another State, and collecting the purchase price and remitting it to the consignor. Such an ordinance is void.<sup>6</sup>

### **Sec. 307. Police visiting saloon.**

Under a power to regulate the sale of intoxicating liquors, a municipality may provide that the police or excise inspector shall have at all times access to all licensed saloons except during the time the law or ordinances require them to be closed.<sup>7</sup>

### **Sec. 308. Penalties essential.**

The power conferred by a Legislature upon the municipal corporations of a State to enact ordinances authorizes or of necessity implies the power of such corporations to impose penalties for the violation of such ordinances; and without provision for such a penalty a penal ordinance is non-enforceable.<sup>8</sup> The power to suppress, regulate and restrain the

<sup>4</sup> Chicago v. Netcher, 183 Ill. 104; 55 N. E. 707; 48 L. R. A. 261.

<sup>5</sup> McNulty v. Toopf, 116 Ky. 202; 75 S. W. 258; 25 Ky. L. Rep. 430; Regina v. Martin, 21 Ont. App. 145; Regina v. Belmont, 35 Up. Can. 298; Bennett v. Pulaski (Tenn. Ch.), 52 S. W. 913; 47 L. R. A. 278. See People v. Carrel, 118 Mich. 79; 76 N. W. 118; Endsley v. State (Ind.), 88 N. E. 62.

<sup>6</sup> Carthage v. Munnell, 203 Ill. 474; 67 N. E. 831; affirming 105 Ill. App. 119, citing Langel v. Bushnell, 197 Ill. 20; 63 N. E. 1086; 58 L. R. A. 266.

<sup>7</sup> Croker v. Board (N.-J. Ch.), 63 Atl. 901; Commonwealth v. Ducey, 126 Mass. 269.

<sup>8</sup> Mayor, etc. v. Guillo, 3 Ala. 137; Mason v. Shawneetown, 77 Ill. 533; Mount Pleasant v. Breeze, 11 Iowa 399; Shreveport v. Roos, 35 La. Ann. 1010; Grover



use of intoxicating liquors embraces the authority to adopt the usual means employed for such purpose. The merely adopting an ordinance which declares that liquor shall not be sold, without imposing any penalty for its non-observance, would not tend in the slightest degree to accomplish the end sought. The imposition of a fine for the breach of such ordinance is the means usually authorized by the Legislature, and none are more proper; occasionally provision is made for imprisonment, and this is legitimate.<sup>9</sup> Under a power to require a license a city may inflict a penalty for a sale without such license.<sup>10</sup>

### **Sec. 309. Penalties, greater and additional—Infliction.**

Municipal corporations may exercise powers by ordinances regulating the sale of intoxicating liquors beyond those authorized by the general laws of the State, provided they are not inhibited from doing so by a statute of the State, and in such cases may provide for greater penalties than are provided for by the laws of the State.<sup>11</sup> Likewise they may impose additional penalties to those inflicted by the State, and there are undoubtedly good reasons why this may be done. Particular acts may be far more injurious and the temptation to commit much greater in a crowded town or city than in the State generally. They consequently require more severe

v. Huckins, 26 Mich. 476; Town of Tipton v. Yakey, 72 Mo. 380; Hookset v. Amoskeag, etc. Co., 44 N. H. 105; Reinhard v. Mayor, etc., 2 Daly (N. Y.) 243; Barter v. Commonwealth, 3 Pa. 260; Trigally v. Memphis, 6 Cold. (Tenn.) 382; Winooski v. Yokey, 49 Vt. 292. See Louisville v. Worden, 11 Ky. L. Rep. (abstract) 402.

<sup>9</sup> City of Pekin v. Smelzell, 21 Ill. 464.

An ordinance inflicting a penalty for operating a saloon within certain limits of the city is not void, for a failure to provide a

penalty for outside such limits. Johnson v. Bessemer, 143 Mich. 313; 106 N. W. 852; 12 Detroit Leg. N. 981.

A failure to provide a penalty renders the ordinance void. Astoria v. Wells, 68 Kan. 787; 75 Pac. 1026.

<sup>10</sup> *Ex parte* Guerrero, 69 Cal. 88; 10 Pac. 261; Deitz v. City of Central, 1 Colo. 323; King v. Jacksonville, 2 Seam. (Ill.) 305; Warrensburg v. McHugh, 122 Mo. 649; 27 S. W. 523; Meyer v. Bridgeton, 37 N. J. L. 160; Clintonville v. Keating, 4 Denio, 341.

<sup>11</sup> Pekin v. Smelzel, 21 Ill. 464.

measures for prevention. State laws are, of course, for the general good and cannot always answer the peculiar wants of particular localities. The power of making general laws belongs exclusively to the State, but local legislation may be delegated to the municipal corporations. Their acts under the power thus delegated are valid when there is no conflict, and superadded penalties are not inconsistent with those previously imposed.<sup>12</sup>

### Sec. 310. Revocation of license—Conditional ordinance.

Where power is rightfully conferred on a city to entirely prohibit the sale of intoxicating liquors, or to regulate and license the same, at discretion, the city may grant the privilege of selling such liquors on such terms and conditions as it may see fit to impose, and has ample power to impose, as a condition, that a license granted shall be subject to revocation on the violation of any of the statutes of the State or of the ordinances regulating the traffic. In such a case, where absolute control over the whole subject of granting licenses is conferred, the city may impose any other conditions calculated to protect the community, preserve the order and suppress vice, such as closing the licensed place on election days, holidays or Sundays, or the closing of the same at a particular hour each evening; and for a violation of any of these conditions provide for a forfeiture of the license. Such power grows out of the fact that it is discretionary with the city to prohibit the sale of such liquor or to grant a license for their sale on such terms as it may choose.<sup>13</sup> A person who takes out a license to engage in a business he otherwise would

<sup>12</sup> Wood v. Brooklyn, 14 Barb. (N. Y.) 425; Wallace v. Cubanola, 70 Ark. 395; 68 S. W. 485.

A city cannot inflict a greater penalty than the limitations placed upon it by the statute. Minneapolis v. Olson, 76 Minn. 1; 78 N. W. 877.

<sup>13</sup> *In re Bickerstaff*, 70 Cal. 35; 11 Pac. 393; Whitten v. Mayor,

etc., 43 Ga. 421; Sprayberry v. Atlanta, 87 Ga. 124; 13 S. E. 197; Wiggins v. Chicago, 68 Ill. 372; Schwuchow v. Chicago, 68 Ill. 444; Huber v. Baugh, 43 Ia. 291; Optumwa v. Schaub, 52 Ia. 515; 3 N. W. 529; Hildreth v. Crawford, 65 Ia. 359; 21 N. W. 677; Martin v. State, 23 Neb. 371.

have no right to carry on, takes the privilege subject to the restrictions and burdens imposed by the ordinance under which alone it can issue, and his act in accepting the license is a recognition of the ordinance and estops him from denying its validity.<sup>14</sup> In such case the burden is cast upon the licensee in order to protect himself in the enjoyment of his license, to see to it that no violation of the law or ordinance be committed upon the licensed premises; and he cannot claim that an offense committed thereon was committed without his knowledge or consent.<sup>15</sup> Under "full power and authority to regulate the retail of ardent spirits," and "at their discretion to issue a license to retail or to withhold" it, a city may enact an ordinance providing that upon a conviction of a licensee of a violation of the State liquor law it shall revoke his city license.<sup>16</sup> So it may provide that a violation of its liquor license ordinance shall work a revocation of the license issued thereunder,<sup>17</sup> or require the applicant to consent to a revocation at the will of the city council.<sup>18</sup> A city may provide by ordinance for the trial of a licensee for a violation of the liquor license law and for the revocation of his license;<sup>19</sup> but it cannot delegate its power to revoke a license to a court trying the offender.<sup>20</sup> A statute may authorize a city to revoke a license, in its discretion, without cause, on refunding the value of the unexpired term.<sup>21</sup>

<sup>14</sup> *Lauder v. Chicago*, 111 Ill. 291.

<sup>15</sup> *People v. Meyers*, 95 N. Y. 223.

Although a statute forbids a city issuing a license for less than one year, it does not prevent the city from adopting an ordinance providing for its revocation on the licensee committing certain offenses. *State v. Dwyer*, 21 Minn. 512.

<sup>16</sup> *Sprayberry v. Atlanta*, 87 Ga. 120; 13 S. E. 197.

<sup>17</sup> *Schwuchow v. Chicago*, 68 Ill. 444; *Paul v. Washington*, 134 N. C. 363; 47 S. E. 793; 65 L.

R. A. 902; *Carr v. Augusta*, 124 Ga. 116; 52 S. E. 300. *Contra*, *In re Bright*, 12 Ont. Rep. 433; *Shreveport v. Draiss & Co.*, 111 La. 511; 35 So. 727; *Smith v. Toronto*, 16 C. P. (Ont.) 200.

<sup>18</sup> *Wells v. Torrey*, 144 Mich. 689; 108 N. W. 423; 13 *Detroit Leg. N.* 378.

<sup>19</sup> *Langen v. Wood River*, 77 Neb. 444; 109 N. W. 748.

<sup>20</sup> *State v. Milwaukee*, 129 Wis. 562; 109 N. W. 421. See also *Baker v. Paris*, 10 Up. Can. 21.

<sup>21</sup> *State v. Pierce County*, 50 Wash. 650; 97 Pac. 778.

**Sec. 311. Ordinance annulled by subsequent statute.**

The Legislature has full power to enact a statute in general terms which will annul previous ordinances of a city; as, for instance, taking away the power of a city to enact such ordinances. And so if a State adopts general prohibition that will annul all license ordinances without an express provision to that effect.<sup>22</sup> And so, under a power to adopt special legislation, if the Legislature adopt a prohibition law for a county, the effect would be to annul all city or town liquor licensing ordinances of cities or towns situated in such county. Such is the case when a county adopts local option, except that the ordinances are not annulled but temporarily suspended.<sup>23</sup>

**Sec. 312. Exceptions to prohibitory ordinances.**

Where a State law permits sales for certain special purposes, or where a statute authorizes a city to adopt an ordinance prohibiting sales of liquor except for such purposes—as medicinal, mechanical or sacramental purposes—an ordinance which does not except or permit sales for such purposes has been held void.<sup>24</sup> On the contrary, such an ordinance has been held valid;<sup>25</sup> and in the same State from which the first case is cited another court of co-ordinate jurisdiction has held such an ordinance valid.<sup>26</sup>

**Sec. 313. Ordinance in part void.**

If an ordinance be in excess of the power of a city to pass it, of course the entire ordinance is void; but not infrequently only a part of it is in excess of such power, and then it is always a question whether the valid part can remain and be

<sup>22</sup> *Platteville v. McKernan*, 54 Wis. 487; 11 N. W. 798; *Adams v. Stephens*, 88 Ky. 443; 11 S. W. 427; *Ottawa v. La Salle*, 11 Ill. 339.

<sup>23</sup> *Turner v. Forsyth*, 78 Ga. 683; 3 S. E. 649; *Ex parte Brown*, 38 Tex. Cr. App. 295; 42 S. W. 554.

As to difference in time of clos-

ing under an ordinance and under a subsequent statute, see *State v. Brady*, 41 Conn. 588.

<sup>24</sup> *Akerman v. Lima*, 7 Ohio N. P. 92; 8 Ohio S. & C. P. Dec. 430.

<sup>25</sup> *Houek v. Ashland*, 40 Ore. 117; 66 Pac. 697.

<sup>26</sup> *Edis v. Butler*, 8 Ohio N. P. 183; 11 Ohio S. & C. P. Dec. 245.



enforced. In this respect in determining this question the same rules apply as apply in determining the validity of a statute which in part infringes upon some provision of the Constitution.<sup>26\*</sup> Thus, if a city can only require a license for sales, and it requires a license for one class of sales and prohibits sales of another class, as to the latter class the ordinance is void, yet as to the other class it remains in force, and a license as to that class may be enforced.<sup>27</sup> And this was held true where a city could prohibit the sale of malt and vinous liquors and could not spirituous, but undertook to prohibit the sale of any of them.<sup>28</sup> And where a city could not prevent the sale of liquors in quantities of five gallons or over, and it passed an ordinance preventing the sale of any quantity, it was held to prohibit sales of less than five gallons, though void as to sales of five gallons or over.<sup>29</sup> And the same rule applies to one prohibiting sales by anyone when the city has no power to prohibit sales by a druggist.<sup>30</sup> An attempt to permit a transfer of a license does not avoid the other provisions of the ordinance forbidding sales without a license.<sup>31</sup>

### Sec. 314. Ordinance in conflict with Constitution.

It does not require the citation of a decision of a court to establish the proposition that an ordinance in conflict with a provision of the State or Federal Constitution is absolutely void.<sup>32</sup> If it is in conflict when enacted with a provision of the Constitution, a subsequent amendment of that provision so as to remove the conflict will not render the ordinance valid;<sup>33</sup> nor does such an amendment so amend the city's charter as to give it power it did not possess before.<sup>34</sup> But a constitu-

<sup>26\*</sup> *Ex parte* Stephen, 114 Cal. 278; 46 Pac. 86.

<sup>27</sup> *Harbaugh v. Monmouth*, 74 Ill. 367; *Wagner v. Garrett*, 118 Ind. 114; 20 N. E. 706.

<sup>28</sup> *Eldora v. Burlingame*, 62 Ia. 32; 17 N. W. 148; *Cantrill v. Sainer*, 59 Iowa, 26; 12 N. W. 753.

<sup>29</sup> *State v. Priester*, 43 Minn. 373; 45 N. W. 712.

<sup>30</sup> *Ex parte* Cowert, 92 Ala. 94; 9 So. 225.

<sup>31</sup> *Wallace v. Cubanola*, 70 Ark. 395; 68 S. W. 485.

<sup>32</sup> *Baldwin v. Smith*, 82 Ill. 162.

<sup>33</sup> *Mt. Pleasant v. Vansice*, 43 Mich. 361; 5 N. W. 378; 38 Am. Rep. 193.

<sup>34</sup> *Dewar v. People*, 40 Mich. 401; 29 Am. Rep. 545.



tional provision giving the inhabitants of a State religious freedom does not prohibit the enactment of an ordinance forbidding the sale of liquors or the keeping open of saloons on Sunday;<sup>35</sup> nor does an ordinance imposing a reasonable regulation upon the sale of liquors, or even prohibiting trafficking in them, violate the provisions of a Constitution prohibiting the deprivation of a person of his liberty or property.<sup>36</sup> Where a city openly and defiantly enacted an ordinance authorizing the sale of liquors in the face of a provision of the Constitution prohibiting such sale, it was held that proceedings in the nature of a *quo warranto* lay to annul the authority attempted to be thus given.<sup>37</sup> Likewise a city charter in conflict with the Constitution is void to the extent of the conflict.<sup>38</sup>

### Sec. 315. City conducting a dispensary.

A power to control and direct the sales of liquor within its limits will not authorize a city to enter upon the sale of liquors by organizing a dispensary and appointing officers to sell the liquors, although done in the interest of temperance.<sup>39</sup> Nor does the general welfare clause of a city's charter empower it to do so.<sup>40</sup> Under the North Carolina statute<sup>41</sup> the State established a dispensary board in certain cities and authorized the board of aldermen to name the members of the board and to approve the bonds of the treasurer and manager; but the city simply acted as the agent of the State to name the members of the dispensary board and it was not engaged in the liquor traffic in violation of its charter provisions forbidding it.<sup>42</sup> In South Carolina an ordinance de-

<sup>35</sup> Gabel v. Houston, 29 Tex. 335.

<sup>36</sup> Tanner v. Alliance, 29 Fed. 196; Markle v. Akron, 14 Ohio 586.

<sup>37</sup> State v. Topeka, 30 Kan. 653; 2 Pac. 387; 31 Kan. 452; 2 Pac. 597; State v. Leavenworth, 36 Kan. 314; 13 Pac. 591.

<sup>38</sup> Morrilton v. Comer, 75 Ark. 458; 87 S. W. 1024.

<sup>39</sup> Lofton v. Collins, 117 Ga. 434; 43 S. E. 708; 61 L. R. A. 150; Barnesville v. Murphey, 113 Ga. 779; 39 S. E. 413.

<sup>40</sup> Leesburg v. Putnam, 103 Ga. 110; 29 S. E. 602; State v. Rushing, 140 Ala. 187; 36 So. 1007.

<sup>41</sup> Laws 1899, c. 254.

<sup>42</sup> Garsed v. Greensboro (N. C.), 35 S. E. 254.

declaring all liquors contraband except those sold by the State's agent was held not inconsistent with the State dispensary law which declared all liquors, except domestic wines, not labeled and certified to as having been bought from a State dispensary should be contraband.<sup>43</sup>

### Sec. 316. Appointment of liquor agents.

Under laws providing for it, cities, towns or counties may appoint agents for the sale of liquors within their boundaries, under proper conditions.<sup>44</sup> These agents are not considered as officers of the cities holding over as officers do, and, therefore, their employment ceases at the end of the time for which they were appointed or employed.<sup>45</sup> If the liquor statute requires him to be appointed and give a bond, until he is duly appointed and gives his bond he has no authority to act;<sup>46</sup> and until then he cannot bind the city by purchasing liquor on its account, when that may be done.<sup>47</sup> An agent duly selected may usually appoint such sub-agents as will enable him to carry out the provisions of the law.<sup>48</sup>

### Sec. 317. Duties and powers of public liquor agents.

If an agent make illegal sales he is liable the same as if he were not an agent.<sup>49</sup> Any agreement on his part for a profit

<sup>43</sup> *Easley v. Pegg*, 63 S. C. 98; 41 S. E. 18.

<sup>44</sup> *State v. City Council*, 42 S. C. 222; 20 S. E. 221; 26 L. R. A. 345; *Atkins v. Randolph*, 31 Vt. 226.

<sup>45</sup> *State v. Weeks*, 67 Me. 60.

<sup>46</sup> *Commonwealth v. Pillsbury*, 12 Gray 127.

<sup>47</sup> *Atkins v. Randolph*, 31 Vt. 226; *Foxcroft v. Croker*, 40 Me. 308.

<sup>48</sup> *State v. Marley*, 78 Conn. 330; 62 Atl. 85. See as to law in New Hampshire, *Opinion of justices*, 72 N. H. 605; 55 Atl. 943.

In Georgia the question of the continuance of a public dispensary may be submitted to a vote

of the community. *Waters v. McDowell*, 126 Ga. 807; 56 S. E. 95; and in South Carolina the location of one may be enjoined under certain circumstances. *Croxton v. Truesdale*, 75 S. C. 418; 56 S. E. 45.

Controlling a division of the profits between the city and county, *Clarke Co. v. Herrington*, 113 Ga. 234; 38 S. E. 852.

Under the Georgia dispensary law the persons appointed to sell liquors are governmental officials and not liquor dealers subject to a tax. *Dispensary Comrs. v. Thornton* (Ga.), 31 S. E. 733.

<sup>49</sup> *State v. Keen*, 34 Me. 300; *State v. Putnam*, 38 Me. 296.

to himself in the sale of the city's liquor is void, being contrary to public policy.<sup>50</sup> He must sell for cash and not on credit, whatever the customs may be in the vicinity.<sup>51</sup> If the law requires him to purchase from a State agent, he cannot purchase from another and bind his city.<sup>52</sup> At the end of his term he must account for all monies received and liquors on hand.<sup>53</sup>

<sup>50</sup> Baldwin v. Coburn, 39 Vt. 441.

<sup>51</sup> Mansfield v. Stonehan, 15 Gray 149.

<sup>52</sup> Lauter v. Allenstown, 58 N. H. 289.

<sup>53</sup> Washington v. Eames, 6 Allen 417.

## CHAPTER VI.

### LICENSES.

#### SECTION.

- 318. Definition.
- 319. A personal trust.
- 320. Imposes no public duties—  
Purpose of license.
- 321. Not a tax.
- 322. License distinguished from a  
tax.
- 323. Inherent and common law  
right to sell liquors with-  
out a license.
- 324. License to sell not a vested  
right.
- 325. License not property.
- 326. Neither a contract nor prop-  
erty.
- 327. Effect of enactment of pro-  
hibition and a license law.
- 328. Repeal of licensing laws af-  
ter license issued.
- 329. License by implication.
- 330. Taken subject to subsequent  
legislation.
- 331. Annulment of license by  
change of law.
- 332. License prospective, not ret-  
rospective.
- 333. Retroactive effect of license.
- 334. Impossibility to secure a li-  
cense.
- 335. Neglect or improper refusal  
to grant a license.

#### SECTION.

- 336. Performance of requisites to  
obtain a license not a li-  
cense.
- 337. What a license does and does  
not authorize.
- 338. Agent or servant, when  
protected by license of his  
principal.
- 339. Sale by servant when his  
master holds no license—  
Illegal sales.
- 340. Servant's license no protec-  
tion for his master.
- 341. Partnership license.
- 342. Number of licenses an indi-  
vidual may or is required  
to hold.
- 343. City may require license in  
addition to a State license.
- 344. City license not a defense to  
a State violation.
- 345. United States license—  
State license.
- 346. U. S. Government license no  
defense to State license.
- 347. Duration of license.
- 348. Expired license.
- 349. "On" and "off" license.
- 350. Void license—Collateral at-  
tack.

#### Sec. 318. Definition.

In its proper sense, a license is a permit to do business that cannot be done without it.<sup>1</sup> It is synonymous with "author-

<sup>1</sup> *Sonora v. Curtin*, 137 Cal. 583; 70 Pac. 674; *Board v. May-*

*or*, 31 Colo. 173; 74 Pac. 458; *People v. Rains*, 20 Colo. 489; 39

ity" or "permission."<sup>2</sup> "The popular understanding of the word license undoubtedly is, a permission to do something which without the license would not be allowable. This we are to suppose was the sense in which it was made use of in the Constitution. But this is also the legal meaning."<sup>3</sup> It is essentially a grant to those to whom it is given or extended, not enjoyed by persons generally.<sup>4</sup> It is "granted by some competent authority to do an act which without such authority would be illegal."<sup>5</sup> "The object of a license is to confer a right that does not exist without a license."<sup>6</sup> "A common right is not the creation of a license."<sup>7</sup> As used in the liquor laws of a State, "a license is a privilege granted by the court, or other competent authority, to sell liquor."<sup>8</sup> Where a

Pac. 341; *Standard Oil Co. v. Commonwealth*, 119 Ky. 75; 82 S. W. 1020; 26 Ky. L. Rep. 985; *Ft. Smith v. Hunt*, 72 Ark. 556; 82 S. W. 163; 66 L. R. A. 238; *Schweirman v. Highland Park (Ky.)*, 113 S. W. 507.

It is not a privilege that any citizen may demand. It is in the nature of a favor. *Schweirman v. Highland Park (Ky.)*, 113 S. W. 507.

<sup>2</sup> *Harmon v. Chicago (Ill.)*, 26 N. E. 697; *Neuman v. State*, 76 Wis. 112; 45 N. W. 30; *Winoski v. Gokey*, 49 Vt. 282; *Sinnot v. Davenport*, 22 How. 227; 16 L. Ed. 243; *San Francisco v. Liverpool, etc. Co.*, 74 Cal. 113; 15 Pac. 380; 7 Am. St. 425.

<sup>3</sup> *Youngblood v. Sexton*, 32 Mich. 406; 20 Am. Rep. 654; *Chilvers v. People*, 11 Mich. 43; *Adler v. Whitbeck*, 44 Ohio St. 439; 9 N. E. 672.

<sup>4</sup> *State v. Frame*, 39 Ohio St. 399; *Adler v. Whitbeck*, 44 Ohio St. 439; 9 N. E. 672.

<sup>5</sup> *Pullman Southern Car Co. v. Nolan*, 22 Fed. 276; *Metcalf v.*

*Hart*, 3 Wyo. 513; 27 Pac. 900; 31 Am. St. 122; *Caldwell v. Fulton*, 7 Casey (Pa.) 475; 72 Am. Dec. 760; *Shurman v. Ft. Wayne*, 127 Ind. 109; 26 N. E. 560; 11 L. R. A. 378; *Hockett v. Wilson*, 12 Ore. 25; 6 Pac. 652; *Anderson v. Brewster*, 44 Ohio St. 576; 9 N. E. 683; *State v. Hipp*, 38 Ohio St. 199; *State v. Hardy*, 7 Neb. 377.

<sup>6</sup> *Chilvers v. People*, 11 Mich. 43; *Adler v. Whitbeck*, 44 Ohio St. 539; 9 N. E. 672.

<sup>7</sup> *State v. Frame*, 39 Ohio St. 399; *State v. Peel, etc., Co.*, 36 W. Va. 802; 15 S. E. 1000; 17 L. R. A. 385.

<sup>8</sup> *Hubman v. State*, 61 Ark. 482; 33 S. W. 843; *Silver v. Sparta*, 107 Ga. 275; 33 S. E. 31; *Chicago v. Collins*, 175 Ill. 445; 51 N. E. 907; 49 L. R. A. 408; 67 Am. Rep. 224.

The term "liquor license" may mean the paper writing which usually, though not necessarily, is the evidence of the license; or it may be used to designate the permission to sell liquors. *Fie-*



statute prohibited the taking of liquor into a certain territory without a permit issued by the lieutenant-governor, and another statute authorized a municipality in this territory to require a license, it was held that the permit was not the license and did not dispense with the obtaining of a license from the municipality.<sup>9</sup> The license must be a written one, it has been held, or it is not a license.<sup>10</sup>

### Sec. 319. A personal trust.

A license to sell intoxicating liquor is granted to the recipient of it because of his personal fitness to receive it and act thereunder. It is a personal trust, not transferable, and not, because of its non-transferability, an asset of his estate on his decease or assignment in bankruptcy.<sup>11</sup>

genston v. Mulligan, 63 N. J. Eq. 179; 51 Atl. 191; United States v. Cutting, 3 Wall. 441; 18 L. Ed. 241; Elmore v. Overton, 104 Ind. 548; 4 N. E. 197; 54 Am. Rep. 343, or it may mean both, as where a statute authorizes the attachment and sale of liquor licenses and all rights and interests therein. Quinnipac Brewing Co. v. Hackbarth, 74 Conn. 392; 50 Atl. 1023.

Under authority to license a city cannot stretch its powers so as to prohibit. *Ex parte Sikes*, 102 Ala. 173; 15 So. 522; 24 L. R. A. 774.

In Pennsylvania a statute provided that if a "party licensed" should die or remove his license might be transferred by the authority granting it, or a license be granted his successor for the remaining part of the year; and it was held that a person removing from the State between the time of granting the license and payment of the fee was a "party

licensed." *In re Umholtz*, 191 Pa. St. 177; 43 Atl. 75.

<sup>9</sup> *Queen v. Salterio*, 1 Ter. L. R. 301.

<sup>10</sup> *Connecticut Breweries Co. v. Murphy*, 81 Conn. 145; 70 Atl. 450.

The requiring of a license is a proper exercise of the police power. *Campbell v. Jackman Bros.* (Iowa), 118 N. W. 755; *Appeal of Allyn*, 81 Conn. 534; 71 Atl. 794.

Usually a license is necessary to sell intoxicating liquors. *Prater v. Commonwealth*, 4 Ky. L. Rep. 344.

<sup>11</sup> *In re Buck's Estate*, 185 Pa. St. 57; 39 Atl. 821; 64 Am. St. 816; *Watkins v. Grieser*, 11 Okla. 302; 66 Pac. 332; *Furman, etc. Co. v. Long*, 113 Ala. 203; 21 So. 339; *In re Whitlock's License*, 39 Pa. Super. Ct. 34; *In re Miller*, 171 Fed. 263; *In re Conner & Co.*, 171 Fed. 261; *Tracy v. Ginzberg*, 189 Mass. 260; 75 N. E. 637.

Although a license is no part

### Sec. 320. Imposes no public duties—Purpose of license.

“License to a person to follow any particular trade or business,” it was said in a New York case, “is not an appointment to office, nor does it confer any of the powers or privileges of a public officer. It is a mere license to follow his calling, whatever it may be. The duties to be performed are not public duties, and the public have no interest in their performance or omission. The object of the license is for the purpose of controlling the business and preventing its being conducted in a manner injurious to the public welfare. Beyond that the public interest is not affected, and, if the licensee neglects to act under his license, the public cannot complain.”<sup>12</sup>

### Sec. 321. Not a tax.

A tax is not a license; it does not come within the definition of a license. “Within this definition,<sup>13</sup> a mere tax upon the traffic cannot be a license of the traffic, unless the tax confers some right to carry on the traffic which otherwise would not have existed. We do not understand that such is the case here. The very act which imposed this tax repealed the previous law, which forbade the traffic and declared it illegal. The trade then became lawful, whether taxed or not; and this law, in imposing the tax, did not declare the trade illegal in case the tax was not paid. So far as we can perceive, a failure to pay the tax no more renders the trade illegal than would a like failure of a farmer to pay his tax on his farm render its cultivation illegal. The State has imposed the tax in each

of an estate's assets, yet if the administrator make a personal profit out of it, and if he treat it as a part of the estate, his personal creditors cannot reach the profits he derives from its uses. *Asherbach v. Carey* (Pa.), 73 Atl. 435.

A licensee is not an officer of the State, and his right to sell under it cannot be tested by *quo*

*warranto*. *State v. Gibbs* (N. H.), 74 Pac. 229.

<sup>12</sup> *People v. Beard*, 33 How. Pr. 32; *People v. Acton*, 48 Barb. 524.

<sup>13</sup> “The object of a license is to confer a right that does not exist without a license.” *Chilvers v. People*, 11 Mich. 43, 49; *Kitson v. Ann Arbor*, 26 Mich. 325; *Doran v. Phillips*, 47 Mich. 228; 10 N. W. 350.

case, and made such provision as has been deemed needful to insure its payment; but it has not seen fit to make the failure to pay a forfeiture of the right to pursue the calling. If the tax is paid, the traffic is lawful; but if it is not paid, the traffic is equally lawful. There is consequently nothing in the case that appears to be in the nature of a license. The State has provided for the taxation of a business which was found in existence, and the carrying on of which it no longer prohibits; and that is all. But it is urged that by taxing the business the State recognizes its lawful character, sanctions its existence, and participates in the profits—all of which is within the real intent of the prohibition of license. The lawfulness of the business, if by that we understand merely that it is no longer punishable, and is capable of constituting the basis of contracts, was undoubtedly recognized when the prohibitory law was repealed; but as the illegality of the traffic depended on that law, so its lawfulness now depends upon its repeal; the tax has nothing to do with it whatever. Now, it is not claimed, so far as we are aware, that the repeal of the prohibitory law was incompetent; and if not, the mere recognition of the lawfulness of the traffic cannot make the tax levy or any other law invalid. It is only the recognition of an existing and conceded fact, and the courts cannot, if they would, refuse to recognize it. The idea that a State lends its countenance to any particular traffic by taxing it, seems to us to rest upon a very transparent fallacy. It certainly overlooks or disregards some ideas that must always underlie taxation. Taxes are not favors; they are burdens; they are necessary, it is true, to the existence of government, but they are not the less burdens, and are only submitted to because of the necessity. It is deemed advisable to make careful provisions to preclude these burdens becoming needlessly oppressive; but it is conceded by all the authorities that under some circumstances they may be carried to an extent that will be ruinous to individuals. It would be a remarkable proposition, under such circumstances, that a thing is sanctioned and countenanced by the Government when this burden, which may prove disastrous, is imposed upon it; while, on the other hand, it is pounced upon and condemned when the burden is

withheld. It is safe to predict that if such was the legal doctrine any citizen would prefer to be visited with the untaxed forms of government rather than with those testimonials of approval which are represented by the demands of the tax gatherer." "Taxes upon business are usually collected in the form of license fees; and this may possibly have led to the idea that seems to have prevailed in some quarters, that a tax implied a license. But there is no necessary connection whatever between them. A business may be licensed and yet not taxed, or it may be taxed and yet not licensed. And so far as the tax being necessarily a license, that position is frequently made by law for the taxation of a business that is carried on under a license existing independent of the tax."<sup>14</sup>

### Sec. 322. License distinguished from a tax.

There seems to be a little difference of opinion as to the definition of a license. It is defined, in its general sense, as a "permission granted by some competent authority to do an act which, without such permission, would be illegal."<sup>15</sup> This agrees in substance with the definition as given in a number of cases.<sup>16</sup> A license is essentially the granting of a special

<sup>14</sup> *Youngblood v. Sexton*, 62 Mich. 402; 20 Am. Rep. 654.

A license "is a part of the police regulations of the country, and the fee is rather intended to prevent the indiscriminate opening of such establishments than to raise revenue by taxation. It is in no proper sense a tax." *Burch v. Savannah*, 42 Ga. 596

Power given a city "to license" gives implied power to tax when such is the manifest intention. *St. Joseph v. Ernst*, 95 Mo. 360; 8 S. W. 558; *St. Charles v. Elener*, 155 Mo. 671; 56 S. W. 291. So does a power "to license and regulate." *San Jose v. San Jose*, etc. R. Co., 53 Cal. 475. But as a rule the mere power to license

does not authorize a tax, though a fee for it sufficient to cover the cost of issuance and its enforcement may be exacted; but if the fee is so high as to amount to a prohibitory tax, it cannot be exacted. *Ottumwa v. Zekind*, 95 Iowa 922; 64 N. W. 622; 29 L. R. A. 734; 58 Am. St. 447; *Hoefling v. San Antonio*, 85 Tex. 228; 20 S. W. 85; 16 L. R. A. 608; *Burlington v. Putman Ins. Co.*, 31 Iowa 102; *State v. Herod*, 29 Iowa 123.

<sup>15</sup> *Bouvier's Law Dic.*, art. "License"; *State v. Hipp*, 38 Ohio St. 206.

<sup>16</sup> *Home Ins. Co. v. Augusta*, 50 Ga. 530; *Chilvers v. People*, 11 Mich. 43; *Youngblood v. Sexton*,



privilege to one or more persons, not enjoyed by citizens generally, or, at least, not enjoyed by a class of citizens to which the licensee belongs. A common right is not the creature of a license.<sup>17</sup> The result of the definitions which have been given of a license as implied in its etymology, is in conformity to the sense in which the word is ordinarily used, and may be regarded as strictly accurate. That is permitted which cannot be done without permission; and to say that a person is permitted, licensed, to do what he may lawfully do without permission, is a misuse of the words. The distinction between a tax upon a business and what might be termed a license, is, that the former is exacted by reason of the fact that the business is carried on, and the latter is exacted as a condition precedent to the right to carry it on. In the one case the individual may rightfully engage in and carry on the business without paying the tax; in the other, he cannot. Hence, unless it can be shown that a simple tax on the liquor traffic enlarges the privileges of those engaged in it, or confers a right that did not previously exist, there is no ground for saying the tax is a license of the business.<sup>18</sup> A license being of the nature of a privilege, it would be a strange incongruity to grant one the privilege of bearing the burden of a tax. A tax which may be resorted to for the purpose of restraining what is opposed to the public interests, would hardly be called a license to do that which is sought to be restrained. The two things are entirely distinct in their characteristics. A license may exist without the imposition of a tax, and a tax may be imposed without the granting of a license.<sup>19</sup>

32 Mich. 406; *Plenler v. State*, 11 Neb. 547; *Andler v. Whitbeck*, 44 Ohio St. 539; *Anderson v. Brewster*, 44 Ohio St. 576; 9 N. E. 683.

<sup>17</sup> *State v. Frame*, 39 Ohio St. 399.

<sup>18</sup> *Adler v. Whitbeck*, 44 Ohio St. 539.

<sup>19</sup> *Anderson v. Brewster*, 44 Ohio St. 576; 9 N. E. 683. For cases on this generally, see *Peterswold*

*v. Bartley*, 4 S. R. (N. S. W.), 290; 21 W. N. C. (N. S. W.), 81; *State v. Miller*, 114 Iowa 396; 87 N. W. 287; *Doran v. Phillips*, 47 Mich. 228; 10 N. W. 350; *Allyan*, Appeal of, 81 Conn. 534; 71 Atl. 794; *Brown v. State* (Tenn.), 114 S. W. 198; *State v. Plainfield*, 44 N. J. L. 118; *Courtwright v. Newaygo*, 96 Mich. 290; 55 N. W. 808.



**Sec. 323. Inherent and common law right to sell liquors without license.**

A law or municipal ordinance authorizing the licensing of the sale of intoxicating liquors cannot be defeated as unconstitutional on the ground that the traffic in such liquor is dangerous and hurtful to society; that the right to engage in the retail traffic of such liquors is not an inherent or inalienable right, and that no such right existed at common law. It is true that brothels and gaming houses were at common law under all circumstances held to be nuisances, but ale houses and other places in which intoxicating liquors were sold to be drunk were not so held or regarded unless they became disorderly, and in such cases it was not the mere sale of the liquors which constituted them nuisances but it was the disorderly conduct therein; or, in other words, the disorderly manner in which they were conducted or kept, and in such cases it was immaterial whether the keepers thereof were licensed or unlicensed. The first general statute restricting and regulating the keeping of ale houses and tippling houses was passed by the British Parliament in 1552, and was the act of the Fifth and Sixth Parliament of Edward VI. This statute constitutes Chapter 25, page 391, of the English Statutes at Large, 1540 to 1552. The preamble to this statute declares: "For as much as intolerable hurts and troubles to the commonwealth of this realm doth daily grow and increase through such abuses and disorders as are had and used in common ale houses and other houses called tippling houses, it is therefore enacted by the King, our Sovereign Lord," etc. At common law prior to the passage of this statute, any person had the right, without a license, to keep and maintain ale houses and tippling houses. Such business was not regarded as a public offense, but was considered and held to be a means of livelihood which one was free to follow.<sup>20</sup> In

<sup>20</sup> 2 Cooley's Blackstone (4th ed.), p. 714; 1 Hawkins P. C. (Cum. Ed.), p. 714; 1 Bishop on Crim. Law (7th ed.), Sec. 505; 1 Bishop on Statutory Crimes (3d ed.), Secs. 984, 985; Stevens v. Watson, 1 Salk. 45; King v. Ran-

dall, 3 Salk. 27; Anonymous, 3 Salk. 24, 25; King v. Marriot, 4 Mod. 144 and notes; Faulkner case, 1 Saund. 249; King v. Iyves, 2 Showers, 357; State v. Bertheol, 6 Blackf. 474; 39 Am. Dec. 442; State v. Milliken, 8

Bishop on Statutory Crimes, it is said: "It is at common law lawful to keep a properly regulated inn, ale house or tippling house, which severally are indictable only when disorderly. Hence, *a fortiori*, the simple selling of intoxicating drinks is not a common law crime; but from an early period in English legislation during ante-colonial times, and thence downward to the present day with us, statutes, in various forms of provisions, have been enacted as aids to the suppression of erroneous evils which the use or abuse of inebriating liquors have wrought. Indeed, the old English enactments of this sort are numerous, and they have largely been the models for legislation in our States."<sup>21</sup> The *dicta* or expressions of the higher courts, both State and Federal, that the right to engage in the retail traffic of intoxicating liquor is not an inherent or inalienable right invariably occur in connection with the restricted and unregulated traffic in such liquors and not as an argument to defeat laws and ordinances regularly adopted for the purpose of licensing and regulating the sale of such liquors.<sup>22</sup> In the language of Mr. Justice Greer: "It is not necessary, for sake of justifying the State legislation now under consideration, to array the appalling statistics of misery, pauperism and crime which have their origin in the abuse of ardent spirits. The police power, which is exclusively in the States, is alone competent to the correction of these great evils, and all measures of restraint or prohibition necessary to effect the purpose are within the scope of that authority."<sup>23</sup> As has been aptly said by another learned judge: "The power is signally exercised in legislation designed to diminish and prevent the demoralization and impoverishment and the numberless vices and miseries, which as the mere concomitants and consequences of a free traffic in intoxicating liquors, by restraining or prohibiting them."<sup>24</sup>

Blackf. 260; *Welsh v. State*, 126 Ind. 71; 25 N. E. 883; *Sopher v. State*, 169 Ind. 177; 81 N. E. 913; *Commonwealth v. McDonough*, 13 Allen (Mass.) 581.

<sup>21</sup> 1 Bishop on Crim. Law (7th ed.), Sec. 505.

<sup>22</sup> *Sopher v. State*, 169 Ind. 177; 81 N. E. 913.

<sup>23</sup> *License Cases*, 5 How. 504; *People v. Walling*, 53 Mich. 264; 18 N. W. 807.

<sup>24</sup> *State v. Fitzpatrick*, 16 R. I. 54; 11 Atl. 767; *Appeal of Allyan*, 81 Conn. 534; 71 Atl. 794; *Campbell v. Jackman Bros.* (Iowa), 118 N. W. 755.

**Sec. 324. License to sell not a vested right.**

The enactment of a law regulating the liquor traffic is an exercise of the police power of the State. The police power is a governmental one, and permits obtained under laws enacted in its exercise are not contracts. In enacting laws for the regulation of the business of retailing liquors, a sovereign power is asserted, and its exercise does not confer upon any officer authority to make a contract which will abridge or limit the great and important attribute of sovereignty. Sovereigns may make contracts, which, under the Constitution, will preclude them from impairing vested rights by subsequent legislation, but this result never follows the exercise of a purely police power. The right to legislate for the promotion and security of the public safety, morals and welfare can not be surrendered or bartered away by the Legislature. Accordingly, the uniform decisions of the courts have been to the effect that a license to retail intoxicating liquors is nothing more than a permit; it is neither a contract nor a grant. It is a restrictive special tax, imposed for the public good, in the exercise of the police power of the State. It may be changed or even annulled by the supreme legislative power of the State whenever the public welfare demands. Under a license the licensee acquires no vested right or contractual interest. He takes the license with the tacit condition and the full knowledge that the matter is at all times within the control of the sovereign power of the State, and is deemed to have consented to all proper conditions and restrictions which have been imposed by the Legislature, or may in the future be imposed by it in the interest of the public morals and safety relative to the traffic in such liquors, or to the place wherein he was granted such permit to sell the same, notwithstanding their burdensome character. And a law regulating or authorizing municipal corporations to regulate and impose restrictions upon the sale of intoxicating liquors is an exercise of the police power of the State, and neither the State nor the municipality can, by any sort of contract, license or permit, abdicate, embarrass or bargain away its right to exercise the power in such a

measure as it may thereafter deem the public welfare requires.<sup>25</sup>

### **Sec. 325. License not property.**

A license to sell intoxicating liquors is not a contract between the State or a municipal corporation and the person licensed, giving the latter vested rights, protected on general principles and by the Constitution of the United States against subsequent legislation; nor is it property in any legal constitutional sense. It has neither the qualities of a contract nor of property, but is simply a temporary permit to do what would otherwise be an offense against a general law or an ordinance. It forms a portion of the internal police powers of the State or municipal corporation, is issued in the exercise of the police power, and is subject to the direction of the State or municipal government, which may modify, revoke or continue it as the State or corporation may deem fit, even though based upon a valuable consideration. For this reason the holder of such a license cannot complain that the obligation of a contract has been impaired or that he has been unduly

<sup>25</sup> Beer Co. v. Massachusetts, 97 U. S. 25; Powell v. State, 69 Ala. 10; Kallsmith v. People, 8 Colo. 175; La Croix v. Fairfield Co., 49 Conn. 591; Elk Point v. Vaughan, 1 Dak. 113; Brown v. State, 82 Ga. 224; Sprayberry v. Atlanta, 87 Ga. 120; 13 S. E. 197; McKinney v. Salem, 77 Ind. 213; Moore v. City of Indianapolis, 120 Ind. 483; State v. Gerhardt, 145 Ind. 439; Shea v. City of Muncie, 148 Ind. 14; Columbus City v. Cutcomp, 61 Iowa 672; Prohibitory Cases, 24 Kan. 700; Fell v. State, 42 Md. 71; Calder v. Kurby, 5 Gray (Mass.), 597; Commonwealth v. Brennan, 105 Mass. 70; Hearn v. Brogan, 64 Miss. 334; Wheeler v. State, 64

Miss. 462; State v. Clarke, 54 Mo. 17; Metropolitan Board v. Barrie, 34 N. Y. 659; Rowland v. State, 12 Tex. App. 418; Hedges v. Titus, 47 Ind. 145; State v. Mullenhoff, 74 Iowa. 271; 37 N. W. 329; State v. Isabel, 40 La. Ann. 340; 4 So. 1; Reithmiller v. People, 44 Mich. 280; 6 N. W. 667; People v. Warden, 17 N. Y. Misc. Rep. 1; 38 N. Y. Supp. 837; affirmed 6 N. Y. App. Div. 520; 39 N. Y. Sup. 582; Commonwealth v. Sellers, 130 Pa. St. 32; 18 Atl. 541; 15 Atl. 891; 25 Wkly. N. C. 154; Commonwealth v. Donahue, 149 Pa. St. 104; 24 Atl. 188; 30 Wkly. N. C. 134; West v. Bishop, 110 Iowa 410; 81 N. W. 696.



deprived of his property.<sup>26</sup> Those powers which are inherent in all governments, and the exertion of which, as emergencies may demand, is essential to the well-being of organized society, cannot be abridged or weakened or their vigor impaired by contract or bargain.<sup>27</sup> The right to legislate for the promotion and security of the public safety, morals and welfare cannot be surrendered or bartered away by the Legislature.<sup>28</sup>

### **Sec. 326. Neither a contract nor property.**

A license to sell intoxicating liquors is not a contract between the State or municipality issuing it and the licensee. This question has been discussed in the chapter on constitutional law, but it will bear a short review here. "These licenses to sell liquor," said the Court of Appeals of New York, "are not contracts between the State and the persons licensed, giving the latter vested rights, protected on general principles and by the United States Constitution against subsequent legislation, nor are they property in any legal or constitutional sense. They have neither the qualities of a contract or of property, but are merely temporary permits to do what otherwise would be an offense against a general law. They form a portion of the internal police system of the State, are issued in the exercise of its police powers, and are subject to the direction of the State government, which may modify, revoke or continue them, as it may deem fit. If the act of 1857 had declared that licenses under it should be irrevocable (which it did not, but by its very terms they are revocable), the Legislature of subsequent years would not have been bound

<sup>26</sup> *Brown v. State*, 82 Ga. 224; *Block v. Jacksonville*, 36 Ill. 301; *Moore v. City of Indianapolis*, 120 Ind. 483; *Prohibitory Amendment Cases*, 24 Kan. 700; *Fell v. State*, 42 Md. 71; *Calder v. Kurby*, 5 Gray (Mass.) 597; *Commonwealth v. Brennan*, 103 Mass. 70; *Metropolitan Board, etc., v. Barrie*, 34 N. Y. 659.

<sup>27</sup> *Boyd v. Alabama*, 94 U. S.

645; *Moore v. Indianapolis*, 120 Ind. 483; 22 N. E. 424.

<sup>28</sup> *Beer Co. v. Massachusetts*, 97 U. S. 25; *Patterson v. Kentucky*, 97 U. S. 501; *Stone v. Mississippi*, 101 U. S. 814; *McKinney v. Town of Salem*, 77 Ind. 213; *Freleigh v. State*, 8 Mo. 606; *State v. Gerhardt*, 145 Ind. 439; 44 N. E. 469; 33 L. R. A. 313; *Horning v. Wendell*, 57 Ind. 171.



by the declaration. The necessary powers of the Legislature were all subjects of internal police, being a part of the general grant of legislative power given by the Constitution, and cannot be sold, given away or relinquished." <sup>29</sup> The legal qualities of a license are strikingly brought into light when it is borne in mind that the power authorizing their issuance may revoke them at any time without either a liability to compensate the holders for the losses the holders sustain by the revocation or even to return the fees or any part of them paid for them, or may even increase the unpaid fees before the license has expired and make the continuance of the life of the license to depend upon the payment of the increased amount.<sup>30</sup> And likewise it is strikingly illustrated by the rule that if a licensee holds a license from the State, the latter may, while it is in force, authorize a municipality to exact another license before it shall be lawful to sell under the first, although the statute authorizing a municipality to require the license is enacted

<sup>29</sup> *Metropolitan Board v. Barrie*, 34 N. Y. 659; *Moore v. Indianapolis*, 120 Ind. 483; 22 N. E. 424; *Brown v. State*, 82 Ga. 224; 7 S. E. 915; *Fell v. State*, 42 Md. 71; 20 Am. Rep. 83; *Cald-er v. Kurby*, 5 Gray 597; *Commonwealth v. Brennan*, 103 Mass. 70; *State v. New Orleans*, 113 La. 371; 36 So. 999; *Meehan v. Board*, 73 N. J. L. 382; 64 Atl. 689; *Martin v. State*, 23 Neb. 371; *Plenler v. State*, 11 Md. 547; *State v. Carron*, 73 N. H. 434; 62 Atl. 1044; *Powell v. State*, 69 Ala. 10; *Hearn v. Brogan*, 64 Miss. 334; 1 So. 246; *Rowland v. State*, 12 Tex. App. 418; *Columbus v. Cutcomp*, 61 Iowa 672; 17 N. W. 47; *State v. Clarke*, 54 Mo. 17; 14 Am. Rep. 471; *McCoy v. Clark*, 104 Iowa, 491; 73 N. W. 1050; *Nelson v. State*, 17 Ind. App. 403; 46 N. E. 941;

*People v. Schmitz*, 7 Cal. App. 330; 94 Pac. 407; *State v. Lichta*, 130 Mo. App. 284; 109 S. W. 825; *State v. Roberts* (N. H.), 69 Atl. 722; *Kresser v. Lyman*, 74 F. 765; *Hevren v. Reed*, 126 Cal. 219; 58 P. 536; *La Croix v. Commissioners*, 50 Conn. 321; 47 Am. Rep. 648; *Sprayberry v. City of Atlanta*, 87 Ga. 120; 13 S. E. 197; *McCoy v. Clark*, 104 Iowa 491; 73 N. W. 1050.

<sup>30</sup> *Moore v. Indianapolis*, 120 Ind. 493; 22 N. E. 424; *McKinney v. Salem*, 77 Ind. 213; *State v. Bonnell*, 119 Ind. 494; 21 N. E. 1101; *Stone v. Mississippi*, 101 U. S. 814; *Beer Co. v. Massachusetts*, 97 U. S. 25; *Burnside v. Lincoln Co.*, 86 Ky. 423; 7 S. W. 276; 9 Ky. L. Rep. 635; *Mugler v. Kansas*, 123 U. S. 623; 8 Sup. Ct. 273; *Prohibitory Amendment Cases*, 24 Kan. 700.

after the State's license has been issued, and while it is in force.<sup>31</sup>

### Sec. 327. Effect of enactment of prohibition and a license law.

The effect of the adoption of a constitutional provision in favor of total prohibition is to annul all statutes on the subject of licenses then in force.<sup>32</sup> And a sale after such provision goes into force, under a license previously issued and which by the terms had not expired, is illegal.<sup>33</sup> So where a

<sup>31</sup> Elk Point v. Vaughn, 1 Dak. 113; 46 N. W. 577; McKinney v. Salem, 77 Ind. 213; Decker v. McGowan, 59 Ga. 805.

In New York liquor tax certificates are property only in a qualified and restricted sense. People v. Flynn, 18 N. Y. 597; 77 N. E. 1194; affirming 110 N. Y. App. Div. 279; 96 N. Y. St. 655; and reversing 48 N. Y. Misc. Rep. 159; 96 N. Y. Sup. 653; Lyman v. Malcom Brewing Co., 160 N. Y. 96; 54 N. E. 577; 55 N. E. 408; affirming 40 N. Y. App. Div. 46; 57 N. Y. Supp. 634; Frank v. Forgetston, 61 N. Y. Supp. 1118; Duncan v. Clement (N. Y.), 119 N. Y. Supp. 374. In British Columbia a license, "like other contracts, carries the elements of mutuality," subject to forfeiture for its violation. *In re* Clay, 1 B. C., pt. II, 300.

The owner of a liquor license or a liquor tax certificate may invoke the general rules of law to protect it in any proceedings intended for the forfeiture of his rights therein. Lyman v. Malcom Brewing Co., 160 N. Y. 96; 54 N. E. 577; affirming 40 N. Y. App. Div. 46; 57 N. Y. Supp. 634; Frank

v. Forgetston, 61 N. Y. Supp. 1118; Hillard v. Giese, 25 N. Y. App. Div. 222; 49 N. Y. Sup. 286; *In re* Livingston, 24 N. Y. App. Div. 51; 48 N. Y. Supp. 989.

In Washington it is held that where the right to transfer a liquor license is recognized by a statute, it becomes valuable property, subject to barter and sale. Deggender v. Seattle, etc. Co., 41 Wash. 385; 83 Pac. 898.

So long as the State recognizes the right to make and sell liquor, the occupation is under the protection of the law, but the license may be revoked. F. W. Cook Brewing Co. v. Garber, 168 Fed. 942.

<sup>32</sup> State v. Tonks, 15 R. I. 385; 5 Atl. 636; State v. Dorr, 82 Me. 212; 19 Atl. 171; State v. Swan, 14 N. W. 492.

<sup>33</sup> Prohibitory Amendment Cas. 24 Kan. 700.

Other phases under such a provision can be seen in the following cases: Coggeshall v. Groves, 16 R. I. 18; 11 Atl. 296; Franklin v. Westfall, 27 Kan. 614; State v. Clark, 15 R. I. 383; 5 Atl. 635; State v. Kane, 15 R. I. 395; 6 Atl. 783.

statute for licensing the sale of liquors is adopted, and which prohibits all sales except under license is of so general a character that it repeals a previous prohibitory law;<sup>34</sup> but a statute prohibiting the manufacture and sale of liquors "to be used as a beverage" is not affected by a general statute of subsequent date prohibiting the manufacture and sale of liquors for "other purposes."<sup>35</sup> Of course, a general licensing statute which repeals all previous laws concerning the sale of intoxicating liquors will remit all penalties incurred under such laws, unless there be a saving clause.<sup>36</sup>

### **Sec. 328. Repeal of licensing law after license issued.**

As a license is not a contract, and the holder of it has no vested right therein within the meaning of that phrase in the Constitution, it follows that there is no limitations on the right of the Legislature or on the city when it has issued the license to repeal the statute or ordinance under which it has been issued, although the repeal may result in absolute prohibition by the annulment of the license.<sup>37</sup> Saving clauses may, however, preserve or keep in force licenses then issued until they expire by the limitations prescribed by the law repealed.<sup>38</sup>

### **Sec. 329. License by implication.**

The complying with all the requirements to secure a license is not the equivalent of a license actually granted or issued.

<sup>34</sup> Culler v. State, 42 Conn. 55; State v. Spokane Falls, 2 Wash. 40; 25 Pac. 903.

<sup>35</sup> State v. Kane, 15 R. I. 395; 6 Atl. 783. In this case a prohibitory clause in the Constitution forbade the manufacture and sale of liquors "to be used as a beverage," and it was held that the Legislature could enact a law forbidding their manufacture and sale for "other purposes."

<sup>36</sup> State v. Sutton, 100 N. C. 476; 6 S. E. 687.

Such is the case by the adoption of local option. Freese v.

State, 14 Tex. App. 31; Monroe v. State, 8 Texas App. 343; Frather v. State, 14 Tex. App. 453; Dawson v. State, 25 Tex. App. 670; 8 S. W. 820; Wells v. State, 24 Tex. App. 230; 5 S. W. 830.

<sup>37</sup> Pleuler v. State, 11 Neb. 547; 10 N. W. 481; State v. Holmes, 38 N. H. 225 (Adams v. Hackett, 27 N. H. 289; 59 Am. Dec. 376, is not the law on this point); Badgett v. State (Ala.), 48 So. 54.

<sup>38</sup> Menken v. Atlanta, 78 Ga. 668; 3 So. 414; Griffin v. Atlanta, 78 Ga. 679; 4 So. 154.

If it were, then the license would practically be one by implication, or a *quasi* parol license, things or conditions the statutes do not recognize.<sup>39</sup> And statutes or ordinances cannot be construed as impliedly granting licenses or permits to sell intoxicating liquors. This rule is very well illustrated in a number of cases. Thus, where the selectmen of a town in Massachusetts, having full authority so to do, ordered an officer of the town to cause all saloons to be closed on an hour named, and intimating an intention to prosecute all offenders in a certain contingency, a defendant claimed the result of such action was that he was entitled to sell liquor at times and under circumstances not covered by this order and intimation, but the court refused to uphold his claim, because to do so would be in effect to hold that a license had been granted by implication.<sup>40</sup> A statute provided that any person who, after the fifteenth of January, in any year, engaged in or carried on any business for which a license is required should be amenable to the law, and it was held that no one was justified in selling liquors before that date without first procuring a license.<sup>41</sup> And a law providing that a license shall not be granted outside of cities and towns, and making it unlawful to sell without a license, does not authorize a sale within these municipalities without a license first obtained.<sup>42</sup> Under no pretense of legitimate construction of a statute, where a yearly license is granted can it be claimed that the infliction of a fine for conducting the business of selling intoxicating liquors during any year shall be an implied permission to continue to conduct the business without a license for the remainder of such year.<sup>43</sup>

<sup>39</sup> State v. Moore, 14 N. H. 451; Lawrence v. Gracey, 11 John 179.

<sup>40</sup> Commonwealth v. Mathews, 129 Mass. 485.

<sup>41</sup> Moog v. Espalla, 93 Ala. 503; 9 So. 596.

<sup>42</sup> State v. Cofield, 22 S. C. 301.

<sup>43</sup> State v. McBride, 4 McCord 332.

In one State, and perhaps more, this practice is secretly pursued by connivance of the police force,

even to the knowledge of the courts.

Where a city was empowered to license the sale of liquors, and a statute provided that such a license should not authorize a sale "unless the State license be obtained and the State tax be paid before the grant thereof," it was held that the county court had no power to refuse a license, because the purpose of the law



### Sec. 330. Taken subject to subsequent legislation.

From what has already been said, the conclusion is readily reached that a licensee accepts his license, not only subject to all laws then in force having a bearing upon and regulating the liquor traffic, but also subject to all reasonable (indeed, they may be unreasonable if reasonable in the estimation of the Legislature) regulations and restraints that may be adopted in the future; and conditions to that effect need not be inserted in the license itself.<sup>44</sup> Thus a law enacted after a license is issued may forbid sales of intoxicating liquors to a drunkard or minor; for no one has or can acquire a vested right to ruin the health and morals of his fellow beings.<sup>45</sup> And so a licensee may be forbidden to sell on holidays, although it was lawful to do so when he received his license;<sup>46</sup> or he may be forbidden after the license goes into force to give away or sell food upon the licensed premises, even though the statute under which it is issued permitted selling or giving away of food, and provided that every license issued under its provisions shall be valid for the term for which it was granted, and that "the rights and liabilities of the holder thereof during such term shall be governed by the laws in force immediately prior to the taking effect of this act," and the subsequent law provided that those provisions of the earlier law "relating to the transfer, cancellation or revocation of a license, the collection of penalties, or prosecution for the violation of law, shall continue in force as to any license which has not expired at the time this act takes effect until the expiration thereof."<sup>47</sup> So a licensee may be required by a

was fully met by the payment of the State tax. *Griffith v. Commonwealth*, 14 Ky. L. Rep. (abstract) 303.

If a city have no power to exact a license, the State license will authorize sales within such city. *Baldwin County v. Milledgeville*, 42 Ga. 325.

<sup>44</sup> *Baldwin v. Smith*, 82 Ill. 162; *State v. Isabel*, 40 La. Ann. 340; 4 So. 1; *F. W. Cook Brewing Co. v. Garber*, 168 Feb. 942.

<sup>45</sup> *Hedges v. Titus*, 47 Ind. 145; *Commonwealth v. Sellers*, 130 Pa. St. 32; 18 Atl. 541; 25 Wkly. N. C. 154; 15 Atl. 891 (sales to minors forbidden).

<sup>46</sup> *Reithmiller v. People*, 44 Mich. 280; 6 N. W. 667.

<sup>47</sup> In this instance the subsequent statute was an entirely new statute, repealing the old statute, under which the license had been issued, but continuing such old license in force under the



subsequent statute to sell in certain increased quantities and be forbidden to sell liquors to be drunk upon the premises.<sup>49</sup> And so the State may require a licensee to take out a city license before he can continue his sales under his State license.<sup>49</sup> So the fee for the license then in force may be increased for the remainder of the term.<sup>50</sup>

### Sec. 331. Annulment of license by change of law.

The passage and adoption of a constitutional or statutory provision by which the sale of intoxicating liquors is prohibited will have the effect of repealing by implication all laws authorizing the issuance of licenses and of annulling those which may have been issued previously under laws authorizing them to be issued, unless their continuance for the time they were issued is saved by a proviso;<sup>51</sup> and the same will be true of the passage and adoption of a local option law.<sup>52</sup> It cannot be said in either of these events that the con-

clause above quoted. *People v. Warden*, 6 N. Y. App. Div. 520; 39 N. Y. Supp. 582, affirming 17 N. Y. Misc. Rep. 1; 38 N. Y. Supp. 837.

<sup>48</sup> *Commonwealth v. Donahue*, 149 Pa. St. 104; 24 Atl. 188; 30 Wkly. N. C. 124.

The following decisions cannot be said to be in accord with the later and better considered cases: *Rome v. Lumpkin*, 5 Ga. 447; *Hannibal v. Guyott*, 18 Mo. 515; *Adams v. Hackett*, 7 Fost. 289; 59 Am. Dec. 376; *State v. Baker*, 32 Mo. App. 98. The case of *State v. Andrews*, 26 Mo. 171, was an instance of statutory construction; and the cases of *Lehrer v. State*, 42 Ind. 482; *State v. Mullenhoff*, 74 Iowa 271; 37 N. W. 329; and *Watts v. Commonwealth*, 78 Ky. 329, involved a saving clause in subsequent statute.

In *Gilhon v. Wells*, 64 Ga. 192,

was involved an ordinance requiring all persons then or thereafter holding licenses to close their drinking places when "any denomination of Christian people" were holding church in the town. It was held void, but it was void as to future licensees.

<sup>49</sup> *Elk Point v. Vaughn*, 1 Dak. 113; 46 N. W. 577.

<sup>50</sup> *Moore v. Indianapolis*, 120 Ind. 483; 22 N. E. 424.

<sup>51</sup> *Brown v. State*, 82 Ga. 224; 7 S. E. 915; *Prohibitory Amendment Cases*, 24 Kan. 700; *Calder v. Kurby*, 71 Mass. (5 Gray) 597; *Wheeler v. State*, 64 Miss. 462; *State v. Tonks*, 15 R. I. 385; 5 Atl. 636.

<sup>52</sup> *Menken v. Atlanta*, 78 Ga. 668; 2 S. E. 559; *State v. Cook*, 24 Minn. 247; *Wheeler v. State*, 64 Miss. 462; *Robertson v. State*, 12 Tex. App. 541; *Ex parte Lynn*, 19 Tex. App. 293.

stitutional provisions that no law "impairing the obligation of contracts shall be passed," and that "no man's property shall be taken by law without just compensation" have been violated. This is so because a license to sell intoxicating liquor is not a contract, nor a property right, nor a vested interest of any sort. It is merely a permission to engage in a business which is hurtful to society, which the law regards with disfavor, and which may be withdrawn at any time.<sup>53</sup> In accepting such a license the licensee does it with the knowledge that it is at all times within the control of the Legislature, and he will be deemed to have consented to all proper conditions and restrictions which have been or may be imposed in the future, relative to the traffic in such liquors, notwithstanding their burdensome character and that he may have paid a valuable consideration for the license.<sup>54</sup> It is the peculiar province of the State, either by constitutional or legislative enactment, or through authority delegated to its municipalities, to exercise its police power for the protection of the lives, health, and property of its citizens, as well as to maintain good order and preserve public morals. It is everywhere conceded that the traffic in intoxicating liquors affects all these subjects, and that it is, hence, a proper subject for police regulation. It is essential, therefore, that the power to regulate shall be a continuing one, ever present and available, to be exercised by the State as the emergency may require. Hence, the rule that neither the State nor any of its agencies to whom the power has been delegated, can divest themselves of the right to impose such other additional restrictions upon the sale of intoxicating liquors as the maintenance of good order or the preservation of public morals may seem to require.<sup>55</sup>

<sup>53</sup> *People v. Hawley*, 3 Mich. 330; *Schwuchow v. Chicago*, 68 Ill. 444; *Fell v. State*, 42 Md. 71; *Metropolitan Board v. Barrie*, 34 N. Y. 659.

<sup>54</sup> *Haggart v. Stehlin*, 137 Ind. 43; 35 N. E. 997; *State v. Gerhardt*, 145 Ind. 439; 44 N. E. 469; *Shea v. City of Muncie*, 148 Ind. 14; 43 N. E. 138; *F. W. Cook*

*Brewing Co. v. Garber*, 168 Fed. 942.

<sup>55</sup> *Moore v. Indianapolis*, 120 Ind. 483; 22 N. E. 424.

Thus the Legislature may authorize a city by ordinance to annul a State license then in force. *Cuthbert v. Conly*, 32 Ga. 211. The case of *Rome v. Lumpkin*, 5 Ga. 447, is no longer an authority.

### Sec. 332. License prospective, not retrospective.

A license to sell intoxicating liquors should bear date of the day upon which it is issued; it takes effect from that day. It does not relate back to the order or judgment granting it, unless there is a statute providing that it shall do so. Dating it back so as to legalize sales made between the date of the order or judgment and the issuing of the license will not have that effect.<sup>56</sup> It cannot act retrospectively so as to condone offenses against the statute prior to its issue. It is the license properly dated and issued, and not the order or judgment granting it, that authorizes an applicant to sell at retail. The order or judgment is not the license; and when the license is obtained and dated, it looks forward, and not backward. It cannot have relation so as to cover an intermediate space. The order or judgment granting a license is but one of the preliminary steps in procuring it. Such an order or judgment may have been made or rendered, and the applicant then refuse to pay the license fee or execute the bond required by the statute. The statutes in such cases, almost invariably, provide for the payment of the fines and costs assessed against the licensee for violations of the law and all civil damages occasioned by unlawful sales made by him. The sureties on such a bond can not be held liable to pay fine and costs or civil damages which have been or may be adjudged against the licensee on account of anything done before the execution of the bond, though done after the making of the order or rendering of the judgment granting the license. An applicant in such case cannot be under license unless at the same time he is under bond, nor can he obtain a license until he has paid the license fee.<sup>57</sup> The principle here involved is the same

<sup>56</sup> Zeglin v. Carver Co., 72 Minn. 17; 74 N. W. 901.

<sup>57</sup> Edwards v. State, 22 Ark. 253; Johnson v. State, 60 Ga. 634; Reese v. Atlanta, 63 Ga. 344; Hunter v. State, 79 Ga. 365; Moore v. People, 109 Ill. 499; Wiles v. State, 33 Ind. 293; Keiser v. State, 78 Ind. 206; So-

pher v. State, 157 Ind. 360; 61 N. E. 785; State v. Pittman, 10 Kan. 593; Commonwealth v. Welsh, 144 Mass. 356; 11 N. E. 423; State v. Shaw, 32 Me. 570; People v. Foster, 64 Mich. 715; People v. DeGroot, 111 Mich. 245; State v. Hughes, 24 Mo. 147; State v. O'Connor, 65 Mo. App.

under the United States internal revenue laws.<sup>58</sup> A receipt for a license fee in such case is not retroactive, and cannot be admitted in evidence on a charge for retailing liquor during a period of time prior to its issuance. And this principle has been applied where a sale was made after an application for a license had been made, but the license could not be obtained until afterwards, because of the fact that there was no officer authorized to issue it;<sup>59</sup> also, where the licensee had given a bond, which was defective because one of the sureties was disqualified, although the bond was given in good faith and was sufficient in form and had been approved by the municipal authorities.<sup>60</sup> Where an ordinance provided all licenses should be taken out during the first week in April and the first week in October, to continue one year from those weeks, but permitted the granting of licenses at other times if the applicant paid for a full year, it was held that a licensee taking out his license in December, which would expire during the first week of the following October, could not justify a sale made in November immediately preceding the December he took it out, although he received a receipt for a license beginning the previous October.<sup>61</sup> In the same State it was held that the penalty was not remitted by the issuance of the license, although the ordinance under which it was issued provided that after suit commenced for a penalty no person should be permitted to take out a license without the payment of

325; *Overseen, etc., v. Warner*, 3 Hill (N. Y.), 150; *Kingston v. Osterhondt*, 23 Hun (N. Y.), 66; *State v. Cofield*, 22 S. C. 301; *State v. Luddington*, 33 Wis. 107; *State v. Fisher*, 33 Wis. 155; *Brown v. State*, 27 Tex. 335.

<sup>58</sup> *United States v. Angel*, 11 Fed. Rep. 155.

<sup>59</sup> *Bolduc v. Randall*, 107 Mass. 121; *State v. McNary*, 88 Mo. 143.

<sup>60</sup> *Wolcott v. Judge*, 112 Mich. 311; 70 N. W. 831. The cases of *Vannoy v. State*, 64 Ind. 447, and *State v. Wilcox*, 66 Ind. 557, are

overruled in *Keiser v. State*, 78 Ind. 430. See *State v. Strathmann*, 4 Mo. App. (abstract), 533.

In Missouri a license takes effect from the date of its delivery; and antedating it does not affect its validity. *State v. Leonard* (Mo.), 116 S. W. 14.

When a license bears two dates, evidence is admissible to show the true date of its issuance. *Fagan v. State* (Del.), 74 Atl. 692.

<sup>61</sup> *Charleston v. Feckman*, 3 Rich. L. 385.



the penalty.<sup>62</sup> On the day an applicant applied for a city license and paid one-half the license fee, a statute was passed prohibiting the issuance of a license to a person who should not have paid the county fee as well as the city fee. City licenses expired December 31st, and the application was made during the following January. In the following July he obtained his license, in which it was recited that it was good until the following December 31st. Two days before he had paid this half of the license fee he made a sale of liquor. It was held that his license did not have such a retroactive effect as to enable him to escape the penalty of selling without a license.<sup>63</sup> The fact that no board had been created to issue the license at the time of the application will not excuse a sale thereafter made and before the license was issued.<sup>64</sup> If a license be produced covering the period of sale, the prosecution may show that it had been antedated.<sup>65</sup>

### Sec. 333. Retroactive effect of license.

Whether or not a license can have such a retroactive effect as legalizes past illegal sales has been a divided question in

<sup>62</sup> *Charleston v. Schmidt*, 11 Rich. L. 343.

But see *Charleston v. Corleis*, 2 Bailey (S. C.), 186.

<sup>63</sup> *State v. Mancke*, 18 S. C. 81.

<sup>64</sup> *Bolduc v. Randall*, 107 Mass. 121.

<sup>65</sup> *Commonwealth v. Welch*, 144 Mass. 356; 11 N. E. 423; *State v. Leonard* (Mo.), 116 S. W. 14.

In the case of *Rome v. Knox*, 14 How. Pr. 268, a new law made it impossible to renew a license that had expired April first until July first, when the renewal was dated back, and sales in the interval made legal; and a like ruling was made in *Pahner v. Doney*, 2 Johns. Cas. 346. But at the present day (these were early cases) it is exceedingly doubtful if these

cases are recognized as sound decisions.

A statute providing for a license during a "calendar year" means the year from January 1st to December 31st, inclusive, and not a period of twelve months commencing at any fixed or designated month, and terminating with the day of the corresponding month in the next succeeding year. *Carroll v. Wright*, 131 Ga. 728; 63 S. W. 260. See also *Crothers v. Monteith*, 11 Manitoba, 373.

When license may become effective in England. *Rex v. Johnston*, 75 L. J. K. B. 229; [1906] 1 K. B. 228; 94 L. T. 377; 54 W. R. 347; 30 J. P. 118; 22 T. L. R. 226.



the past; but it may now be regarded as settled that it cannot. Where a license was granted, thereafter a sale made at the place for which it was granted, a prosecution then instituted, and the next day the requisite bond was filed and the license issued, dated back to the date of the grant, it was held that it could have no such retroactive effect as to relieve the licensee from the penalty he had incurred by making the sale, although the license, being only for one year, began to run on the day it was granted.<sup>66</sup> "The order of the board is not the license," said the Supreme Court of Indiana, "nor does it alone confer the power to retail. It is but one of the preliminary steps in procuring the license. The order may be made, but the applicant may refuse to pay the fee or execute the bond, without which he is not entitled to the license. It is the license itself, properly procured, that confers the right to retail under the statute, and until it is issued no such right is conferred. It is made a penal offense to sell intoxicating liquors by a less quantity than a quart at a time, or to sell any quantity to be drunk or suffered to be drunk in the vendor's house without such license, and it is not in the power of the county board or the auditor to grant a license extending back to a prior date, so as to cover offenses already committed. The license can only take effect from the date it is issued."<sup>67</sup> In another line of cases, however, it is held that the subsequent issuance of the license so far legalizes the sale as to enable the vendor of the liquor to escape the penalty

<sup>66</sup> *Keiser v. State*, 78 Ind. 430 (overruling *Vannoy v. State*, 64 Ind. 447, and *State v. Wilcox*, 66 Ind. 557); *Houser v. State*, 18 Ind. 106; *Schliet v. State*, 31 Ind. 246; *Wiles v. State*, 33 Ind. 206; *Fagan v. State* (Del.), 74 Atl. 692.

<sup>67</sup> *Wiles v. State*, 33 Ind. 206. To same effect are many cases. *Edwards v. State*, 22 Ark. 253; *Lawrence v. Gray*, 11 Johns. 179; *State v. Hughes*, 24 Mo. 147; *State v. Brooks*, 94 Mo. App. 57; 67 S. W. 933; *Dudley v. State*, 91 Ind. 312. (The case of *Keiser v.*

*State*, 78 Ind. 430, and *Dudley v. State*, 91 Ind. 312, are made to turn upon the fact that the grantee had not filed his bond, which he must have done before getting his license, when the sale was made; but even though the bond had been filed, and no license taken out, the sale would now be held illegal by the great majority of cases.) *State v. Bach*, 36 Minn. 234; 30 N. W. 764; *Kingston v. Osterhaut*, 23 Hun, 66; *United States v. Angell*, 11 Fed. 34.

of the statute. The overruled cases of the Indiana court very well express the view of the courts upon this point: "If he had been prosecuted for this sale, before he obtained his license, he would have been liable perhaps, upon conviction, to the penalty imposed by statute. But it seems to us that, after he had paid his license fee and had obtained a license, in due course of law, which covered the day on which the sale was made, the sale which had been illegal for the want of such license, was thereby legalized, and the offense was thereby pardoned, if the expression may be allowed, at least to the extent that he could not and ought not to be thereafter prosecuted or convicted. The proper officers under the law having received his money, and having thereupon issued him a license which in terms authorized him to make the sale for which he was afterward indicted, we are clearly of the opinion that these facts operated as a complete bar to this prosecution."<sup>68</sup> And where a city ordinance, by statute, was required to "relate back to the regular semi-annual periods of April and October," it was held that a license would relate back to one or the other of those dates, as the case might be, so as to cover a sale thereafter and before the license was issued.<sup>69</sup> It is error to admit evidence of a sale before the statute prohibiting it took effect.<sup>70</sup> A license issued in the afternoon does not cover a sale in the forenoon of the same day.<sup>71</sup> Of course, where a license begins to run from the date of its issuance and not from the date of the grant, the result is the same.<sup>72</sup>

### Sec. 334. Impossibility to secure license.

It is no excuse, when a charge is preferred for a sale without a license, that none could be procured, under any circum-

<sup>68</sup> *Vannoy v. State*, 64 Ind. 447; *State v. Wilcox*, 66 Ind. 557; 9 Cent. L. Jr. 408. (These cases overrule the earlier Indiana cases cited above.) But see *Keiser v. State*, 78 Ind. 430.

<sup>69</sup> *Charleston v. Corleis*, 2 Bailey (S. C.), 186.

Yet if suit had been brought for the penalty before the license was

issued, the subsequent issue of the license is no defense. *Charleston v. Schmidt*, 11 Rich. (S. C.) 343.

<sup>70</sup> *State v. Dunning*, 14 S. D. 316; 85 N. W. 589.

<sup>71</sup> *Campbell v. Strangways*, 3 C. P. Div. 105.

<sup>72</sup> *Brown v. State*, 27 Tex. 335; *Boldue v. Randall*, 107 Mass. 121;

stances.<sup>73</sup> This statement is very well illustrated by an Indiana case. The Ohio River constitutes the boundary between that State and Kentucky, low-water mark on the north side of the river being the southern boundary of the State of Indiana, but Indiana has concurrent jurisdiction in civil and criminal cases with the State of Kentucky on the river. If a violation of the criminal law occurs on the river the offense may be charged as having been committed in the county opposite the place where the act was committed constituting the crime. Where, therefore, intoxicating liquors were sold without license in a boat anchored in the river opposite an Indiana county, south of low-water mark, on the Indiana side, it was held proper to charge and try the offense as having been committed in that county, and the fact that no provision had been made by law for granting a license to sell intoxicating liquors upon the Ohio River did not authorize their sale without a license. "It will thus be seen," said the court, "that the criminal laws of the State extend to and are in force on the Ohio River where such river constitutes the southern boundary of the State. The contention of the appellant, that because no provision is made by law for granting a license to sell intoxicating liquors upon the Ohio River, he has a right to sell without a license, is not tenable. As it is made unlawful to retail intoxicating liquors within the jurisdiction of the State without a license so to do, and as there is no law authorizing the granting of a license to sell upon the waters of the stream, it may be that as to the space between low-water mark on the Kentucky side, we have absolute prohibition in so far as the right to sell liquors by retail is involved. The difficulty attending the detection, arrest and punishment of violators of the law engaged in the retail liquor business on the water would seem to furnish a sufficient reason to the Legislature

Commonwealth v. Welch, 144 Mass. 356; 11 N. E. 423.

In Missouri it begins to run from date of delivery. State v. Leonard (Mo.), 116 S. W. 14.

<sup>73</sup> State v. Tucker, 45 Ark. 55; State v. Brown, 41 La. Ann. 771;

6 So. 638; Smith v. Adrian, Man. (Mich.) 495; Hunzinger v. State, 39 Neb. 653; 58 N. W. 194; Shannon v. State, 39 Neb. 658; 58 N. W. 196; Soehl v. State, 39 Neb. 659; 58 N. W. 196; Rowels v. State, 39 Neb. 659; 58 N. W. 197.

for withholding a license to sell upon the Ohio and Wabash Rivers, when such rivers constitute the boundary of the State. It is to be observed that we are not dealing with a person navigating the Ohio River, engaged in interstate commerce, but the case before us is one where the offender, not engaged in navigation, anchors his boat near the Indiana line and engages in the business of retailing intoxicating liquor without a license. Such a case, in our opinion, falls both within the letter and the spirit of our statute, and it is no defense to say that the law makes no provision for granting a license to sell at that place."<sup>74</sup> Nor is it an excuse that no one is empowered to issue the license; for if a person cannot obtain a license he has no right to sell.<sup>75</sup> Nor is it any excuse that the licensing board or court absolutely refuses to grant one a license, however much he may be entitled to it, for its refusal to grant the license does not repeal the statute.<sup>76</sup> It is not a defense, in a prosecution by a municipality, for a violation of the ordinance that a license could not be issued by it for that portion of the city where the sale was made;<sup>77</sup> nor is it a defense that the city clerk was so ill that none could be issued, and after the sale one was issued and dated back to the time when the old license should have been renewed.<sup>78</sup> And it is not a defense when the limit has been reached in the number of licenses that can be issued for the locality, as shown by the official record, for the accused to produce an unrecorded license and prove thereunder he made the sale charged to have been an illegal one.<sup>79</sup> Practically, in diametrical opposition to this line of cases is another line which, under proper con-

<sup>74</sup> *Welsh v. State*, 126 Ind. 71; 25 N. E. 883; 9 L. R. A. 664.

As to sale in Michigan on one of the great lakes, see *People v. Bouchard*, 82 Mich. 156; 46 N. W. 232; 9 L. R. A. 106.

<sup>75</sup> *Rosenham v. Commonwealth*, (Ky.); 2 S. W. 230; 3 Ky. L. Rep. 519; *Bolduc v. Randall*, 107 Mass. 121; *State v. McNeary*, 88 Mo. 143.

<sup>76</sup> *Commonwealth v. Blacking-*

*ton*, 24 Pick. 352. *New York v. Mason*, 1 Abb. Pr. 344; 4 E. D. Smith, 142; *State v. Downer*, 21 Wis. 274; *State v. Kantler*, 33 Minn. 69; 21 N. W. 856; *State v. Funk*, 27 Minn. 318; 7 N. W. 359; *Brock v. State*, 65 Ga. 437; *Kadgihn v. Bloomington*, 58 Ill. 229.

<sup>77</sup> *Indianapolis v. Fairchild*, 1 Ind. 315.

<sup>78</sup> *Reese v. Atlanta*, 63 Ga. 344.

<sup>79</sup> *State v. Shaw*, 32 Me. 570.



ditions, excuse the person making the alleged illegal sale, as where a licensed dealer, after his license expired, and before the next possible meeting of the licensing board for the issuing of licenses, continued to sell until its next meeting, and then took out a license.<sup>80</sup> And where the system of licensing took effect July first and a new license law took effect April first, it was held that no offense was committed by an old license holder making sales during the interval, although his license, by reason of the new law, was not in force during that interval.<sup>81</sup>

### **Sec. 335. Neglect or improper refusal to grant a license.**

Licenses to sell intoxicating liquors are not matters of right. This has been repeatedly decided. Therefore, the neglect or the improper refusal or the intentionally wrongful refusal of the licensing board or court or officers to grant or issue a license to an applicant, although he has clearly shown himself entitled to it, will not justify him in engaging in the sale of intoxicating liquors without a license; and when prosecuted for a violation of the statute by making sales without a license covering the period of such sales, he cannot show that he had taken all the necessary steps to secure one, but was wrongfully refused, or that the board or court officer had negligently failed to issue it.<sup>82</sup> So a refusal of the licensing board to grant any licenses whatever, even though they had no discretion in the matter of their issuance, however arbitrarily made, will not justify an applicant (or anyone else) in engaging in the liquor traffic.<sup>83</sup> In such an instance the applicant must pursue his remedy by appeal or mandamus;<sup>84</sup> and, of course, if the board has a discretion in the granting of a license, he is without relief. The fact that the attempted adoption of

<sup>80</sup> *Palmer v. Doney*, 2 Johns. Cas. 346.

<sup>81</sup> *Rome v. Knox*, 14 How. Pr. 268.

<sup>82</sup> *State v. Huntley*, 29 Mo. App. 278; *Reese v. Atlanta*, 63 Ga. 344.

<sup>83</sup> *Mayor v. Mason*, 4 E. D. Smith, 142; *State v. Downer*, 21

Wis. 274; *Commonwealth v. Blackington*, 24 Pick. 352.

<sup>84</sup> *Brock v. State*, 65 Ga. 437; *State v. Jamison*, 23 Mo. 330; *Kansas City v. Flanders*, 71 Mo. 281; *Kadgihn v. Bloomington*, 58 Ill. 229.



local option is void, but the licensing board has erroneously held it valid, and consequently refused the application for a license, will not justify the applicant in engaging in liquor traffic.<sup>85</sup> Nor can he justify his action in selling without a license on the ground that the district in which prohibition prevailed has voted in favor of license, when he has not secured one.<sup>86</sup> And if his license has expired and he has made application for its renewal, he cannot excuse himself upon the plea that it was the practice that between the date of the expiration of the license and the granting of a renewal, where proceedings for a renewal were pending, it was customary to continue in the traffic, and that police officers assured him he would not be prosecuted or was immune from prosecution.<sup>87</sup> Where, however, the license issued was only evidence of the permit granted, and an ordinance authorizing the town clerk to issue it upon compliance with its provisions, the court held the mere clerical failure of that office to issue the formal permit would not subject the applicant to a prosecution for having violated its provisions in making a sale without its issuance.<sup>88</sup>

### Sec. 336. Performance of requisites to obtain a license not a license.

The performance of all the requisites to obtain a license—the filing of the application, the obtaining and filing of the written consent of the adjoining property owners, the order for the issuance of the license, any or all of these is not or are not the equivalent of the issuance of a license.<sup>89</sup> This is especially true if the applicant has not paid the license fee;<sup>90</sup> or the licensing board have a discretion in granting the license

<sup>85</sup> *Curry v. State*, 28 Tex. App. 477; 13 S. W. 773.

<sup>86</sup> *State v. Cron*, 23 Minn. 140.

<sup>87</sup> *State v. Brady*, 14 R. I. 508.

<sup>88</sup> *Prather v. People*, 85 Ill. 36.

Of this case it may be observed that the clerk was really an automatic machine for issuing the license when a certain condition had been brought about.

<sup>89</sup> *Roberts v. State*, 26 Fla. 360; 7 So. 861; *State v. White*, 23 Ark. 275; *Brock v. State*, 65 Ga. 437; *State v. Bach*, 36 Minn. 234; 30 N. W. 764; *State v. Huntley*, 29 Mo. App. 278; *Curry v. State*, 28 Tex. App. 477; 13 S. W. 773.

<sup>90</sup> *Dudley v. State*, 91 Ind. 312; *Houser v. State*, 18 Ind. 106.

and have made no order for it.<sup>91</sup> In one case it was said: "It is argued that the defendant tendered the money and demanded a permit to sell liquor, and that the officer whose duty it was to grant the permit refused to grant it, and for this reason the defendant, in selling without a license, was not legally liable for such selling. But this is not correct, because it makes no difference whether the defendant offered to pay the money or not, as his authority for selling could only be shown by the proper license. If the defendant was entitled to the permit and license, he could have compelled<sup>92</sup> the proper officers to grant them. This he did not do, but proceeded to sell without authority, and hence laid himself liable to the penalties of the law."<sup>93</sup> But where an applicant had taken all the steps that were required of him to secure a license, including the payment of the license fee, it was held that the jury were warranted in acquitting his bartender who had made a sale for his employer.<sup>94</sup> So where an applicant had complied with all the requirements of an ordinance to secure a license and had paid his fee, it was held that he was not to be convicted merely because of the failure of the clerk of the town to issue the license;<sup>95</sup> and in the same State it was held that a refusal of the authorities to issue the license, where they had no discretion, would justify the applicant to proceed upon the retail of liquor.<sup>96</sup> But where the president of the town board refused to approve the applicant's bond or to sign the license, it was held that sales could not be made upon the application.<sup>97</sup> Yet where a licensing board refused to grant a license, but on appeal to the court a judgment was entered that he was entitled to one, and thereupon he paid the license fee and tendered a sufficient bond which the county auditor refused to approve and also refused to issue the license; and the remonstrators then appealed from this judg-

<sup>91</sup> New York v. Mason, 4 E. D. Smith, 142.

<sup>92</sup> See Brock v. State, 65 Ga. 437; Kadgihn v. Bloomington, 58 Ill. 229.

<sup>93</sup> Roberts v. State, 26 Fla. 360; 7 So. 861; Commonwealth v.

Welsh, 144 Mass. 356; 11 N. E. 423; Vannoy v. State, 64 Ind. 447.

<sup>94</sup> State v. White, 23 Ark. 275.

<sup>95</sup> Prather v. People, 85 Ill. 36.

<sup>96</sup> Zanone v. Mound City, 11 Bradw. 334.

<sup>97</sup> Franklin v. Stringam, 56 Ill. App. 194.

ment to the Supreme Court, and after the appeal to the Supreme Court had been taken, and after the fee had been paid, and after the auditor, by command of the court, had approved the bond, the applicant sold liquor, it was held he could not be prosecuted for selling liquor without a license, the court saying: "An applicant for a license, who has obtained a proper judgment declaring his right to a license, and has properly tendered the requisite fee and bond, cannot be successfully prosecuted for violating the law, for he has done all that it was in his power to do, and all that the law required of him. The violation of law is on the part of the ministerial officer who withholds the license. The case is utterly unlike that of one who sells without having tendered either fee or bond, and after sale makes tender of both bond and fee. In the one case there is wrong on the part of the applicant; in the other there is none; in the one case there is the possibility of an evasion of the law, in the other there is an earnest effort to obey the law before undertaking to sell. The applicant cannot be in the wrong where he has done all that it was in his power to do. A man cannot be denied a statutory right because a public officer has made it impossible to fully comply with the statute; to hold otherwise would be equivalent to declaring that a man may be denied the benefit of a statute for not doing what was legally impossible. If the proper officer should demand the fee and bond and offer a license relating back to the judgment and the appellant should refuse to execute the bond or pay the fee, and should thereafter retail liquor, he would, doubtless, be subject to prosecution, but as long as he honestly keeps himself in the position of doing all that he can do to comply with the law, he cannot be prosecuted for a criminal offense."<sup>98</sup>

**Sec. 337. What a license does and does not authorize.**

What a license does authorize depends upon the law under which it is issued and the purpose for which it was issued. Thus, under an early statute of Ohio it was held that a license to keep a tavern was, according to the true meaning of the act,

<sup>98</sup> Padgett v. State, 93 Ind. 396.

a license to sell intoxicating liquors at retail;<sup>99</sup> and a like decision was rendered in South Carolina,<sup>1</sup> although a decision otherwise was also rendered in that State,<sup>2</sup> and a decision similar to the latter was rendered in New York.<sup>3</sup> So that it has been held that a license to *keep* a saloon does not necessarily authorize the licensee to engage in the sale or to sell intoxicating liquors.<sup>4</sup> And a licensed restaurant keeper cannot supply his customers with intoxicating liquors under his license;<sup>5</sup> nor can they be sold under a confectioner's license.<sup>6</sup> So a statute authorizing sales in small quantities cannot be construed to authorize sales of liquors to be drunk on the premises, even though the licensee is an innkeeper, where a statute forbids sales of liquors to be drunk at the place of sale.<sup>7</sup> So a license to sell from a quart to five gallons is not a license to retail liquors.<sup>8</sup> A license to sell for one purpose will not authorize a sale for another purpose.<sup>9</sup> Nor can a licensee

<sup>99</sup> *Hirn v. State*, 1 Ohio St. 15. So in Kentucky, *Commonwealth v. Kemp*, 14 B. Mon. 385.

<sup>1</sup> *State v. Chamblyss*, 1 Cheves, 220; 34 Am. Dec. 593. So in Maine, *State v. Woodward*, 34 Me. 293.

<sup>2</sup> *Commissioners v. Dennis*, 1 Cheves, 229.

<sup>3</sup> *Benson v. Moore*, 10 Wend. 260; *Commonwealth v. Jordan*, 18 Pick. 228; *Hannibal v. Guyott*, 18 Mo. 515.

<sup>4</sup> *Kitson v. Ann Arbor*, 26 Mich. 325.

<sup>5</sup> *Commonwealth v. Markoe*, 17 Pick. 465; *Commonwealth v. Jordan*, 18 Pick. 228; *State v. Cohen* 35 Md. 236.

<sup>6</sup> *New Orleans v. Jane*, 34 La. Ann. 667.

<sup>7</sup> *People v. Smith*, 69 N. Y. 175; reversing *Smith v. People*, 9 Hun, 446; *Commonwealth v. Mandeville*, 142 Mass. 469; 8 N. E. 327; *Commonwealth v. Frost*, 155 Mass. 273; 34 N. E. 334.

<sup>8</sup> *State v. Newcomb*, 107 N. C. 900; 12 S. E. 53. In this case the charter of the city of Greensboro prohibited the county commissioners granting a license to retail liquors in the city without the consent of the city, but permitted them granting licenses to sell in quantities of five gallons or less.

The defendant cannot give evidence that he thought he was selling five gallons when the liquor sold was less than that quantity. *People v. Nylin*, 236 Ill. 19; 86 N. E. 156; affirming 139 Ill. App. 500. In this case it was also held that there must be five gallons of quiet liquor after it had been released from confinement and the gas, froth or foam arising when the liquor is released from the vessel in which it is contained cannot be considered in determining the quantity of liquor sold.

<sup>9</sup> *State v. Adams*, 20 Iowa, 486; *Curd v. Commonwealth*, 14 B. Mon. 386.



justify sales under his license in violation of the criminal laws of the State, though no reference be made in his license or in the licensing statutes to such laws.<sup>10</sup> So where a board of county commissioners had the power to make an order prohibiting sales within three miles of any college, after they had made such an order it was held that a license granted by them for sale of liquors at a place within the limits thus prescribed would not be a justification to the licensee in making sales thereunder; for the reason that when the board had entered the prohibition order its powers were exhausted, and it could neither revoke nor modify its action.<sup>11</sup> So if a statute prohibit the sale of liquor within a certain distance of a factory, a license for the county will not authorize a sale within the prohibited area.<sup>12</sup> A license to sell "bottled beer" by the quart will not authorize a sale by the quart when the liquor is drawn from casks.<sup>13</sup> A license to sell at a particular place will not justify a sale at another place, or on certain premises a sale off the premises,<sup>14</sup> nor to conduct the business in more than one place.<sup>15</sup> A licensee under a wholesale license cannot sell at retail.<sup>16</sup> Nor is a licensee authorized to sell in violation of law simply because he holds a license,<sup>17</sup> as on Sunday<sup>18</sup> or out of hours.<sup>19</sup>

<sup>10</sup> *Lambert v. State*, 8 Mo. 492.

<sup>11</sup> *Wilson v. State*, 35 Ark. 414.

<sup>12</sup> *Barnes v. State*, 49 Ala. 342.

<sup>13</sup> *Harris v. People*, 1 Colo. App. 289; 28 Pac. 1133.

<sup>14</sup> *State v. Prettyman*, 3 Har. (Del.) 570; *Hochstadler v. State*, 73 Ala. 24; *Commonwealth v. Estabrook*, 10 Pick. 293; *Wason v. Severance*, 2 N. H. 501; *People v. Davis*, 45 Barb. 494; *State v. Moody*, 95 N. C. 656; *Horan v. Travis Co.*, 27 Tex. 226; *Pearce v. State*, 35 Tex. Cr. Rep. 150; 32 S. W. 697; *Travis v. State*, 37 Tex. Cr. Rep. 486; 36 S. W. 589.

<sup>15</sup> *Zinner v. Commonwealth* (Pa. St.), 14 Atl. 431; *State v. Walker*, 4 Shep. (Me.) 241; *State v. Fredericks*, 16 Mo. 382; *State v. Hughes*, 24 Mo. 147. Keeping three bars at one place is permissible. *St. Louis v. Gerardi*, 90 Mo. 640; 3 S. W. 408.

<sup>16</sup> *People v. Greiser*, 67 Mich. 490; 35 N. W. 87.

<sup>17</sup> *Lambert v. State*, 8 Mo. 492; *Horning v. Wendell*, 57 Ind. 171; *Gouin v. State*, 8 Mo. 493; *Brua v. State*, 8 Mo. 496.

<sup>18</sup> *State v. Ambs*, 20 Mo. 214.

<sup>19</sup> *Maxwell v. Jonesboro*, 11 Heisk. 257.



**Sec. 338. Agent or servant when protected by license of his principal.**

A license to sell intoxicating liquors is not transferable, but a licensee who has not forfeited his license may carry on the business by an agent at the place designated in the license, and the agent will not be responsible, criminally, for selling without a license. If, however, under a statute which requires the applicant for a license to be a resident where the application is made, the licensee moves from the county or State, he can not continue the business under his license by an agent. This is so because the license in such case is a personal privilege, not transferable, and the personal fitness of the licensee is a matter of legislative concern; the fitness not merely when an applicant, but also at all times while in the enjoyment of the privilege. The purpose of a Legislature in providing for the granting of such a license is to regulate the traffic, in part, through the particular persons found by the proper authorities to be qualified to have charge and control of the business.<sup>20</sup> Yet, however, in Alabama and Kentucky it has been held that a license having been granted to one man to keep a tavern in a particular house, and he having removed from it, another man, being indicted for retailing liquor in the same house, may prove in defense that he did it as the agent of the licensee under the latter's license.<sup>21</sup> The weight of authority, however, we think is against the Alabama and Kentucky decisions, and there is reason for thinking so. A review of the statutes upon this subject forces the conclusion that there has been a manifest purpose shown by the Legislature to place about the retail traffic a safeguard by way of prescribing for licensees qualifications tending to minimize the inevitable evils of the business. The object of such statutes is not to encour-

<sup>20</sup> *Pickens v. State*, 20 Ind. 116; *Krant v. State*, 47 Ind. 519; *Runyon v. State*, 52 Ind. 320; *Keiser v. State*, 58 Ind. 379; *Shaw v. State*, 56 Ind. 188; *Pierce v. Pierce*, 17 Ind. App. 107; 46 N. E. 480; *Duncan v. Commonwealth*, 2 B. Mon. (Ky.) 281; 38 Am. Dec.

152; *People v. Buffum*, 27 Hun (N. Y.), 216; *State v. McNeely*, 60 N. C. 232; *Young v. Stevenson*, 73 Ark. 480; 86 S. W. 1000.

<sup>21</sup> *Thompson v. State*, 37 Ala. 151; *Barnes v. Commonwealth*, 2 Dana (Ky.), 388.

age the traffic, but rather to narrow its dangers, the extent of which is largely dependent upon the qualifications of the particular persons to whom the control of the business is entrusted. It is plain that very much of such contemplated restraining influences would be less likely to be exercised by proprietors continuously away from the neighborhood of the business, and unacquainted, therefore, with the persons of their customers and their habits, and unable to personally supervise the conduct of the business. Such statutes contemplate, not merely that the licensee shall remain within limits where he may be reached by legal process, but also that he shall remain where he will have the ability to see personally that the business is carried on within the restrictions placed upon it by law.<sup>22</sup> And for like reasons the placing of such a business in the hands of an agent must be real and not for the purpose of evading the law, and therefore the appointing a vendee by the vendor of a saloon or other place where intoxicating liquors are retailed, as his agent, will afford such vendee no protection under the vendor's license.<sup>23</sup> This statement is well illustrated in a case where B agreed to pay A for his license to keep a saloon and sold liquors in an adjoining room, renting the room from C, the saloon not being at all under the control of A. It was held that A's license was no protection to B.<sup>24</sup> Of course, if the principal cannot make sales at any other place than the one licensed, his agent in making them at another place is not protected by the license.<sup>25</sup> But a license for a place does not necessarily confine the agents in the performance of his duties to the licensed premises; for his principal may send him out to solicit and take orders, and

<sup>22</sup> *State v. Dudley*, 33 Ind. App. 640; 71 N. E. 975; *Sawyer v. Sanderson*, 113 Mo. App. 233; 88 S. W. 151.

<sup>23</sup> *Heath v. State*, 105 Ind. 342; 4 N. E. 901; *Commonwealth v. Branaman*, 8 B. Mon. (Ky.) 374. See *Keiser v. State*, 58 Ind. 379.

If the principal has a license, the agent, in making a sale for his master, will be protected the

same as if his principal had made it. *State v. Hunt*, 29 Kan. 762; *Barnes v. Commonwealth*, 2 Dana. 388; *Duncan v. Commonwealth*, 2 B. Mon. 281; 38 Am. Dec. 152; *People Buffum*, 27 Am. 216.

<sup>24</sup> *Commonwealth v. Branamon*, 8 B. Mon. 374.

<sup>25</sup> *People v. Lester*, 80 Mich. 643; 45 N. W. 492.

he will not be liable if he do not deliver the goods sold, the place of delivery being confined to the licensed premises.<sup>26</sup>

**Sec. 339. Sale by servant when his master holds no license—Illegal sales.**

The usual statute prohibiting sales without a license or permit has been held not to apply to an agent or servant merely selling his principal's or master's liquors, he not otherwise violating the law. Thus in England a statute provides that "no person shall sell or expose for sale by retail any intoxicating liquors without being duly licensed to sell the same, or at any place where he is not authorized by his license to sell the same. Any person selling or exposing for sale by retail any intoxicating liquor which he is not licensed to sell by retail, or selling or exposing for sale any intoxicating liquor at any place where he is not authorized by his license to sell the same" is liable to certain penalties. It was held that this statute did not apply to a sale of his master's property by a servant under orders. "The sale which is prohibited," said Chief Justice Russell, "must be a sale by the person who ought to be licensed. The sale struck at is a sale by the master or the principal."<sup>27</sup> But if he acted knowingly he can be convicted under the Act of 1848,<sup>28</sup> making it an offense to aid and abet in the illegal sale of intoxicating liquor.<sup>29</sup> In the case just cited it was held that an unlicensed sale at a bar within the precincts of the House of Commons by a servant of the House of the liquors of the House, by the direction of the committee, did not render him liable under the provision of the statute above quoted. But "if a servant having no authority to sell at all, chooses to make a sale, he not being a licensed person, is liable to penalties under" the statute

<sup>26</sup> Haug v. Gillett, 14 Kan. 140.

<sup>27</sup> Williamson v. Norris [1899], 1 Q. B. 7; 62 J. P. 790; 68 L. J. Q. B. 31; 47 W. R. 94; 79 L. T. 415; 15 T. L. R. 18; 19 Cox. C. C. 203; Newell v. Hemingway, 53 J. P. 324; Carrico v. Commonwealth, 5 Ky. L. Rep. (abstract) 605; State v. Sterns, 28 Kan. 154.

<sup>28</sup> 11 and 12 Vict. c. 43.

<sup>29</sup> Williamson v. Norris, *supra*; Wilson v. Stuart, 32 L. J. M. C. 198; 3 B. & S. 913; 27 J. P. 661; 8 L. T. 277; Burnett v. State, 42 Tex. Cr. App. 600; 62 S. W. 1063; Richardson v. Commonwealth, 11 Ky. L. Rep. (abstract) 174.

quoted.<sup>30</sup> In the case just cited the defendant, who was licensed to sell by retail, at his brewery, beer for consumption off the premises, employed a drayman to deliver beer to customers only who had previously given orders for it. He had been expressly ordered not to sell or deliver beer to other persons, and to bring back to the brewery any beer which he was unable to deliver. The drayman sold and delivered some bottled beer from his van to persons in a street who had not previously ordered it. It was held that the defendant was not liable, not having violated the statute, the drayman not having had any delegated authority to sell, and what the drayman did was outside the scope of his authority.<sup>31</sup> The decision of the English courts would seem to be reasonable, but their doctrine has not always been accepted in this country. In Vermont it was said of an agent who illegally sold liquors: "The agent who does the act can stand in no better situation than his principal. He justifies under him, and if the principal had no authority to sell the agent would have none."<sup>32</sup> The rule announced in this quotation has been adopted in many cases, and they hold that the fact the servant made the sale for his master is no defense if the latter was unlicensed.<sup>33</sup> Indeed, the decisions have gone so far as to hold that the good faith of the agent or servant is immaterial; for at his peril he must ascertain whether his principal holds

<sup>30</sup> Boyle v. Smith [1906], 1 K. B. 432; 70 J. P. 115; 75 L. J. K. B. 282; 94 L. T. 30; 54 W. R. 519; 22 T. L. R. 200.

<sup>31</sup> See also Regina v. Gilroys, 4 Sc. Sess. Cas. 3d Series, 656.

<sup>32</sup> State v. Bugbee, 22 Vt. 32. This was said, however, in a case where the defendant was not in the employ of the liquor owner, and where he voluntarily sold the liquors.

<sup>33</sup> Wason v. Underhill, 2 N. H. 505; Commonwealth v. Hadley, 11 Met. 66; State v. Chastain, 19 Ore. 176; 23 Pac. 963; People v. Drennan, 86 Mich. 445; 49 N. W.

215; Commissioners v. Dougherty, 55 Barb. 332; State v. Bryant, 14 Mo. 340; Abel v. State, 90 Ala. 631; 8 So. 760; Hays v. State, 13 Mo. 246; Davidson v. State, 27 Tex. App. 262; 11 S. W. 371; State v. Kriechbaum, 81 Iowa, 633; 47 N. W. 872; Baird v. State, 52 Ark. 326; 12 S. W. 566; Cloud v. State, 36 Ark. 151; Rana v. State, 51 Ark. 481; 11 S. W. 692; State v. Deevers, 38 Ark. 517; Berning v. State, 51 Ark. 550; 11 S. W. 882. *Contra*, Commonwealth v. Holland, 7 Ky. L. Rep. (abstract) 299.



a valid license. "As statutes of this character bind the party to know the facts and to keep them at his peril, neither the motive nor the intent of the defendant can relieve him, when a sale is made without a license. The intent is immaterial when the statute makes the act indictable irrespective of guilty knowledge; and in such case ignorance of fact, no matter how insincere, can be no defense. It is enough that under the statute the commission of the act prohibited constitutes the offense, irrespective of the motives or knowledge of the defendant, and as his principal had no license to sell, the defendant must stand for him, so far as appertains to this prosecution."<sup>34</sup> But a servant may carry on his master's business at a place and have sole charge thereof, and will not be guilty of selling without a license if his master hold a license for that place.<sup>35</sup> One selling in violation of a prohibition law cannot justify his conduct on the ground that he was in fact acting for his principal.<sup>36</sup> So an agent or bartender carrying on for his principal the business of a common seller is liable unless his principal has a license.<sup>37</sup> So if he keeps liquors for illegal sale for a non-resident principal, he is guilty of maintaining a nuisance.<sup>38</sup> And if he makes a sale his master could not make under his license, he is liable.<sup>39</sup> Thus where a servant engaged to clean up a saloon on Sunday carried whisky from the barkeeper to a purchaser, who stood outside the door, it was held that he was guilty of assisting in an illegal sale.<sup>40</sup> But a purchase of liquor for another without the State is not an offense in him within a statute

<sup>34</sup> *State v. Chastain*, 19 Ore. 176; 23 Pac. 963.

<sup>35</sup> *Runyan v. State*, 52 Ind. 320; *State v. Dudley*, 33 Ind. App. 640; 71 N. E. 975.

It would be otherwise if the agency was a mere subterfuge to avoid the law, the servant being an unfit person to hold a license and could not obtain one for that reason. *Heath v. State*, 105 Ind. 342; 4 N. E. 901.

<sup>36</sup> *Bauman v. Commonwealth*, 14

Ky. L. Rep. (abstract) 174; *Henry v. State*, (Tex.), 116 S. W. 1162.

<sup>37</sup> *Commonwealth v. Hadley*, 11 Met. 66; *Commonwealth v. Drew*, 3 Cush. 279.

<sup>38</sup> *Commonwealth v. Callone*, 154 Mass. 115; 27 N. E. 881.

<sup>39</sup> *People v. Metzger*, 95 Mich. 121; 54 N. W. 639; *Cagle v. State*, 87 Ala. 93; 6 So. 300.

<sup>40</sup> *Burnett v. State*, 42 Tex. Cr. App. 600; 62 S. W. 1063.



making it an offense to aid or procure an unlawful sale or purchase or other disposition of liquor, nor within the provision of a statute making it an offense to act as agent for a purchaser in procuring an unlawful purchase.<sup>41</sup>

**Sec. 340. Servant's license no protection for his master.**

If the master have no license, he cannot shield himself under his servant's license. If the servant sells his master's liquors the sale is by the master and not by the servant. Thus a defendant entered into a contract to supply liquor at an exhibition, and arranged with one Jenkins, a licensed person, that he (Jenkins) should obtain what was known as an occasional license for the sale of liquors at the exhibition. The defendant, who was not a licensed person, applied on behalf of Jenkins for an occasional license, and it was granted to Jenkins. Liquors were sold at the exhibition by bar maids who were ordinarily employed by Jenkins in his business at his licensed premises, but who for the time they were at the exhibition were paid by the defendant. The liquors so sold were sent to the exhibition by the order of the defendant, who subsequently paid for them. The proceeds of the sale were put into the till at the bar and then taken away by Jenkins's son, who was in the employment of the defendant. The defendant was occasionally in the room where the liquors were sold, but did not with his own hands sell any liquors. Jenkins attended at the bar and personally sold liquors, and was in control of the bar and serving staff. but

<sup>41</sup> *Vernon v. State* (Ala.), 50 So. 57.

Where the defendant purchased a bankrupt licensee's stock of liquor and sold it back to him, taking a mortgage on it, but retaining possession of the goods himself to secure the purchase price; and they agreed that the defendant should conduct the business as manager until the purchase price was paid, and then receive a stated salary for conduct-

ing the business, it was held that he was an employe of the licensee and was protected by his license. *Barnard v. State* (La.), 48 So. 438.

A servant cannot sell his own liquors under his master's license. *Ruemmeli v. Cravens*, 13 Okla. 342; 74 Pac. 908; 76 Pac. 188. But see *State v. Keith*, 37 Ark. 96; *Johnson v. State*, 37 Ark. 98, and *Lane v. State*, 37 Ark. 273.

was not paid for such services, nor did he receive a share of the profits of the sale. It was held that the defendant was guilty of an illegal sale.<sup>42</sup>

### **Sec. 341. Partnership license.**

Under a statute providing that any male inhabitant of the State, of good moral character, is entitled to a license to sell intoxicating liquors, and that it should "be unlawful for any person or persons to directly or indirectly sell" intoxicating liquors without a license, the license may be granted to two persons jointly, as to partners; but if granted to one person and he then forms a partnership with another, the unlicensed person is not protected by the license in sales he may make;<sup>43</sup> though if the arrangements between them did not constitute them as partners, and the one selling was in law the agent of the other, he would not be guilty of a violation of a statute prohibiting unlicensed persons making sales.<sup>44</sup> In passing upon a question of this kind the Supreme Court of Indiana, after referring to the statute making it "unlawful for any person or persons to directly or indirectly sell" intoxicating liquors without first procuring a license, and after deciding that a license might be granted to two persons jointly, said: "We think, as a corollary \* \* \* that a joint sale by, or a sale for the joint benefit of, two or more persons, of said articles jointly owned by such persons, if the sale be made by one of said persons, who has no separate license, will be unlawful, unless the whole number of persons, by or for whom such joint sale is made, have first procured the required license, and that a license to one of two or more persons will not legalize a sale made by the other or others of said persons, who have no license, even though it be a sale of articles which the licensed person might lawfully sell, and in which, and the sale whereof he was equally interested with the other or others making such sale. Such, in our opinion, is a fair interpreta-

<sup>42</sup> *Dunning v. Owen* [1907], 2 K. B. 237; 71 J. P. 383; 76 L. J. K. B. 796.

<sup>43</sup> *Shaw v. State*, 56 Ind. 88; *Commonwealth v. Hall*, 8 Gratt. 588.

<sup>44</sup> *Keiser v. State*, 58 Ind. 379.

tion of the present liquor law of this State. It recognizes the fact that two or more persons, as partners or joint owners, may engage in the sale of intoxicating liquors, in quantities less than a quart at a time, and it provides that it shall be unlawful for such persons to make such sales, without having first procured, from the proper board of commissioners, the proper license." The court then refers to the statute providing that the applicant for a license must "be a fit person to be entrusted with the sale of intoxicating liquor, and if he be not in the habit of becoming intoxicated, but in no case shall a license be granted to a person in the habit of becoming intoxicated," and adds: "From the last clause of this proviso it will be observed that it contains a positive prohibition against the granting of a license, in any case, to any person who is in the habit of becoming intoxicated. Ordinarily, anyone can form a copartnership in business with anyone else, without regard to his personal habits and without let or hindrance from the law. If we should hold that a license granted to one person would inure to the benefit and protection of his partners, the effect of such a decision might well be to virtually license persons who were all the time drunk or intoxicated, and wholly unfit for the peculiar trust conferred by the license. The law recognizes the fact that some persons are fit and others are not fit for this particular business, but the construction of the law advocated by appellant's counsel, if carried out, would necessarily abolish this distinction and render nugatory the provisions of this proviso. Such a construction this court will not give." "The license to Besselman was certainly not a license to appellant; nor can it be construed to be a license to both Besselman and the appellant. Appellant's counsel insists that, in making the sale in question, appellant was the agent of Besselman, and would, therefore, be protected by the latter's license. A partner is the agent of his copartner in partnership matters; but where, as in this case, a partner sells copartnership property, in which each partner has an equal interest, he is rather the agent of the firm than of the individual partner, in making of such sale."<sup>45</sup>

<sup>45</sup> Shaw v. State, 56 Ind. 188.

In an Alabama case the question was more tersely put in this way: "A license to retail affords protection only for those acts which, in law, are merely the acts of the person to whom it was granted. If granted to an individual, it affords protection only for those acts which, in law, are merely his acts as an individual. If granted to a partnership, it affords protection only for those acts which, in law, are acts of the firm. A license to an individual cannot be a license to a partnership."<sup>46</sup> In consonance with this reasoning, a license to a firm, one member of which is a member of another firm, confers no right upon the latter firm to sell liquor;<sup>47</sup> although if one member of a licensed firm purchase out his partners he may continue the business under the license issued to the partnership;<sup>48</sup> and so may the remaining partner, if for any reason the others retire, and the question of his fitness to hold the license cannot be raised, for that was settled when the license was issued to the firm.<sup>49</sup> Of course, in a case of this kind the question of partnership or no partnership is always to the front. Thus, where a defendant in a prosecution for selling without a license was the owner of the premises where the sale was made, and he made the sale pursuant to and in compliance with the terms of a written contract between him and another who had a license, whereby he, the defendant, leased the premises to the licensee for a saloon, upon the condition that such licensee should furnish the stock necessary to carry

<sup>46</sup> Long v. State, 27 Ala. 32; *Ex parte* Leveille, Stephens' Canadian Digest [1877-1881], p. 474, § 155; Lovejoy v. Commonwealth, 13 Ky. L. Rep. (abstract), 976.

<sup>47</sup> Wharton v. King, 69 Ala. 365.

<sup>48</sup> United States v. Denis, 37 Fed. 468; United States v. Glab, 1 McCrary, 166; Commonwealth v. James, 98 Ky. 30; 32 S. W. 219; 17 Ky. L. Rep. 588; James v. Commonwealth, 16 Ky. L. Rep. (abstract) 445. So held in South Africa. Queen v. Ware, 12 Juta. 4; but later the contrary was held.

Rex v. Hoffman, 22 Juta, 32. *Contra*, State v. Zermmehler, 110 Iowa, 1; 81 N. W. 154.

<sup>49</sup> State v. Gebhardt, 3 Jones (N. C.), 178; *In re* Kornman, 13 Pa. Co. Ct. Rep. 147; 23 Pittb. Leg. J. (N. S.) 476.

If an action be brought by a firm to recover back the price of liquor sold in violation of law, the presumption is that it was made by the partner who had authority to sell; and if that be not true, the defense must show it. Webber v. Williams, 36 Me. 512.



on the business, that the defendant in the name of the licensee should make all purchases and sales of the stock, pay all debts and expenses incurred in carrying on the business out of the proceeds of the sale, and for his services and the rent of his building should receive all the profits of the business, except a certain sum *per diem*, which was to be paid the licensee, it was held that the defendant and licensee were not partners, but principal and agent, and that the sale by the defendant was protected by the license.<sup>50</sup> Where a partnership may hold a license, if one of the partners sell liquors illegally, *prima facie*, all are liable;<sup>51</sup> but if the accused was not present or dissented from or protested against the sale, he is not liable; for the fact they were partners did not imply an agreement by them as part of their partnership undertaking to violate the laws of the State by illegal sales of liquors.<sup>52</sup> The question of guilty or not guilty turns upon the question of agency, and the same rules applicable to an illegal sale by a servant, where it is sought to hold his master liable for his illegal act, applies when it is sought to hold one partner guilty for his partners' illegal act; and the same presumptions prevail, though perhaps more strongly. In a more recent case in Indiana, the one from which a quotation has been made above, it was held that a partnership could not hold a license. The statute construed by the court provided that "no license shall be granted to any other than a male person over the age of twenty-one years," and that "no more than one license shall be granted or issued to any one person, and in no case to any person other than the actual owner and proprietor of such business, who must apply in his own name." "It is evident," said the Appellate Court of that State, "that it was the intention of the Legislature that the license to sell intoxicating liquors at retail should only be issued to one person, and guided by the established principles of construction [that the express mention of one person or thing is the exclusion of another], it is clear that two or more persons are inhibited by the statute from obtaining a license jointly or as partners, and hence

<sup>50</sup> *Keiser v. State*, 58 Ind. 379.

<sup>52</sup> *Acree v. Commonwealth*, 13

<sup>51</sup> *Hooper v. Commonwealth*, 11 Bush, 353.

Ky. L. Rep. (abstract) 369.



cannot engage as partners in retailing intoxicating liquors under the law."<sup>53</sup>

**Sec. 342. Number of licenses an individual may or is required to hold.**

Aside from the question of holding a license under different jurisdictions, it may be said that it is altogether a matter of statute whether a person may hold more than one license. If the license is a permit to retail liquor within a certain political division of the State, and is not confined to a particular place, then, of course, only one license is required to retail at one or any number of places within that division, the statute not forbidding the maintenance of more than one single place of business; but if the statute requires the license to be issued for a particular place within the political division, then it is clear that if the licensee desires to carry on business at another place therein he must have a license for that place. Whether he can obtain it will depend upon the words of the statute. So under a license issued for one political division of the State it is clear that sales and the business must be confined to that division, unless in making such sales they are made through the medium of an agent taking orders. But it is clear that under a license to either manufacture or sell at wholesale a licensee cannot sell at retail,<sup>54</sup> though there would be no objection to a retailer selling at wholesale, unless he was expressly forbidden by the statute to do so. And, of course, as we have elsewhere seen, a license for one thing cannot be used for another, as a license to keep a confectionery cannot confer the right to sell liquors; and if the confectioner desires to sell liquors he must also obtain a license for that purpose.<sup>55</sup> And so of a licensed retail grocer.<sup>56</sup>

<sup>53</sup> *Spaulding v. Nathan*, 21 Ind. App. 122; 51 N. E. 742.

But in a subsequent case, where a license was issued to two persons, the same court held that the bond they gave was valid. *State v. Golding*, 28 Ind. App. 233; 62 N. E. 502.

<sup>54</sup> See *State v. Coren*, 35 Md. 236; *Schumm v. Gardener*, 25 Ill.

App. 633; *Burch v. Savannah*, 42 Ga. 596.

<sup>55</sup> *New Orleans v. Jane*, 34 La. Ann. 667.

<sup>56</sup> *State v. Sies*, 30 La. Ann. 918; *Mobile v. Richards*, 98 Ala. 594; 12 So. 793; *Police Jury v. Marrero*, 38 La. Ann. 696; *State v. Sheriff*, 38 La. Ann. 975; *Kelly v. Dwyer*, 7 Lea, 180.

Usually a person engaged in selling liquors must have as many licenses as he has different and distinct bars or places to sell liquor.<sup>57</sup>

**Sec. 343. City may require license in addition to State license.**

There is nothing to prevent a State authorizing a municipality to exact a license, notwithstanding a person holds a license issued by the State. This is a common practice.<sup>58</sup> And a city license issued to a person will not excuse him from taking out a State license.<sup>59</sup> Even a statute providing that retailers procuring a license from a city shall not be required to pay anything to the county for the privilege of selling liquor will not excuse them from taking out a State license under a statute requiring a license.<sup>60</sup> A city may enact an ordinance, after the State has issued a license, requiring all persons selling liquor within her boundaries to take out a license under the ordinance; and the fact that the licensee under the State law held a license issued prior to the adoption of the ordinance will not excuse him from a compliance with the provisions.<sup>61</sup> The fact that a city's charter gave it exclusive power to license liquor dealers does not even raise a presumption that such dealers are exempt from a general

<sup>57</sup> *In re Lyman*, 59 N. Y. App. Div. 217; 69 N. Y. Supp. 309; affirming (N. Y. Misc. Rep.) 67 N. Y. Supp. 48; *Huber v. Commonwealth* (Ky.), 112 S. W. 583; 33 Ky. L. Rep. 1031; *State v. Falkenheimer* (La.), 49 So. 214.

<sup>58</sup> *Haug v. Gillett*, 14 Kan. 140; *Gillen v. Riley*, 27 Neb. 158; 42 N. W. 1054; *In re Lawrence*, 69 Ala. 608; 11 Pac. 217; *Paton v. People*, 1 Colo. 77; *People v. Raines*, 20 Colo. 489; 39 Pac. 341; *Elk Point v. Vaughn*, 1 Dak. 113; 46 N. W. 577; *Sloan v. State*, 8 Blackf. 361; *Emerick v. Indianapolis*, 118 Ind. 279; 20

N. E. 795; *Freeman v. Commonwealth*, 8 Bush, 139; *Independence v. Noland*, 21 Mo. 394; *Furman v. Knapp*, 19 Johns. 248; *Warden v. Louisville*, 11 Ky. L. Rep. 179; 11 S. W. 774.

<sup>59</sup> *Davis v. State*, 4 Stew. & P. (Ala.) 83; *Stevenson v. Hunter*, 2 Ohio N. P. 300; 5 Ohio S. & C. P. Dec. 27; *Austin v. State*, 10 Mo. 591; *Broomfield v. State*, 10 Mo. 556; *Griffith v. Commonwealth*, 14 Ky. L. Rep. (abstract) 303.

<sup>60</sup> *State v. Esterbrook*, 6 Ala. 653.

<sup>61</sup> *Cuthbert v. Conly*, 32 Ga. 211.

law of the State taxing liquor dealers;<sup>62</sup> although statutes may be, and have been, so worded as to exclude the right of the State to exact a license within a city or town, the whole authority of the State having been delegated to the municipality;<sup>63</sup> or the statute may be so drafted as to prohibit the exacting by the city of a license from any one holding a State license,<sup>64</sup> or the State exacting one when the city has done so.<sup>65</sup> Where a statute permitted a city to exact a license from any person retailing liquors within a certain distance beyond its boundaries, that was held not to prohibit the State also requiring a license of him.<sup>66</sup>

#### **Sec. 344. City license not a defense to a State violation.**

The grant of a right to the common council of a city by the Legislature of a State to fix the rate of all licenses for the retailing of intoxicating liquors should be construed to mean for a city purpose only; and, the fact that a sale of such liquors is made within the city by a licensee of the city, but in violation of a general statute of the State upon the same subject, cannot in a prosecution by the State be defeated because of the existence of such ordinance. Corporate powers are granted for the benefit of the corporators. They afford additional privileges and impose additional obligations, but do not exempt such corporations from any of their obligations as citizens of the county and State in which the corporation is situated. As inhabitants of incorporated cities or towns they may be taxed for city and town purposes, but

<sup>62</sup> Decker v. McGowan, 59 Ga. 805; State v. Sherman, 50 Mo. 265; State v. Harper, 58 Mo. 530; Parsley v. Hutchins, 47 N. C. 159; State v. Propst, 87 N. C. 560; Commonwealth v. Sweitzer, 129 Pa. St. 644; 18 Atl. 569; 25 Wkly. N. C. 151; Commonwealth v. Berghman, 129 Pa. 644; 18 Atl. 570; 25 Wkly. N. C. 151; Commonwealth v. Shultz, 129 Pa. 644; 18 Atl. 571; 25 Wkly. N. C.

151; State v. Williams, 143 Ala. 501; 39 So. 276.

<sup>63</sup> Hetzer v. People, 4 Colo. 45; Bennett v. People, 30 Ill. 389; State v. Schmail, 25 Minn. 370; Phillips v. Tecumseh, 5 Neb. 312; *Ex parte* Schmitker, 6 Neb. 108.

<sup>64</sup> Chastain v. Calhoun, 29 Ga. 333.

<sup>65</sup> State v. White, 115 La. 779; 40 So. 44.

<sup>66</sup> Emerick v. Indianapolis, 118 Ind. 279; 20 N. E. 795.

they are not thereby relieved from the necessity of contributing their proportion of the public charges in their capacity as citizens of the State at large.<sup>67</sup>

### Sec. 345. United States license—State license.

Inasmuch as any resident or inhabitant of a State is a resident or inhabitant of the United States, it follows that if the United States requires a license that fact cannot excuse the licensee from taking out a license under the State if the State requires a license to sell liquors.<sup>68</sup> A distiller holding a license from the United States to distill or manufacture whisky does not authorize him to manufacture or sell his manufactured product without a State license where a State statute requires him to take out a State license to manufacture whisky or to sell it.<sup>69</sup> This is true even if he sell through an agency in a town where his distillery is not located.<sup>70</sup> Under a Federal license the licensee cannot even sell his domestic or own manufactured wine, if a State statute requires a State license.<sup>71</sup> This applies also to a Federal licensee selling liquors on board a steamer plying on waters within a State's jurisdiction.<sup>72</sup> This question has also been put at rest by a special provision of Congress providing that "the payment of any

<sup>67</sup> Davis v. State, 4 Stevens & Porter (Ala.), 83; Sloan v. State, 8 Blackf. (Ind.) 361; Lewadag v. State, 4 Ind. 611.

<sup>68</sup> McGuire v. Commonwealth, 3 Wall. 387; 18 L. Ed. 226; *In re Jordan*, 49 Fed. 238; Pierson v. State, 39 Ark. 219; Black v. Jacksonville, 36 Ill. 301; State v. McCleary, 17 Iowa, 44; State v. Carney, 20 Iowa, 82; Boyd v. State, 12 Lea (Tenn.), 687; State v. Stulz, 20 Iowa, 488; State v. Baughman, 20 Iowa, 497; Stommel v. Timbal, 84 Iowa, 336; 51 N. W. 159; Commonwealth v. Thorniley, 6 Allen, 445; Commonwealth v. O'Donnell, 8 Allen, 548; Commonwealth v. Hornbrook,

10 Allen, 200; Commonwealth v. Keenan, 11 Allen, 262; Commonwealth v. McNamee, 113 Mass. 12; Commonwealth v. Sanborn, 116 Mass. 61; State v. Funk, 27 Minn. 318; 7 N. W. 359; State v. Downs, 116 N. C. 1064; 21 N. E. 689; Territory v. O'Connor, 5 Dak. 597; 41 N. W. 746; 3 L. R. A. 355; Territory v. Connell, 2 Ariz. 339; 16 Pac. 209.

<sup>69</sup> State v. Hazell, 100 N. C. 471; 6 S. E. 404.

<sup>70</sup> Pietz v. State, 68 Wis. 538; 32 N. W. 763.

<sup>71</sup> State v. Delano, 54 Me. 501.

<sup>72</sup> Commonwealth v. Sheckler, 78 Va. 36.



tax imposed by the internal revenue laws for carrying on any trade or business shall not be held to exempt any person from any penalty or punishment provided by the laws of any State for carrying on the same within such State, or in any manner to authorize the commencement or continuance of such trade or business contrary to the laws of such State or in places prohibited by municipal law; nor shall the payment of any such tax be held to prohibit any State from placing a duty or tax on the same trade or business, for State or other purposes.”<sup>73</sup>

**Sec. 346. United States Government license no defense to State violation.**

The payment of a tax imposed by the United States upon retail liquor dealers is not a protection against the violation of a State statute prohibiting or regulating the sale of intoxicating liquors. When a State, in the exercise of an undoubted power, has prohibited the sale of intoxicating liquors within the State, Congress disclaims all intention to confer the right to authorize the exercise of such prohibited business in opposition to the State laws. But when a State has conferred the authority to sell such liquors, then the general government may claim the right to tax the exercise of the business thus

<sup>73</sup> Rev. St. U. S. 1878, § 3243. Another statute expressly provides that the word “State” shall include a “territory.” Rev. St. U. S. 1878, § 3140. Construed, *Territory v. O'Connor*, 5 Dak. 397; 41 N. W. 746; 3 L. R. A. 355.

A licensee under the Federal Government, when indicted for selling liquors in violation of a State statute, is not entitled to remove the suit into the Federal court for that district under the Federal statute for the removal of suits, providing that “a suit or prosecution against any officer of the United States or other

person, for or on account of any act done under the revenue laws of the United States, or under color thereof, or for or on account of any right, authority or title set up or claimed by such officer or other person under any such law of the United States.” Rev. Stat. U. S. 1878, § 643; *Commonwealth v. Casey*, 12 Allen, 214; *State v. Elder*, 54 Me. 381.

A licensee under the Federal statute cannot take into or sell liquor in an Indian country, even if such country be a part of his district. *United States v. Forty-three Gallons of Whisky*, 108 U. S. 491; 2 Sup. Ct. 906.



authorized and to impose a revenue tax upon the exercise of the occupation. In other words, the general government recognizes the power of the State governments to regulate their internal police. Any other rule would necessarily result in confusion and lead to a conflict in the jurisdiction of the two governments. Such power has never, since the organization of the Government, been claimed or exercised. Indeed, to hold that Congress can license citizens of a State to violate its laws, would be an invasion of the constitutional power of the State, which would be subversive of our republican form of government.<sup>74</sup>

### Sec. 347. Duration of license.

As a rule a license begins to run from the date of its issuance, and usually expires within a year from that date. And if the limitation is a year it cannot be construed as extending over a period of a year and a day.<sup>75</sup> In many States all licenses are granted for a fixed period, and all expire on the same date, and the fact that a license is granted after that date does not continue it in force beyond the succeeding date, although if granted on the first date it would have continued a full year.<sup>76</sup> If a State authorize the granting of a license for a year the licensing board cannot grant it for a part of a year<sup>77</sup> unless the statute expressly authorizes it.<sup>78</sup> A licensing board may grant a license which will begin to run

<sup>74</sup> License Case, 46 U. S. (5 How.) 574; *McGuire v. Commonwealth*, 70 U. S. (3 Wall.) 387; *In re Jordan*, 49 Fed. Rep. 238; *Pierson v. State*, 39 Ark. 219; *Black v. Town of Jacksonville*, 36 Ill. 301; *State v. McCleary*, 17 Ia. 44; *State v. Carney*, 20 Ia. 82; *State v. Baughman*, 20 Ia. 497; *Stommel v. Timbrel*, 84 Ia. 336; 51 N. W. 159; *State v. Delano*, 54 Me. 501; *Commonwealth v. Thornley*, 88 Mass. (6 Allen) 445; *Commonwealth v. Keenan*, 93 Mass (11 Allen) 262; *Common-*

*wealth v. Sanburn*, 116 Mass. 61; *State v. Funk*, 27 Minn. 318; *State v. Hazel*, 100 N. C. 471; *State v. Downs*, 116 N. C. 1064; 21 S. E. 689; *Commonwealth v. Sheekels*, 78 Va. 36.

<sup>75</sup> *Schwarm v. State*, 82 Ind. 470; see *State v. Sumter Co.*, 22 Fla. 1, and *Reusch v. Lincoln*, 78 Neb. 828; 112 N. W. 377.

<sup>76</sup> *Disbrow v. Sanders*, 1 Denio, 149.

<sup>77</sup> *Gurley v. State*, 65 Ga. 157.

<sup>78</sup> *People v. Ganey*, 8 Hun, 60.

after the terms of the commissioners have expired; and the fact that their terms expired before the date the license was to take effect cannot be used to shorten its life.<sup>79</sup> The term of a license, by statute, may, however, begin to run from the date of the payment of the license fee and not from the date it is issued, that depending upon the statute;<sup>80</sup> but in Indiana the license begins to run from the date it is granted, and not from the date of its issuance.<sup>81</sup> In England "occasional" licenses are issued to licensed keepers of public houses to carry on the traffic in liquors at some other designated place for a period of time "not exceeding three consecutive days at any one time."<sup>82</sup> When these licenses (or rather permits to sell off the licensed premises) are granted, they are, for the time being, a complete protection to the holder if he in other respects obey the law.<sup>83</sup> In fact, they are permits to sell liquors for a period not over three days at a designated place, but subject to all the regulations and requirements pertaining to sales under a regular license. A license for a "calendar year" means from January 1st to December 31st, inclusive, and not for a period of twelve months commencing at any fixed date and terminating with the corresponding date next year.<sup>84</sup>

### Sec. 348. Expired license.

An expired license is no better than no license at all. The licensee selling under it is in no better position than if he had

<sup>79</sup> *Hendersonville v. Price*, 96 N. C. 423; 2 S. E. 155.

<sup>80</sup> *Brown v. State*, 27 Tex. 335.

<sup>81</sup> *Keiser v. State*, 78 Ind. 430 (overruling *Vannoy v. State*, 64 Ind. 447; *State v. Wilcox*, 66 Ind. 557).

<sup>82</sup> 25 and 26 Vict. c. 22, § 13; *Patterson's Licensing Act*, p. 288.

<sup>83</sup> *Stevens v. Emson*, 1 Exch. Div. 100; 40 J. P. 484; 45 L. J. M. C. 63; 33 L. T. 821.

<sup>84</sup> *Carroll v. Wright (Ga.)*, 63 S. E. 260; see *People v. Moore*,

59 N. Y. Misc. Rep. 533; 112 N. Y. Supp. 475.

When a license expires. *Greenough v. Narragansett (R. I.)*, 71 Atl. 574. In *Manitoba. Crothers v. Monteith*, 11 Manitoba, 373.

The issuing officer cannot, by insisting that the license was to continue until it was revoked, prolong a license beyond the date fixed by law for its expiration. *State v. Brown (Iowa)*, 109 S. W. 1011.

never held a license. He may not even sell the stock he held on hand when it expired.<sup>85</sup> In certain instances, however, as has elsewhere been stated, sales after the expiration of a license and before it could be renewed or another obtained have been excused where a renewal or license was thereafter secured as soon as the law permitted its issuance.<sup>86</sup>

### Sec. 349. "On" and "off" licenses.

In England licenses are divided into two classes, "on" and "off" licenses. How this distinction arose is thus stated by Patterson: "In 1830 it was deemed 'expedient for the better supplying of the public with beer in England to give greater facilities for the sale thereof than are at present afforded by licenses to keepers of inns, ale houses and victualing houses.'<sup>87</sup> The Beer House Act, 1830, was accordingly passed, authorizing any person being a householder assessed to the poor rate except sheriffs' officers, etc., to obtain from the excise, on payment of two guineas a year, a license to sell beer by retail. This license authorized the holder to sell beer by retail in his dwelling house, whether for consumption on the premises or not, but was issued subject to certain conditions expressed on the face of it, for the breach of which he was subject to heavy penalties. These conditions were substantially the same as in the case of the innkeeper's license, but the closing hours were more strictly defined. In 1834 it was found that much evil had arisen from the management and conduct of these beer houses. The Beer House Act of 1834<sup>88</sup> was accordingly passed, by which a distinction was made between retail licenses for consumption *on* the premises and *off* retail beer licenses. The former were to cost three

<sup>85</sup> United States v. Angell, 11 Fed. 34; State v. McNett, 5 Pen. (Del.), 334; 61 Atl. 689; Tracy v. Ginzberg, 189 Mass. 260; 75 N. E. 637.

<sup>86</sup> Where the issuing officer inserted a clause that the license was to continue until revoked, and a statute provided that all sales

should expire on a certain date, this was held not to protect the licensee on a prosecution for a sale after such date. State v. Brown (Iowa), 109 S. W. 1011.

<sup>87</sup> Beer House Act of 1830, 11 Geo. IV and I Will 4, c. 64.

<sup>88</sup> 4 and 5 Will 4, c. 85.

guineas a year and the latter one guinea. The latter were to be granted practically in the same way as under the production to the excise, by the applicant, of a certificate that he was of good character, signed by six rated inhabitants of the parish. The licenses, whether *on* or *off*, were held subject to the same conditions as under the previous act, with the same penalties, a slight change being made in the closing regulations." <sup>89</sup> Subsequently on and off licenses for selling wine and also licenses for selling spirits were permitted.<sup>90</sup>

### Sec. 350. Void license—Collateral attack.

A sale under a void license is the same as a sale without any license whatever. A void license is no protection, however *bona fide* may have been the intention of the licensee not to violate the law.<sup>91</sup> Such was held to be the case where a town board was composed of a mayor and three aldermen, to which an application was made for a license. One of the aldermen moved that a license be granted the applicant, but the mayor refused to put the question, and, therefore, one of the two remaining aldermen put the question and he and the alderman moving the question voted for it. The clerk of the board refused to enter the action upon the minutes, but the two aldermen voting for it signed an order granting the license, approved the applicant's bond, and a license otherwise was duly issued. It was held that the license was void and no protection for sales under it.<sup>92</sup> But if a license be duly granted by a board or court having jurisdiction of the application for it, its validity cannot be collaterally attacked in order to secure a conviction of the licensee under a charge of a sale without authority to make it.<sup>93</sup> But notwithstanding the

<sup>89</sup> Patterson's Licensing Acts, p. 410; 44 So. 156; State v. Ray, 119 La. 417; 44 So. 417.

<sup>90</sup> 32 and 33 Viet. c. 27; 33 and 34 Viet. c. 29.

<sup>91</sup> Alexander v. State, 77 Ark. 294; 91 S. W. 181; State v. Moore, 1 Jones (N. C.), 276; *Ex parte* Dimond, 2 N. S. W. L. R. 207; State v. Laborde, 119 La.

<sup>92</sup> Hugonin v. Adams (Miss.), 33 So. 497.

<sup>93</sup> Ludwig v. State, 18 Ind. App. 518; 48 N. E. 390; Commonwealth v. Graves, 18 B. Mon. 33; Goff v. Fowler, 3 Pick. 300; City Council v. Hollenback, 3 Strobb.

general rule that a license cannot be collaterally attacked, it has been held that an inquiry may be instituted, as to whether it had been properly obtained, in an action for a sale without a license.<sup>94</sup> And so it has been held in England that if the licensee was a person to whom a license could not be issued, his license was no protection upon a charge of a sale without one;<sup>95</sup> and this is also true if it was issued for a local option district, or where local option had become effective.<sup>96</sup>

355; *Hornaday v. State*, 43 Ind. 306.

<sup>94</sup> *Ex parte Dimond*, 2 N. S. W. L. R. 207.

<sup>95</sup> *Regina v. Vine*, L. R. 10 Q. B. 195; 35 J. P. 213; 44 L. J. M. C. 60; 31 L. T. 842; 23 W. R.

649; *Thompson v. Harvey*, 4 H. & N. 254; 28 L. J. M. C. 163; 23 J. P. 150.

<sup>96</sup> *State v. Laborde*, 119 La. 410; 44 So. 156; *State v. Ray*, 119 La. 417; 44 So. 159.



## CHAPTER VII.

### PERSONS ENTITLED TO A LICENSE.

#### SECTION.

- 351. Eligibility.
- 352. Married women—Female.
- 353. Corporations.
- 354. Joint and partnership licenses.
- 355. Manufacturers.
- 355a. Wholesalers.
- 356. Hotel keeper—Innkeeper.

#### SECTION.

- 357. Restaurant in capitol building.
- 358. Holder of house.
- 359. Boat license.
- 360. Canteen—Street railway car.
- 361. Who must have a license.
- 362. Wholesalers.
- 363. Native or domestic wines.

#### Sec. 351. Eligibility.

The right to a license to sell liquors at retail is usually restricted to a certain class of persons; but, as a rule, no such restrictions are placed upon a license to sell at wholesale. There is no question of the right and power of a State to restrict a license to retail to a certain class, as has been shown in the chapter on constitutional law. It is not necessary to further discuss that phase of the subject. Usually the statutes restrict the right to a license to an inhabitant of the State. The object of this is to enable the State to secure a better control over the traffic. If the licensee is required to be an inhabitant of the State, however, he need not be an inhabitant of the town, or city or county wherein he seeks a permit to carry on the business of retailing liquors; it is sufficient if he be an inhabitant of the State.<sup>1</sup> Of course, the distinction between an inhabitant and a citizen must be borne in mind, for while an inhabitant must reside in a State a citizen does

<sup>1</sup> *Ex parte* Laboyleaux, 65 Ind. 545; *Murphy v. Board*, 73 Ind. 483; *State v. Dudley*, 33 Ind. App. 640; 71 N. E. 975; *Welsh v. State*, 126 Ind. 71; 25 N. E. 883; 9 L. R. A. 664.

A male inhabitant cannot insist an ordinance is invalid because women cannot obtain a license under it. *Wagner v. Garrett*, 118 Ind. 114; 20 N. E. 706.

not necessarily do so.<sup>2</sup> Statutes often restrict the license to an inhabitant of a county, or a city, or a town, or even a township; and when such is the case the applicant must be an inhabitant of the political subdivision for which he seeks the license; and not only that, but he must remain an inhabitant during the life of the license, for if he do not and move out of it he will forfeit his license, and his servant retailing liquors over this bar after his master has removed will not be protected by his master's license.<sup>3</sup> This is particularly true if the licensee remove from the State.<sup>4</sup> As a rule, statutes require licensees to be persons of good moral character, and when such was the case it was held that a refusal of a license to the keeper of a house of prostitution was proper.<sup>5</sup> Not infrequently statutes provide that an applicant who has been convicted of a violation of the liquor laws shall not be entitled to a license, but unless the statute expressly so provides, that is no ground for refusing him a license.<sup>6</sup> But a statute providing that "any person having a license as a dramshop keeper" who sells on Sunday shall be subject to a fine, forfeit his license, and not be entitled to another license for two years, applies only to a licensed dealer who has violated the statute and not to an unlicensed person selling on Sunday, though he may be liable to a penalty.<sup>7</sup> In New York it was held that an application will not be refused solely on the ground that the applicant eighteen years before had been convicted of a felony and then pardoned.<sup>8</sup> The fact that an applicant may have once been intoxicated does not disqualify him under a statute requiring the licensee to be "a fit person to be intrusted with the sale of intoxicating liquors" and "not in the habit of becoming intoxicated."<sup>9</sup> Other species of

<sup>2</sup> *Welsh v. State*, 126 Ind. 71; 25 N. E. 883; 9 L. R. A. 664.

<sup>3</sup> *State v. Dudley*, 33 Ind. App. 640; 71 N. E. 975; *Runyan v. State*, 52 Ind. 320.

<sup>4</sup> *Kraut v. State*, 47 Ind. 519.

<sup>5</sup> *Quachita Co. v. Rolland*, 60 Ark. 516; 31 S. W. 144.

<sup>6</sup> *Golden v. Bingham*, 61 Ind. 198.

<sup>7</sup> *State v. Hambright*, 33 Mo. 394; see also *Regina v. Roper*, 63 L. J. M. C. 68; 10 R. 598; 70 L. T. 409; 58 J. P. 512.

<sup>8</sup> *People v. Sackett*, 17 N. Y. Misc. Rep. 406; 40 N. Y. Supp. 413. The pardon wiped out the offense and made the person receiving it a new man in law.

<sup>9</sup> *Calder v. Sheppard*, 61 Ind. 219; *Miller v. Wade*, 58 Ind. 91.

immorality besides intoxication may be made an effectual objection to an applicant;<sup>10</sup> for one may be an immoral man within the sense that term is used in the statutes without being addicted to intoxication.<sup>11</sup> Such would be the case of one who frequents gambling places, though the statute makes no reference by that name to the unfitness of an applicant.<sup>12</sup> If the statute prohibits the issuance of a license to any person convicted of a certain crime, the fact that an applicant had been so convicted but on appeal the judgment was reversed or set aside will not be a bar to his application.<sup>13</sup> An ordinance prohibiting the issuance of a license to any person who has either carried on or is carrying on his business in a certain manner applies to an applicant who so carried on his business before the ordinance was adopted.<sup>14</sup> A statute providing for the issuance of a license to druggists, to sell for medicinal and other purposes, does not require the applicant to be a pharmacist.<sup>15</sup> A statute requiring the application to be for a designated place or house does not require the applicant to reside on such place or in such house, though it may require

<sup>10</sup> *Grumman v. Holmes*, 76 Ind. 585.

<sup>11</sup> *Hill v. Perry*, 82 Ind. 28.

<sup>12</sup> *Groscap v. Rainer*, 111 Ind. 361; 39 N. E. 47; *Whissen v. Furth*, 366 Ark.; 84 S. W. 500; 68 L. R. A. 161.

<sup>13</sup> *Appeal of Smith*, 65 Conn. 135; 31 Atl. 529; *Horton v. Central Falls (R. I.)*, 35 Atl. 962.

<sup>14</sup> *Foster v. Board*, 102 Cal. 483; 37 P. 763; 41 Am. St. 194; also see *Regina v. Vine*, L. R. 10 Q. B. 195; 39 J. P. 213; 44 L. J. M. C. 60; 31 L. T. 842; 23 W. R. 649, where a conviction of a felony previous to the enactment of the statute prevented a transfer of the license, it evading the license.

<sup>15</sup> *Owens v. People*, 56 Ill. App. 569; see *In re Gillham (Iowa)*, 99 N. W. 179.

A plea of guilty, followed by a suspension of sentence, is a conviction, and prevents the issuing of a license where the statute provides no license shall issue to a person convicted of a felony. *People v. Lyman*, 33 N. Y. Misc. Rep. 243; 68 N. Y. Supp. 331.

Under a discretionary power to grant licenses to sell liquors in quantities not less than a quart, a licensing board may grant a license to a druggist. *In re Susquehanna Co.*, 3 Pa. Co. Ct. Rep. 616.

That the applicant must be an inhabitant of the political subdivision of the State for which he applies for a license, see *Miller v. Made*, 58 Ind. 91; *People v. Davis*, 36 N. Y. 77; affirming 45 Barb. 494; *State v. County Ct.* 66 Mo. App. 96.

him to reside in the political subdivision for which such license is to be granted, as where an innkeeper may take out a license.<sup>16</sup> A statute prohibiting a "police official" from taking out a license does not apply to the mayor of the city, though *ex officio* he is a member of the police force;<sup>17</sup> nor does it apply to an alderman, though the board of aldermen has power to appoint and remove members of the police force.<sup>18</sup> Where a statute provided that a license should not issue to a person of "bad fame," proof of the fact that he was living in adultery, but coupled with no evidence as to his reputation in the neighborhood, was held not to show he was a man of "bad fame" within the sense it was used in the statute;<sup>19</sup> for a man to be of "bad repute" must be generally known as such, and merely living with another man's wife does not bring him within the statutory meaning of the word.<sup>20</sup> Where a statute provided that a permit to sell liquor should not be granted to a pharmacist, and no other person was entitled to a license, and a pharmacist should not be granted a permit if six months prior to the application he had been unlawfully conducting a pharmacy, it was held that if an applicant within that period, without a permit, sold alcohol to be used in "preserving a specimen," though he himself assisted in putting the liquor to its intended use, he was not entitled to a license.<sup>21</sup> Where an applicant for a second license was shown to have so screened his place of business as to amount to a violation

<sup>16</sup> *State v. Hill*, 52 N. J. L. 326; 19 Atl. 789; *The People v. Hartmann*, 10 Hun. 602; *O'Rourke v. People*, 3 Hun. 225; 5 *Thomp. & C.* 496.

<sup>17</sup> *People v. Gregg*, 59 Hun. 107; 13 N. Y. Supp. 114; 35 N. Y. Supp. 757.

<sup>18</sup> *People v. Hannon*, 59 Hun. 617; 19 N. Y. Supp. 117; 35 N. Y. St. Rep. 117.

As to producing certificate of good moral character, see *In re Hunter*, 24 Ont. 522 (reversing 24 Ont. 153); *In re Greystock*, 12 Up. Can. 458.

<sup>19</sup> *In re Pool*, 14 Vict. L. R. 519.

<sup>20</sup> *Potter v. Bowling*, 5 W. N. (N. S. W.) 143.

<sup>21</sup> *In re Heery*, 124 Iowa, 358; 100 N. W. 43; *In re Wilhelm*, 124 Iowa 380; 100 N. W. 44. Effect of judgment of conviction by consent. *In re Thomas*, 117 Iowa 275; 90 N. W. 581. But an unlawful sale of soda waters or cigars does not disqualify him as a licensee. *In re Mausley*, 136 Iowa 66; 113 N. W. 548.



of the law, a license was refused.<sup>22</sup> But in Pennsylvania it was held that a single sale in violation of law would not justify a refusal of the application for a license.<sup>23</sup> And where an applicant had been granted a license, executed his bond in good faith, but the bond was void because of a technical defect, it was held that he was not guilty of a criminal offense in making sales and was entitled to another license.<sup>24</sup> A statute of Kentucky provided that a license should not be granted "to any person of bad character, or who does not keep an orderly, law-abiding house;" and it was held that the county court did not abuse its discretion in refusing a license to an applicant who had sold liquor without a license and also to minors.<sup>25</sup> So liquors sold at a place forbidden by law is sufficient to authorize not only the refusal of a new license but a revocation of one in existence.<sup>26</sup> A statute provided that no

<sup>22</sup> *In re MacRae* (Neb.), 106 N. W. 1020.

<sup>23</sup> *Babb v. Taylor*, 2 Pa. Super. Ct. 38; 38 W. N. C. 440.

<sup>24</sup> *North v. Barringer*, 147 Ind. 224; 46 N. E. 531. In Indiana even a conviction of the applicant for a violation of the law in the sale of liquors does not necessarily show him to be unfit to receive a license. *Golden v. Bingham*, 61 Ind. 198; *Lynch v. Bates*, 139 Ind. 206; 39 N. E. 919.

<sup>25</sup> *Appeal of Candill* (Ky.), 66 S. W. 723; 23 Ky. L. Rep. 2139; *Watkins v. Grieser*, 11 Okla. 302; 66 Pac. 332.

<sup>26</sup> *In re Clement*, 125 N. Y. App. Div. 676; 110 N. Y. Supp. 57, 59.

In England "The real resident holder and occupier" of the house in which he seeks a license must be *sleeping* upon the premises. *Rex v. Manchester JJ.*, 68 L. J. Q. B. 358 [1899]; 1 Q. B. 571; 6 L. T. 531; 47 W. R. 410 63 J. P. 360; *Regina v. Sherman*, 67 L. J. Q. B. 460 [1898]; 1 Q. B.

578; *Nix v. Nottingham JJ.*, 68 L. J. Q. B. 854 [1899]; 2 Q. B. 294; 81 L. T. 41; 47 W. R. 628; 63 J. B. 628. (In this case it was held that the mere fact that a person receives a salary as a manager of a brewery company and pays over to it the profits made out of the sale of its beer, did not prevent him being the "real resident holder and occupier.")

In British Columbia a Japanese is entitled to a license. *In re Kanamura*, 10 B. C. Rep. 354.

A statute prohibited the granting of a second application during a license year where the applicant's previous license had been denied because he was an unsuitable person, or where a previous application during the year had been refused on the ground that the place was not a suitable one. It was held that the prohibition within the year applied where the person or the place had become a suitable person or place. *Appeal of D'Amato*, 80 Conn. 357; 68 Atl. 445.



one ever convicted of a felony should hold a license; but one who had been convicted and then pardoned was held eligible for a license, the pardon removing all his disability.<sup>27</sup> In England a statute prohibits the issuance of a license, or the renewal of a license, to anyone "convicted of permitting his premises to be a brothel." In construing this statute it is held that it is not necessary to prove the offense; it is not material there was no outward sign of its indecency,<sup>28</sup> or there was no disorderly conduct.<sup>29</sup> Proof that the licensee permitted the place to be used for the purposes of prostitution once is some evidence to support the charge of permitting the premises to be used as a brothel.<sup>30</sup> The fact that the licensee had permitted prostitutes to frequent his place of business was held sufficient to warrant the justices refusing him a license.<sup>31</sup> A license to sell liquors is in the nature of a personal trust, and whoever applies for a license must not only be able and competent to carry out that trust, but he must be willing to do so.<sup>32</sup> If an applicant meets the requirements of the statute, the licensing board must grant him a license, except where it has a discretion in the matter.<sup>33</sup> But it cannot dispense with the necessary qualifications in the applicant.<sup>34</sup> An application cannot be refused solely on the ground that no man of good moral character would engage in the liquor traffic, and, there-

<sup>27</sup> Hay v. Tower Division, 59 L. J. M. C. 79; 24 Q. B. Div. 561; 62 L. T. 290; 38 W. R. 414; 54 J. P. 500. See also People v. Sackett, 17 N. Y. Mis. 407; 40 N. Y. Supp. 413.

<sup>28</sup> Regina v. Rice, L. R. 1 C. C. R. 21; 35 L. J. M. C. 93; 13 L. T. 382; 14 W. R. 56.

<sup>29</sup> Greig v. Bendeno, E. B. & E. 133; 27 L. J. M. C. 294.

<sup>30</sup> Regina v. Justices, 46 J. P. 312; Webb v. Catchlove, 50 J. P. 795.

<sup>31</sup> Sharp v. Hughes, 57 J. P. 104.

<sup>32</sup> *In re* Krug, 72 Neb. 576; 101 N. W. 242; Watkins v.

Grieser, 66 Pac. 332; 11 Okla. 302; see Simpson v. Commonwealth (Ky.), 91 S. W. 404; 30 Ky. L. Rep. 132.

<sup>33</sup> Harrison v. People, 195 Ill. 466; 63 N. E. 191; reversing 91 Ill. App. 421.

<sup>34</sup> Appeal of Burns, 76 Conn. 395; 56 Atl. 611.

If a licensee consent to the entering of a decree of conviction, "in a spirit of compromise," but under an agreement that it shall not bar his right to a second license, yet the judgment will have that effect. *In re* Thoma, 117 Iowa, 275; 90 N. W. 581.

fore, the application shows the applicant is not a man of good moral character, for such a rule would invalidate the law itself.<sup>35</sup>

### Sec. 352. Married Women—Female.

The usual statute restricts a license to a "male inhabitant" or a "resident male" or a "voter;" and, therefore, prohibits licenses being granted to females. So many of the statutes require the licensee to give a bond with sureties for his good behavior or to pay damages under certain conditions. This has been claimed to prevent a married woman from taking out a license, because she could not bind herself by her bond. But here the argument largely fails because of the many recently enacted married women enabling acts. Under a statute providing that any male inhabitant over twenty-one years of age, and giving proper notice, may obtain a retail license, it was held that it impliedly forbade the granting of a license to a female.<sup>36</sup> In New Zealand it is held that "The Married Woman's Property Act" does not authorize the issuance of a license to a married woman, the prohibition being an implied one.<sup>37</sup> In Australia a married woman cannot obtain a license;<sup>38</sup> but in New South Wales, a part of that country,

<sup>35</sup> *In re* Phillips, 82 Neb. 45; 116 N. W. 950.

In Pennsylvania, stockholders in a brewing company cannot take out a license to retail liquor. *In re* Consumers' Brewing Co., 4 Lack. Leg. N. 165; 20 Pa. Co. Ct. Rep. 597; 7 Pa. Dist. Rep. 193.

A statute prohibiting the licensing of the keeper of an eating house or of a restaurant or of a saloon will not prevent the issuance of a license to the keeper of a drug store who sells soda water and ice cream. *In re* Henry, 124 Iowa, 358; 100 N. W. 43.

In some States a person denied a license cannot make a second application within a year from the first application; they are incapacitated thereby to make

the application. Appeal of D'Amato, 80 Conn. 357; 68 Atl. 445. As to place, see *In re* Reznor Hotel Co., 34 Pa. Super. Ct. 525.

<sup>36</sup> *Woodford v. Hamilton*, 139 Ind. 481; 39 N. E. 47.

A male cannot object to the validity of a statute or ordinance because a female cannot obtain a license. *Wagner v. Garrett*, 118 Ind. 114; 20 N. E. 706.

<sup>37</sup> *In re Roche*, 7 N. Z. L. R. 206; *Callander v. Allen*, 6 N. Z. L. R. 436.

<sup>38</sup> *Regina v. Nicolson*, 10 Vict. L. R. 255. But a married woman has held a license in that country. *Chailes v. Bones*, 22 Austr. L. T. 97; 6 Austr. L. R. 209.

it would seem she can when not living with her husband;<sup>39</sup> while in Michigan, the traffic being legal, a married woman, living with her husband, may execute the proper bond and carry on the business of retailing liquors.<sup>40</sup>

### Sec. 353. Corporations.

Where a general statute was in force providing that the words "person or persons" might extend to and be applied to corporations as well as individuals, it was held that a statute for licensing persons to sell intoxicating liquors authorized the licensing of a corporation.<sup>41</sup> But it cannot be said that this decision could be accepted in many of the States under the provisions of their liquor laws, for how can it be said that a corporation is a "male inhabitant," or "twenty-one years of age," or "of good moral character?" And it has been held that a statute requiring the "person" applying for a license to be twenty-one years of age, of good moral character, a law-abiding, an assessed, and tax-paying citizen could not be applied to a corporation or an incorporated club.<sup>42</sup> Where a corporation is entitled to a license, a license issued to one of its stockholders for the place it owns, to retail liquors, with the intention on the part of the licensing board

<sup>39</sup> *Ex parte* Day, 15 N. S. W. L. R. 420.

<sup>40</sup> *Amperre v. Kalamazoo*, 59 Mich. 78; 26 N. W. 222. So held in Kentucky. *Caldwell v. Grimes*, 7 Ky. L. Rep. (abstract) 601.

<sup>41</sup> *Heidelberg Garden Co. v. People*, 124 Ill. App. 331; affirmed 233 Ill. 290; 84 N. E. 230; *In re Gulf Brewing Co.*, 11 Pa. Co. Ct. Rep. 346; *Connecticut Breweries Co. v. Murphy*, 81 Conn. 145; 70 Atl. 450; *Enterprise Brewing Co. v. Grimes*, 173 Mass. 252; 53 N. E. 855.

<sup>42</sup> *State v. St. Louis Club*, 125 Mo. 308; 28 S. W. 604; 26 L. R. A. 573; see *State v. Moniteau Co. Ct.* 45 Mo. App. 387.

A foreign corporation was held to be a trafficker in liquors and subject to tax where it maintained a store in Ohio and sold liquors and collected payment therefor. *Reyman Brewing Co. v. Brister*, 179 U. S. 445; 45 L. Ed. 269; 21 Sup. Ct. 201; see *Jung Brewing Co. v. Commonwealth*, (Ky.); 30 Ky. L. Rep. 267; 98 S. W. 307.

In Pennsylvania a license will not be granted an insolvent hotel company. *In re Cambridge Springs Co.*, 20 Pa. Co. Ct. Rep. 564; see *In re Pittsburg Brewing Co.*, 12 Pa. Super. Ct. 176; 30 Pittsb. Leg. J. (N. S.) 179.

that the corporation may sell liquors thereunder, will not prevent sales of its liquors by it being illegal and subjecting it to a criminal prosecution for making a sale without a license so to do.<sup>43</sup>

### Sec. 354. Joint and partnership licenses.

Where a statute authorized the issuance of "licenses to persons to keep inns" this was construed to authorize the issuance of a license to two persons jointly, though other parts of the statute referred to the licenses in the singular number.<sup>44</sup> But where a statute provided "that no license shall be granted to any other person than a male person over the age of twenty-one years," and "no more than one license shall be granted or issued to any one person, and in no case to any person other than the actual owner and proprietor of said business, who must apply in his own name," it was said that it was "evident that it was the intention of the Legislature that the license to sell intoxicating liquor at retail should only be issued to one person, and \* \* \* it is clear that two or more persons are inhibited by the statute from obtaining a license jointly or as partners, and hence cannot engage as partners in retailing intoxicating liquors under the law."<sup>45</sup> But in the same State, and by the same judge who wrote the opinion from which the above quotation has been made, it was held that

<sup>43</sup> Connecticut Breweries Co. v. Murphy, 81 Conn. 145; 70 Atl. 450.

In Pennsylvania even a registered corporation cannot secure a license. *In re Peter Schoenhofen Brewing Co.*, 8 Pa. Super. Ct. 141; 42 W. N. C. 402.

As a rule, States requiring licenses of wholesalers or distilleries or breweries permit the issuance of licenses to them, though not to retail liquor. *In re Hastings Brewing Co.* (Neb.), 119 N. W. 27.

A corporation may be indicted

for a sale in violation of law. *United States v. Ames Mercantile Co.*, 2 Alaska, 74; *Enterprise Brewing Co. v. Grimes*, 173 Mass. 252; 53 N. E. 855.

In Rhode Island a domestic corporation is a "citizen resident of the State, and entitled to a license." *Greenough v. Board (R. I.)*, 74 Atl. 785.

<sup>44</sup> *State v. Hill*, 52 N. J. L. 326; 19 Atl. 789; *State v. Monteau Co.* Ct. 45 Mo. App. 387.

<sup>45</sup> *Spaulding v. Nathan*, 21 Ind. App. 122; 51 N. E. 472.



where two persons jointly took out a license and executed a joint bond they could not set up the invalidity of the bond when sued upon it to recover damages, the court saying: "They acted under the bond as though it was valid and binding, and every sense of justice demands that for any violation of its conditions they should atone for resulting injuries."<sup>46</sup> In British Columbia the statute requires the applicant for a license to be a "person," and as a firm is not a person, a partnership license cannot be issued.<sup>47</sup>

### Sec. 355. Manufacturers.

Statutes forbidding the retail of liquors without a license forbid a manufacturer selling his own products at retail with-

<sup>46</sup> *State v. Golaing*, 28 Ind. App. 233; 62 N. E. 502.

In these two cases the Appellate Court seems to have overlooked an earlier decision of the Supreme Court, which was binding upon it by statute, holding that a license could be issued to two or more persons, "which license will legalize any sale made by or for said persons." *Shaw v. State*, 56 Ind. 188; but cites *Keiser v. State*, 58 Ind. 379, to the effect that such a license is illegal; yet that case does not lay down any such proposition.

It seems that in Missouri a license cannot be granted to a partnership. See *State v. Scott*, 96 Mo. App. 620; 70 S. W. 736.

<sup>47</sup> *In re Wah Yum & Co.*, 11 B. C. 154; *Ex parte Blain*, 12 Ch. Div. 522, 533.

There are a number of cases that recognize the validity of joint or partnership licenses; but the question whether a license can be issued to two or more jointly or as partners was not strictly

before them. See *Long v. State*, 27 Ala. 32; *Wharton v. King*, 69 Ala. 365. But in these cases the question was practically before the court, and the defendants were held justified in selling under the partnership license. *United States v. Davis*, 37 Fed. 468; *United States v. Glab*, 1 McCrary, 166; and *State v. Gerhardt*, 3 Jones (N. C.), 178.

In Australia it has been held that one joint owner may take out a license, over the other joint owner's objection, for the joint premises. *Ex parte Slack*, 7 Vict. L. R. 28.

In Ontario a statute disqualifying a licensee to hold an office does not extend to his partner lawfully holding a license in his own name. *Regina v. Booth*, 3 Ont. App. 144; 9 C. P. 452; see *Regina v. Conway*, 46 Up. Can. 85.

A member of a licensed firm cannot sell his own liquor at a place not licensed. *State v. McNett*, 5 Penn. 334 (Del.) 61 Atl. 869. See § 362.



out one; and the fact that he has taken out a license as a manufacturer affords him no defense against a charge of selling at retail without a license.<sup>48</sup> A brewer cannot sell his own beer off his premises where a statute requires a license for the sale of liquors before they can be sold from any specified place.<sup>49</sup> Where a sale of a certain quantity or less requires a license, then a brewer, or distiller, or a wine merchant cannot sell his own products in the forbidden quantities.<sup>50</sup> A tax levied on one "engaged in distilling and rectifying alcohol or malt liquors" does not apply to a brewer.<sup>51</sup> If the evidence shows that a person applying for a wholesaler's license intends to covertly conduct an establishment for the business of a bottler in all its branches, a licensing board does not abuse its discretion in refusing to grant it.<sup>52</sup> Manufacturers of liquor from the product of any farm or garden in Tennessee were held liable for the liquor tax imposed on manufac-

<sup>48</sup> *Keller v. State*, 11 Md. 525; 69 Am. Dec. 226; *People v. Greiser*, 67 Mich. 490; 35 N. W. 87; *State v. Schroeder*, 43 Minn. 231; 45 N. W. 149; 45 Minn. 44; 47 N. W. 308; see § 362 on wholesalers.

<sup>49</sup> *Pietz v. State*, 68 Wis. 538; 32 N. W. 763.

<sup>50</sup> *Kurth v. State*, 87 Tenn. 134; 5 S. W. 593; *Clemmens v. Commonwealth*, 6 Rand. 681. *Contra*, *State v. Jaeger*, 63 Mo. 403.

<sup>51</sup> *State v. Weckerling*, 38 La. Ann. 36.

In Kentucky, a foreign brewery selling beer in that State must pay an annual tax to the State for such agency, and it cannot sell at any other point than that at which the agency is located. *Jung Brewing Co. v. Commonwealth* (Ky.), 98 S. W. 307; 30 Ky. L. Rep. 267; *Commonwealth v. Nunan* (Ky.), 104 S. W. 731; 31 Ky. L. Rep. 1090.

In Pennsylvania a brewery company has a right to a license for more than one brewery operated by it; and its stockholders cannot take out a license to sell at retail. *In re Consumers Brewing Co.*, 4 Lack. Leg. N. 165; 20 Pa. Co. Ct. Rep. 597; 7 Pa. Dist. Rep. 193. See also *In re Pittsburgh Brewing Co.*, 12 Pa. Super. Ct. 129, holding that a brewery company is also entitled to a wholesaler's license. *In re Pittsburgh Brewing Co.*, 29 Pittsb. Leg. J. (N. S.) 349. *In re Pittsburgh Brewing Co.*, 12 Pa. Super. Ct. 176; 30 Pittsb. Leg. J. (N. S.) 179.

<sup>52</sup> *In re Fereh*, 27 Pa. Super. Ct. 92.

In Delaware a hotel keeper cannot combine a wholesale liquor selling business with his hotel business. *In re Nundy*, 3 Pennewill, 282; 51 Atl. 605.

turers;<sup>53</sup> and so in North Carolina.<sup>54</sup> A brewer who retails his own manufactured product from a saloon on the same lot on which his brewery is situated is not protected by a statute permitting all persons to sell without a license articles manufactured by themselves within the State, the retail of the liquor from a saloon and its immediate sale from the brewery being two separate branches of business.<sup>55</sup> In Kentucky distillers of spirituous liquors could take out licenses to sell "at their distillery, residence or own warehouse," and to retail peach and apple brandy they manufacture, "at the place of manufacture or the distillery." It was held that did not authorize the grant of a license to a brandy distiller to sell at his residence.<sup>56</sup>

### Sec. 355a. Wholesalers.

Whether or not a wholesale dealer shall take out a license depends on the terms of the statute. If sales of a quart or less is prohibited without a license, then sales of over a quart do not require a license. But a law may be so drawn as to require wholesalers equally with retailers to take out a license, in which event the former cannot excuse himself on the ground that he does not sell liquors as a beverage.<sup>57</sup> The character of the seller's business has nothing to do with the question, that being merely one of the quantity sold.<sup>58</sup> Where a statute requires a manufacturer to pay a "manufacturer's tax," he cannot sell even his own liquor at retail, the same

<sup>53</sup> Webb v. State, 11 Lea, 662.

<sup>54</sup> State v. Patterson, 98 N. C. 657; 4 S. E. 47.

A State cannot levy a tax on a sale of whisky within the State but which at the time was stored without such state. Voss v. Hagerty, 11 Ohio Dec. 408; 26 Wkly. L. Bull. 268; Christ Diehl Brewing Co. v. Spencer, 29 Ohio Cir. Ct. Rep. 512.

<sup>55</sup> New Orleans v. Guth, 11 La. Ann. 405.

<sup>56</sup> Commonwealth v. Holland,

104 Ky. 323; 20 Ky. L. Rep. 581; 47 S. W. 216; Commonwealth v. Asbury, 104 Ky. 320; 20 Ky. L. Rep. 574; 47 S. W. 217; see also State v. McNett, 5 Pen. 334 (Del.) 61 Atl. 869.

<sup>57</sup> State v. Cummings, 17 Neb. 311; 22 N. W. 545; State v. Turner, 18 S. C. 103.

<sup>58</sup> State v. Schroeder, 43 Minn. 231; 45 S. W. 149; 45 Minn. 44; 47 N. W. 308 (State v. Orth, 38 Minn. 150; 36 N. W. 103, is no longer an authority).

statute requiring retailers to pay a tax for the privilege of selling at retail.<sup>59</sup> Where a statute defined "trafficking" in liquors as buying and selling, not including "the manufacturing and sale thereof by the manufacturer," it was held that wholesale dealers not manufacturers were liable to a tax under a statute taxing "the business of trafficking in intoxicating liquors;"<sup>60</sup> but this same statute does not apply to a broker selling whisky stored in another State, by transferring warehouse receipts;<sup>61</sup> nor does it impose a tax on one making a single sale, for he is not a person engaged in "buying or procuring and selling of intoxicating liquors."<sup>62</sup> Under a Tennessee decision one who sells wine made from grapes raised on his own farm in quantities less than a quart is not a wholesale but a retail dealer;<sup>63</sup> and a manufacturer, in that State, selling in unbroken packages at his place of manufacture, is not a wholesale dealer liable to taxation "as other merchants."<sup>64</sup> A wholesaler does not lose his standing

<sup>59</sup> *People v. Greiser*, 67 Mich. 490; 35 N. W. 87; *People v. Newman*, 99 Mich. 148; 57 N. W. 1073.

In Pennsylvania a bottler may sell by the keg without a wholesale license. *In re Johnson*, 1 Dauph Co. Rep. 40; 20 Pa. Cr. Ct. Rep. 464; 7 Pa. Dist. Rep. 248.

<sup>60</sup> *Senior v. Ratterman*, 44 Ohio St. 661; 11 N. E. 321; affirming 17 Wkly. L. Bull. 115.

<sup>61</sup> *Voss v. Hagerty*, 21 Ohio Dec. 408; 26 Wkly. L. Bull. 268.

<sup>62</sup> *Voss v. Hagerty*, *supra*.

<sup>63</sup> *Kurth v. State*, 86 Tenn. 134; 5 S. W. 593; see *Webb v. Baird*, 11 Lea, 667.

<sup>64</sup> *Taylor v. Vincent*, 12 Lea, 282; 47 Am. Rep. 338; *State v. Lowenhaught*, 11 Lea, 13; *State v. Tarver*, 11 Lea, 658; *Webb v. State*, 11 Lea, 662; *Webb v. Baird*, 11 Lea, 667.

For a definition of a wholesale

dealer, see *Flournoy v. Grady*, 25 La. Ann. 591.

A wholesaler cannot purchase beer by the barrel, then bottle it and sell it by the bottle. *In re Stambaugh*, 31 Pa. Super. Ct. 243. But in England, where a dealer in beer must sell it in casks containing not less than four and a half gallons, or in not less than two dozen reputed quart bottles at one time to be drunk or consumed elsewhere, he cannot be treated as selling without a license because he sells in pint instead of quart bottles, if the quantity sold at one time is the same. *Fairelough v. Roberts*, 24 Q. B. Div. 350; 54 J. P. 421; 59 L. J. M. C. 54; 62 L. T. 700; 38 W. R. 330.

A statute restricting the times of sale at retail has no application to a sale by wholesale. *Regina v. Jenkins*, 55 J. P. 824;

as such merely because he sells to a consumer and not to a retail dealer, so long as he sells in wholesale quantities.<sup>65</sup> Sales by a distiller at his distillery or at his residence are "sales in the usual course of trade" within the meaning of a statute exempting from its provisions sales made by manufacturers "in the usual course of trade."<sup>66</sup> A statute which provides that "distillers have the privilege of selling at their residence any spirits of their own manufacture," does not authorize each member of a distillery firm to sell the product of the distillery at his residence; and if each member of such firm does sell at his residence all are liable, even though if the distillery was owned by one person he could lawfully sell at his residence.<sup>67</sup> A statute permitting sales by a distiller at his residence does not permit a sale at his store room.<sup>68</sup>

61 L. J. M. C. 57; 65 L. T. 857; 40 W. R. 318.

When a manufacturer storing liquor must pay a wholesaler's tax under the Ohio Dow Act. *Reyman Brewing Co. v. Bristol*, 92 Fed. 28.

An ordinance providing that anyone selling liquors without a license may be fined, applies to a sale at wholesale. *Cofer v. Commonwealth* (Ky.), 87 S. W. 264; 27 Ky. L. Rep. 934; *Commonwealth v. Nunan* (Ky.), 104 S. W. 731; 31 Ky. L. Rep. 1090.

One who solicits orders in Washington for a brewery in New York is not a brewer's agent under the Act of Congress, 32 U. S. Stat. at L. 627, requiring brewers' agents to pay a tax. *Bertzell v. District of Columbia*, 21 App. D. C. 49.

In Oklahoma, under the liquor law (*Wilson's Rev. & Ann. Stat.* 1903, pp. 841, 843, §§ 1 and 8) exacting a license of persons selling liquor at wholesale, an agent selling liquors of his non-resident

principal under his own license is not protected if his principal has no license. *Ruemmeli v. Cravens*, 13 Okla. 342; 74 Pac. 908; 13 Okla. 342; 76 Pac. 188.

<sup>65</sup> *State v. Bock*, 167 Ind. 559; 79 N. E. 493 (five gallons under the statute).

<sup>66</sup> *Commonwealth v. Jarrell*, 8 Ky. L. Rep. (abstract) 783; *Webb v. Commonwealth*, 7 Ky. L. Rep. (abstract) 299; *Robinson v. Commonwealth*, 7 Ky. L. Rep. (abstract) 453; *Commonwealth v. Holsapple*, 9 Ky. L. Rep. (abstract) 437.

<sup>67</sup> *Hooper v. Commonwealth*, 11 Ky. L. Rep. (abstract) 369.

<sup>68</sup> *Moody v. Commonwealth*, 6 Ky. L. Rep. (abstract) 219.

In West Virginia, under §§ 54, 55 and 62 of the Code of 1899, a brewery must pay a license tax to carry on its business and also take out a license to sell its manufactured product. *State v. Schmulbach Brewing Co.*, 56 W. Va. 333; 49 S. E. 249.

In Ohio, a statute imposed a



**Sec. 356. Hotel keeper—Innkeeper.**

In certain States licenses are restricted to keepers of hotels, and what shall be necessary to constitute a hotel is defined or declared. Thus, in New York the statute<sup>69</sup> provided that a license might be granted to the keeper of a hotel which had ten furnished rooms for guests. It was held that the fact that two of the rooms were connected with doors did not make it a hotel of only eight rooms, and that the objection on that ground to the license being granted was frivolous.<sup>70</sup> Under this statute a hotel is defined to be a house kept open for the entertainment of all who come to it without having any previous agreement concerning the duration of the stay or terms of the entertainment.<sup>71</sup> The fact that a building has upon it a sign as a "boarding house," or does not keep a safe for valuables, or have a register or private stable accommodations, does not necessarily prevent it from being a hotel. Nor does the fact where it has been used exclusively as a hotel at a certain time deprive it of the privilege of being licensed as a hotel, because after that date the barroom has been removed to another part of the hotel.<sup>72</sup> But if portions of it be rented at times to tenants it cannot be said that it had been continuously occupied as a hotel within the meaning of the liquor law of that State requiring a building for which a license is applied to have been continuously occupied as a

tax on a trafficker in liquors. A brewery company maintained a storage house at some distance, and in another part of the town, from its brewery, took orders and delivered beer from this house. It was held it was subject to the tax imposed on traffickers. *Christ Deal Brewing Co. v. Beck*, 30 Ohio Cir. Ct. Rep. 226.

In Alabama, a statute imposed a license tax on wholesale dealers in beer exclusively, but provided that any brewery could sell its own manufactured products at wholesale without taking out a license. It was held that a licensed brewery in one county

could sell its own products at wholesale in another county without taking out a wholesale dealer's license there. *State v. Capitol Brewing & Ice Co.* (Ala.), 50 So. 312.

<sup>69</sup> Laws 1896, c. 112, § 31.

<sup>70</sup> *In re Purdy*, 40 N. Y. App. Div. 133; 57 N. Y. Supp. 629.

<sup>71</sup> *In re Brewster*, 39 N. Y. Misc. Rep. 689; 80 N. Y. Supp. 666, citing *Cromwell v. Stephens*, 3 Abb. Prac. (N. S.) 26; *Matter of Moulton*, 59 App. Div. 27; 69 N. Y. S. 14; *Taylor v. Monnot*, 4 Duer, 116; *Wintermute v. Clark*, 5 Sandf. 242.

<sup>72</sup> *In re Brewster*, *supra*.



hotel.<sup>73</sup> A New York statute required a hotel for which a license was applied to have at least six bedrooms, each having an independent access by doors from the hall, in addition to the rooms occupied by the servants and the keeper's family. In order to comply with the law the keeper's family vacated one of the six bedrooms, after the tax certificate had been applied for, and lodged in the hall, into which the other five bedrooms opened, the vacated room being upon another floor. It was held that the hotel was not constructed in compliance with the law.<sup>74</sup> Where some of the bedrooms of the hotel did not comply with the statute as to floor area and cubic feet of space when the application was made, it was held that a license could not be granted.<sup>75</sup> Under this statute a boarding house cannot be construed to be a hotel.<sup>76</sup> Under the Act of Congress of March 3, 1893, it is the duty of the commissioners for Washington in licensing an applicant for a hotel who claims to be the proprietor or lessee thereof, to determine whether he is such proprietor or lessee, and whether the building is an established hotel; and their decision, they having a discretion in the matter, will not be reviewed by a writ of *certiorari* in the matter, nor will it be reviewed upon a writ of *mandamus*.<sup>77</sup> In Kentucky it is held that one may be a "tavern keeper" though his receipts from the bar exceed those from the tavern proper; and whether there be a necessity for a tavern at the place depends upon whether there are persons who naturally desire or seek accommodations at the one in question, and not whether accommodations can be secured at other places.<sup>78</sup>

<sup>73</sup> *In re Brewster*, *supra*.

<sup>74</sup> *In re McMonagle*, 41 N. Y. Misc. Rep. 407; 84 N. Y. Supp. 1068.

A building with six rooms, two of which are well furnished and two containing single beds and mattresses only, the remaining two being unfurnished; between the rooms being only thin partitions, and only part lighted, is not a hotel. *In re Place*, 27 N. Y. App. Div. 561; 50 N. Y. Supp. 640.

<sup>75</sup> *In re Ryon*, 39 N. Y. Misc. Rep. 698; 80 N. Y. Supp. 1114; affirmed 85 N. Y. App. 621; 83 N. Y. Supp. 123.

<sup>76</sup> *In re Harper*, 30 N. Y. Misc. Rep. 663; 64 N. Y. Supp. 524.

<sup>77</sup> *United States v. Johnson*, 12 U. S. App. D. C. 545.

<sup>78</sup> *Schneider v. Commonwealth* (Ky.), 111 S. W. 303; 33 Ky. L. Rep. 770.

Where the liquor law defines what shall constitute an hotel entitled to a license, a building code

**Sec. 357. Restaurant in capitol building.**

It has been held that the congressional restaurants located and conducted in the capitol building at Washington, D. C., under congressional committees need not take out licenses;<sup>79</sup> but in England it would seem that restaurants in the House of Parliament are subject to the licensing acts.<sup>80</sup>

**Sec. 358. Holder of house.**

In England a license to sell beer or cider by retail could formerly be granted only to a person who was a "real resident householder and occupier of the dwelling-house in which he" should apply to be licensed. The house had to be rated for taxation at not less than fifteen pounds per annum if situated in certain places; or, in certain other places, rated at a rent or annual value of eleven pounds per annum; or, in still certain other places, at a rent or annual value of eight pounds.<sup>81</sup> Under this act a house used partly as a grocer's shop and partly as a beer house is deemed qualified for a

enlarging that definition of an hotel is not controlling. *In re Clement*, 129 N. Y. App. Div. 229; 113 N. Y. Supp. 392.

Under the Pennsylvania Act, 1887, p. 108, a hotel, to be licensed, must have for the "exclusive use of travelers at least four bedrooms and eight beds." *In re Knoblauch's License*, 28 Pa. Super. Ct. 323.

As to keeper of European hotel and the tax he must pay. *McClure v. Krumbholz*, 9 Pa. Dist. R. 544; 31 Pittsb. L. J. (N. S.) 3; 14 York Leg. Rec. 31.

Persons who go into a hotel for the purpose of procuring and drinking liquor are not "guests." *Commonwealth v. Moore*, 145 Mass. 244; 13 N. E. 893; *Commonwealth v. Barnes*, 138 Mass. 511.

Where a statute provided that

the privilege to sell liquor should not be enjoyed by any licensee to keep a tavern, coffee house, boarding house or restaurant, it was held that a license to keep a coffee house was not a license to sell spirituous liquors. *Commonwealth v. Woods*, 4 Ky. L. Rep. (abstract) 262.

As to the necessity for a hotel license in the neighborhood, see *In re Reznor Hotel Co.'s License*, 34 Pa. Super. Ct. 525.

<sup>79</sup> *Page v. District of Columbia*, 20 App. D. C. 469.

<sup>80</sup> *Williamson v. Norris* [1899], 1 Q. B. 7; 62 J. P. 790; 61 L. J. Q. B. 31; 47 W. R. 94; 79 L. T. 415; 15 T. L. R. 18; 19 Cox. C. C. 203.

<sup>81</sup> *Beer House Act* [1840], 3 and 4 Vict. c. 61; *Patterson's Licensing Acts* (19th Ed.), p. 245.

license.<sup>82</sup> To be a real resident holder and occupier, the applicant must at least sleep on the premises. Hence, a railway arch used as a beer house was held not qualified because no one slept in it, and it was not a dwelling-house.<sup>83</sup> So a person who is upon the premises of a restaurant twelve hours each day, and has his meals there, is not a real resident holder and occupier.<sup>84</sup> The fact that the applicant is paid a salary by brewers, and has to pay over to them the profits made upon the sale of the beer, does not of itself in law prevent him from being the "real resident holder and occupier."<sup>85</sup> Unless an applicant for a justice's license or certificate is a "real resident holder or occupier," his application must be denied.<sup>86</sup>

### Sec. 359. Boat licenses.

Not infrequently boats are required to take out licenses, whether they make sales when in port or on their voyages. A

<sup>82</sup> Garrety v. Potts, L. R. 6 Q. B. 86; 35 J. P. 168; 40 L. J. M. C. 1; 23 L. T. 554; 19 W. R. 127.

<sup>83</sup> Regina v. Allmey, 35 J. P. 534.

<sup>84</sup> Regina v. Manchester, J. J. [1899], 1 Q. B. 571; 63 J. P. 360; 68 L. J. Q. B. 358; 47 W. R. 410; 80 L. T. 531. This is now changed by statute. Licensing Act, 1902, 2 Edw. 7, c. 28, § 22; Patterson's Licensing Act (19th Ed.), p. 624.

<sup>85</sup> Nix v. Nottingham, J. J. [1899], 2 Q. B. 294; 68 L. J. Q. B. 854; 63 J. P. 628; 47 W. R. 628; 81 L. T. 41; 15 T. L. R. 463.

<sup>86</sup> Rex v. Woodhouse, J. J. [1906], 2 K. B. 501; 70 J. P. 485; 75 L. J. K. B. 745; s. c. Leeds v. Ryder [1907], App. Cas. 420; 71 J. P. 484; 76 L. J. K. B. 1032; 97 L. T. 261.

This qualification for a license does not apply to a license to sell off the premises, or what is termed an "off" license. Regina v.

DeRutzen, 1 Q. B. Div. 55; 40 J. P. 150; 33 L. T. 726; 24 W. R. 343; 45 L. J. M. C. 57.

The overseers or justices could not be compelled to certify that an applicant was a real resident occupier. Regina v. Kensington, J. J. 12 Q. B. 654; 12 J. P. 743; Regina v. Langridge, 24 L. J. Q. B. 73; 2 C. L. R. 1657; but they could be ordered by mandamus to inquire and determine that fact. *Ex parte* Piddlesden, 18 J. P. 391. A *certiorari* to quash the excise license on the ground that the licensee is not a real resident holder of the premises does not lie. Regina v. Salford, 18 Q. B. 687; s. c. *Ex parte* Salford, 16 J. P. 649. A license issued to a real resident holder without the justice's certificate, is valid, though it would not be if he were not. Thompson v. Harvey, 4 H. & N. 254; 28 L. J. M. C. 163; 23 J. P. 150.

statute of Tennessee provided that any person selling liquors on steamboats must pay a privilege tax, in lieu of other taxes, of \$250 per annum; and it was held that the boat making a trip from one port to another port in the State was subject to this tax.<sup>87</sup> In New South Wales the statute authorizing the exacting of a license from vessels is not restricted to sea-going vessels, but applies to a vessel on inland waters.<sup>88</sup> A packet license issued in that country authorizes the master of the packet, being a vessel by which passengers are carried "from" any place to any "other place," to sell liquor "during his passage between such places." A steamer was placed on a river between W and P, going from W to P on one day, stopping there for the night, and returning the next day. A passenger to P, who was returning the next day, was allowed to stop on board the steamer on the night that she lay at P. Liquor was sold to this passenger on board the steamer while she lay at P. It was held that the sale was not made during the passage of the steamer and the sale was illegal. If the sale had been at a stopping place between W and P it would have been a sale during passage and would have been valid. The sales on board the steamer were restricted to passengers, and it was immaterial that a passenger did not pay for his passage.<sup>89</sup>

<sup>87</sup> *Foppiano v. Speed*, 113 Tenn. 167; 82 S. W. 222.

<sup>88</sup> *Ex parte Bogan*, 8 N. S. W. L. R. 409.

<sup>89</sup> *Stuart v. Cullen*, 16 N. Z. L. R. 336.

In Great Britain, commanders of vessels carrying passengers from one part of the United Kingdom to another, must have a license. Licensing Acts [1828], 9 Geo. 4, c. 47; 4 and 5 Will 4, c. 75, § 10; 5 and 6 Vict. c. 44, § 5; 43 and 44 Vict. c. 20, § 45; 53 and 54 Vict. cc. 21, 28; Patterson's Licensing Acts, pp. 176, 256, 544. Liquors cannot be sold on boats at anchor in the Metropolitan Po-

lice District during the time prohibited in public laws. 5 and 6 Vict. c. 44, § 5; Patterson's Licensing Acts, p. 256.

A sale on a river steamboat while stopping in a town, without a license from the town, is a violation of a statute requiring vendors in such town to have a license; and the boat is a "house" within the meaning of the statute against keeping a tippling house. *Commonwealth v. Neff*, 9 Ky. L. Rep. (abstract) 442. Sale as on a boat in Lake Huron. *People v. Bouchard*, 82 Mich. 156; 46 N. W. 232; 9 L. R. A. 106.



**Sec. 360. Canteen—Street railway car.**

Under the New Brunswick statute the militia may maintain a canteen in that country, under the king's regulations, without a license.<sup>90</sup> And by statute this is the case in England.<sup>91</sup> A statute requiring a "vehicle" plying for hire to procure a license does not apply to a street railway car.<sup>92</sup>

**Sec. 361. Who must have a license.**

The usual statute is directed against sales of liquors as beverages, but many of them are broader than that. It is a general rule that all persons carrying on a traffic in intoxicating liquors must have a license so to do of the character required by the statute. Indeed, most of the statutes go farther and prevent all sales and gifts by unlicensed persons. Thus, in Nebraska, a statute prohibited even so much as the keeping of intoxicating liquors for sale, but excepted therefrom, in a precautionary clause, liquors kept for home consumption; and it was held that the fact a person kept liquors for home consumption did not authorize him to sell or keep for sale liquors without a license or permit.<sup>93</sup> So a wine vintner, making wine from grapes grown on his own land, who retails the liquor over his own bar must have a license.<sup>94</sup> So a confectioner must have a license,<sup>95</sup> and a grocer,<sup>96</sup> and a Pullman car conductor selling on his car when passing through a State requiring a license to sell liquors,<sup>97</sup> and a druggist, unless the statute especially excepts his sales from its provisions,<sup>98</sup> and

<sup>90</sup> *Ex parte* Patchell, 34 N. B. 258.

<sup>91</sup> Licensing Act [1872], 35 and 36 Vict. c. 94, § 72; Licensing Act [1902], 2 Edw. 7, c. 28, § 23; Patterson's Licensing Acts, pp. 475, 478, 625.

<sup>92</sup> *Rex v. Wall*, 7 Hawaii, 760.

<sup>93</sup> *Holt v. State*, 62 Neb. 134; 86 N. W. 1073; *Montpelier v. Mills*, 171 Ind. 175; 85 N. E. 6; *Keller v. State*, 11 Md. 525; 69 Am. Dec. 226; *State v. Stiefel*, 74 Md. 546; 22 Atl. 1; *State v. White*, 115 La. 779; 40 So. 44.

<sup>94</sup> *Mandeville v. Baudot*, 49 La. Ann. 236; 21 So. 258.

<sup>95</sup> *New Orleans v. Jane*, 34 La. Ann. 667.

<sup>96</sup> *State v. Brackett*, 41 Minn. 33; 42 N. W. 548.

<sup>97</sup> *La Norris v. State*, 13 Tex. App. 33; 44 Am. Rep. 699.

<sup>98</sup> *Brown v. State*; 9 Neb. 189; 2 N. W. 214; *Wright v. People*, 101 Ill. 126; *Rochester v. Upman*, 19 Minn. 108; *Stormus v. Commonwealth*, 105 Ky. 619; 49 S. W. 451; 20 Ky. L. Rep. 1434; reversing 47 S. W. 262; *Eastman*



a tavern keeper.<sup>99</sup> But where a license is required for sales not exceeding a certain quantity at a time, a license for a sale exceeding that amount is not necessary.<sup>1</sup> A statute requiring all persons who "sell" liquors to pay a license tax, does not require a person carrying on the "business" of selling liquors to take out a license.<sup>2</sup> A statute requiring a dramshop keeper in a city or town to procure a license from such city or town does not require him to have a county or State license.<sup>3</sup> A licensing statute excepting from its provisions sales "by the maker, brewer, or distiller thereof, not to be drunk on the premises," and declaring that brewers and distillers shall not sell liquors "in less quantities than unbroken packages, or less than packages of one gallon each, and they shall pay" a certain license fee per annum "for the privilege of selling liquors as aforesaid," requires a license for all sales in unbroken packages of not less than one gallon, but only when the liquor is sold to be consumed on the premises.<sup>4</sup> The fact that a municipality has voted in favor of licensing the sale of liquors does not release a vendor of liquors from his duty to take out a license.<sup>5</sup> And where a State law requires a vendor of liquors to have a State license, a subsequent statute empowering a certain town to exact a license of a vendor of liquors within its limits and to restrain, regulate and control "to the entire exclusion of any control or right to regulate or restrain, in said matters, by any board, officer, person, or municipality of this county," the liquor traffic, does not dispense with a State license for a vendor of liquors selling within the limits of such town.<sup>6</sup> Under the phrase that "all

v. Commonwealth (Ky.), 20 Ky. L. Rep. 1639; 49 S. W. 795. *Contra* in Texas. Gibson v. State, 34 Tex. Cr. App. 218; 29 S. W. 1085; Prinzel v. State, 35 Tex. Cr. App. 274; 33 S. W. 350.

<sup>99</sup> Page v. State, 11 Ala. 849; Crown Point v. Warner, 3 Hill, 150; Commonwealth v. Woods, 4 Ky. L. Rep. (abstract) 262. *Contra*, State v. Pittman, 10 Kan. 593.

<sup>1</sup> Hunter v. State, 79 Ga. 365; 5 S. E. 134.

<sup>2</sup> *Ex parte* Mason, 102 Cal. 171; 36 Pac. 401.

<sup>3</sup> State v. Pittman, 10 Kan. 593.

<sup>4</sup> State v. Stiefel, 74 Md. 546; 22 Atl. 1.

<sup>5</sup> State v. Cron, 23 Minn. 140.

<sup>6</sup> State v. Nolan, 37 Minn. 16; 33 N. W. 36; Williams v. State, 52 Tex. Cr. App. 371; 107 S. W. 1121.

persons who shall sell" intoxicating liquors must take out a license, a wholesaler must have one.<sup>7</sup> So a person whose license has expired must have a license, even though the police authorities induce him to believe none was necessary if he had his old license renewed and dated back.<sup>8</sup> A statute which makes it an offense, without a license, to offer or expose for sale "or solicit or receive orders" requires an agent soliciting orders in a county adopting such law at a local option election to have a license even though he solicits orders for a principal who lives in another county, has his place of business there, and in which no license is required.<sup>9</sup> A person selling liquors by sample, as the agent of a non-resident, the goods being shipped to the purchaser by the principal from another State, or from the place of business of the non-resident, need not have a license.<sup>10</sup> So where an ordinance makes no mention of a written permit in order to sell liquors, none is required.<sup>11</sup> So a general statute levying a tax upon the occupation of a

<sup>7</sup> *State v. Cummings*, 17 Neb. 311; 22 N. W. 545.

<sup>8</sup> *State v. Brady*, 14 R. I. 508; *People v. Gault*, 104 Mich. 575; 62 N. W. 724.

<sup>9</sup> *State v. Swift*, 35 W. Va. 542; 14 S. E. 135. See *Smith v. State*, 109 Ga. 227; 34 S. E. 325; *Acme Brewing Co. v. Fletcher*, 109 Ga. 463; 34 S. E. 558.

In Texas the statute is broad enough to require a person selling medicated bitters to have a license. *Prinzel v. State*, 35 Tex. Cr. App. 274; 33 S. W. 350.

In England a statute permitted the children of officers in the Peninsular War to set up and exercise a trade in any city without let, suit or molestation, notwithstanding any statute, law, evidence, custom, or provision to the contrary. It was held that such a person must have a license to sell liquors, the statute having reference only to customs, char-

ters, by-laws and the like existing in particular localities; and that the general statutes relating to liquor licenses and sales were not affected by the special statute. *Killin v. Swatton*, 61 J. P. 150; 76 L. T. 55; 45 W. R. 235; 13 T. L. R. 121; 18 Cox C. C. 477.

In Georgia an indigent Confederate soldier is exempt from a license for sale of "near beer," but not from reasonable municipal regulations for its sale. *Campbell v. Thomasville (Ga.)*, 64 S. E. 815.

<sup>10</sup> *McCarthy v. Gordon*, 16 Kan. 35; *Riley v. Bancroft*, 51 Neb. 864; 71 N. W. 745.

A gift of a drink to a prospective purchaser by a traveling agent is a violation of law. *State v. Jones*, 88 Minn. 27; 92 N. W. 468.

<sup>11</sup> *Moore v. People*, 109 Ill. 499.

liquor dealer, and providing that druggists selling liquors on a physician's prescription shall not be exempted from its provisions, does not require druggists selling liquors on prescriptions in local option prohibition counties to have a license.<sup>12</sup> So a statute requiring "all persons" selling intoxicating liquors to have license so to do has no application to an officer levying upon, with an execution, and selling a stock of liquors by virtue thereof at public auction.<sup>13</sup> Nor need an administrator of a deceased liquor dealer have a license to sell the liquors belonging to the estate, though he may not sell them at retail.<sup>14</sup> And so may an assignee in insolvent proceedings under a State statute providing for such insolvent proceedings.<sup>15</sup>

<sup>12</sup> *Gibson v. State*, 34 Tex. Cr. App. 218; 29 S. W. 1085; see *Prinzel v. State*, 35 Tex. Cr. Rep. 274; 33 S. W. 350.

<sup>13</sup> *Wildermuth v. Cole*, 77 Mich. 483; 43 N. W. 889; *State v. Johnson*, 33 N. H. 441; *Nichols v. Valentine*, 36 Me. 322; see *United States v. Overton*, 2 Cranch. C. C. 42, and *In re Blumenthal*, 125 Pa. St. 412; 18 Atl. 395.

<sup>14</sup> *Williams v. Throop*, 17 Wis. 463.

<sup>15</sup> *Gignoux v. Billbruck*, 63 N. H. 22.

In Kentucky it has been held that a person who is not a merchant, without a license may sell whisky in small quantities to be consumed off the premises. *Commonwealth v. Wheeler*, 79 Ky. 284.

A brewer, having his business in another State, may make an exclusive business arrangement with a person residing in a licensing State for the purchase and sale of his beers, though he is not a licensed dealer in such licensing State. *New York Breweries Co. v. Baker*, 68 Conn. 337; 26 Atl. 785.

Where an ordinance requires a license from any person engaged in the business of selling beer brewed out of the city, to dealers therein, foreign brewers keeping beers in storage in the city, and delivering it from time to time to local dealers buying it, must take out a license. *Jung Brewing Co. v. Frankfort*, 100 Ky. 409; 38 S. W. 710; 18 Ky. L. Rep. 855.

A general statute requiring a license to sell beer does not apply to a manufacturer who has taken out a license under another statute and providing that a licensee thereunder shall not be liable to pay any tax or license fee for selling his manufactured product. *In re Biederman*, 3 Pennewill (Del.), 284; 51 Atl. 602.

A statute assessing a tax against persons selling liquors, but excepting "registered pharmacists holding permits," does not render a pharmacist liable for the tax who sells in violation of his permit. *Shonkwiler v. Stewart*, 104 Iowa, 67; 73 N. W. 479.

Although a distiller may be required to hold a license and not

### Sec. 362. Wholesalers.

Under various heads and in various sections has been discussed in a limited extent the question of licenses for wholesale dealers. In this connection we note a few other cases. A statute forbidding a sale without a license applies not only to retail sales, but also to sales at wholesale.<sup>16</sup> And a license to sell at wholesale will not cover a retail sale,<sup>17</sup> however disguised it may be.<sup>18</sup> Unless a statute fix what shall constitute a wholesale or a retail transaction, or fixes the amount that may be sold without a license, it is a question of fact whether a transaction is a sale at wholesale or retail.<sup>19</sup> If a charge be made of a sale at retail, and the evidence shows one at wholesale, which is lawful, there can be, of course, no conviction.<sup>20</sup> The classification made by dealers themselves, where no statute defines a sale at wholesale, in their trade are controlling, and if it be shown that the transaction is a sale at wholesale according to such classification, a peremptory charge

even then sell in less quantities than a gallon, yet that will not limit his sales to dealers alone. *In re Lauk's Appeal*, 2 Pa. Super. Ct. 53; 39 W. N. C. 42.

In Illinois a statute required all persons selling intoxicating liquors to take out a license; and this was held to include a druggist. *Wright v. People*, 101 Ill. 126. But a Kentucky statute prohibiting a "merchant" from selling liquors was held not to apply to an apothecary combining merchandise with his stock of drugs. *Anderson v. Commonwealth*, 9 Bush, 569.

A statute forbidding a tax levied on a wholesale grocer will not prevent his prosecution for selling intoxicating liquors from his establishment by retail. *Mobile v. Richards*, 98 Ala. 594; 12 So. 793; *Burch v. Savannah*, 42 Ga. 596; *Dearen v. Taylor County Court*, 98 Ky. 135; 32 S. W. 402;

*Flournoy v. Grady*, 25 La. Ann. 591.

Under the Mississippi Act of 1896, p. 39, c. 35, a license to sell hopenweis, hop tea and white hops, though malt liquors, is not required. *Harland v. Adams*, 76 Miss. 308; 24 So. 262.

<sup>16</sup> *Dolson v. Hope*, 7 Kan. 161. See § 359a on Manufacturers. *Contra*, *Commonwealth v. Rosenbaum*, 6 Ky. L. Rep. 575.

<sup>17</sup> *Commonwealth v. Rosenbaum*, 6 Ky. L. Rep. (abstract) 365, 575; *State v. Quinn*, 170 Mo. 176; 70 S. W. 1117.

<sup>18</sup> *Pence v. Commonwealth*, 5 Ky. L. Rep. (abstract) 608.

<sup>19</sup> *Pence v. Commonwealth*, 5 Ky. L. Rep. (abstract) 608; *Engle v. Commonwealth*, 7 Ky. L. Rep. (abstract) 830; *Pence v. Commonwealth*, 6 Ky. L. Rep. 113.

<sup>20</sup> *Luton v. Palmer*, 69 Mich. 610; 37 N. W. 701.



to find for the defendant, who has been charged with retailing, is proper.<sup>21</sup> But where a statute permitted sales of five gallons and over without a license, a sale of five gallons or more of beer, which was placed on ice for the buyer by the seller at the latter's place of business and then delivered in quantities of less than five gallons was held to be a sale at retail.<sup>22</sup> Where a statute permitted sales "at wholesale" without a license, but did not define what constituted a sale at wholesale, yet another statute provided that a manufacturer might sell one gallon or more without license, it was considered that all sales of a gallon or more was a sale at wholesale.<sup>23</sup> Where a statute for a county prohibits the sale and use of intoxicating liquors, and provides for the repeal of all laws authorizing the county "to grant license to retail liquors," this will not prohibit sales in the county at wholesale.<sup>24</sup> A statute which permits sales by wholesale dealers and defines a wholesale dealer as "a person, firm or corporation whose sole business in connection with the liquor traffic is to sell at wholesale to retail dealers licensed by the laws of the State or to wholesale liquor dealers or to druggists or pharmacists who are licensed as such by the State Board of Pharmacy," a sale at wholesale to an unlicensed person who himself is not a wholesaler, is a violation of the statute.<sup>25</sup> A license issued for sale only at wholesale is not invalid as a wholesale license, simply because it does not authorize sales at both wholesale and retail as it might have done.<sup>26</sup>

<sup>21</sup> *Engle v. Commonwealth*, 7 Ky. L. Rep. (abstract) 830.

<sup>22</sup> *Mahan v. Commonwealth*, 21 Ky. L. Rep. 1807; 56 S. W. 529; *Adair v. Commonwealth*, 21 Ky. L. Rep. 1818; 56 S. W. 530; *Mays v. Commonwealth*, 3 Ky. L. Rep. (abstract) 327; see *Walker v. Commonwealth*, (Ky.); 75 S. W. 242; 25 Ky. L. Rep. 401.

A statute permitting sales of five gallons of beer at a time means five gallons of still liquor, and not five gallons of froth and solid liquor combined. *People v.*

*Nylin*, 236 Ill. 19; 86 N. E. 156; affirming 139 Ill. App. 500.

<sup>23</sup> *Lloyd v. Dollison*, 23 Ohio Cir. Ct. Rep. 571.

<sup>24</sup> *Commonwealth v. Hles*, 13 Ky. L. Rep. (abstract) 236.

<sup>25</sup> *Shelton v. State* (Ind.), 89 Ind. 860.

As to manufacturers in South Carolina and the Dispensary law, see *State v. Ross*, 58 S. C. 444; 36 S. E. 659.

<sup>26</sup> *Williams v. Louis*, 14 Kan. 605.



**Sec. 363. Native or domestic wines.**

Elsewhere <sup>26\*</sup> has been discussed to some extent the manufacture and sale of native wines, or wines manufactured from grapes grown in the State or on the premises of the manufacturer. These statutes are so different in their details that a discussion of the cases is hardly practicable. As an illustration, thus in Texas, as late as 1877, a sale of wine without a license was lawful only when made in a separate establishment, and not where other liquors were sold.<sup>27</sup> And where a person who manufactures wine from grapes grown on his own premises may sell it without a license, he cannot sell wine made from grapes grown on his own premises to which have been added other grapes.<sup>28</sup> But the grapes may be grown by him on leased premises.<sup>29</sup> Where a statute permitted one holding a manufacturer's license to sell liquors in quantities not less than a gallon at the place where made, but not to be drunk there; and another statute provided that every person holding or purchasing personal property for the purpose of adding to it by any process of manufacturing, refining, or by combination of different materials, should be a manufacturer, it was held that a person who takes new wine and puts it through a process which clarifies and refines it, by adding an ingredient thereto, was a manufacturer, and must have a license.<sup>30</sup>

<sup>26\*</sup> See Index for references.

<sup>29</sup> Stephens v. Henderson, 120

<sup>27</sup> Higgins v. Rinker, 47 Tex.

Ga. 218; 47 S. E. 498.

393.

<sup>30</sup> State v. Bahnenkamp, 88 Mo.

<sup>28</sup> State v. Miller, 104 Mo. App.

App. 172.

297; 78 S. W. 643.

## CHAPTER VIII.

### ISSUANCE OF LICENSES.

#### SECTION.

- 364. Authority to grant.
- 365. How license law construed.
- 366. The application, its form.
- 367. Delegation of power to license.
- 368. Oath of applicant.
- 369. Notice of application.
- 370. Recommendation of applicant.
- 371. Consent to granting of license.
- 372. Consents where saloon has been abandoned or discontinued.
- 373. Saloon near dwelling, consent of owners.
- 374. What is a dwelling requiring consent of owners.
- 375. Signers to consent on recommendation.
- 376. Saloon near church—Distance, how measured.
- 377. Saloon near schoolhouse.
- 378. Saloon near fair or factory.
- 379. Saloon in resident part of city.
- 380. Moral qualification of applicant.
- 381. Residence of applicant.
- 382. Remonstrance.
- 383. Signatures to remonstrance—Power of attorney to sign—Revocation.
- 384. Who may remonstrate.
- 385. Withdrawal of signatures from remonstrance.

#### SECTION.

- 386. A majority remonstrance.
- 387. Day for hearing application, appointing.
- 388. Hearing application.
- 389. Continuance of hearing—Adjourned meeting.
- 390. Evidence at hearing.
- 391. Licensing board acting upon its own information.
- 392. Discretion of licensing board.
- 393. Character of discretion.
- 394. Discretion of municipalities in granting licenses.
- 395. Review or control of discretion of licensing board.
- 396. Reasons for refusal.
- 397. Unsuitable buildings or place.
- 398. Limiting number of saloons.
- 399. Order granting or refusing the license.
- 400. Mandamus to secure a license.
- 401. Mandamus under the English Licensing Acts.
- 402. Injunction to restrain issuance of license.
- 403. Liability for refusing license.
- 404. Appeal from order granting or refusing license.
- 405. Writ of prohibition.
- 406. From what orders an appeal may be taken.
- 407. Persons entitled to appeal—Parties.

## SECTION.

408. Rights of licensee pending appeal.  
 409. Sale pending appeal to Supreme Court.  
 410. Certiorari  
 411. Renewal of license.

## SECTION.

412. Collateral attack upon license—*Quo warranto*.  
 413. Void license.  
 414. Member of licensing board a prohibitionist—Interest.  
 415. Criminal liability of licensing officer.

**Sec. 364. Authority to grant.**

In discussing the application to obtain a license or the granting of one, the first thing in the natural order of the discussion is the power to grant a license; for if there be no power to grant one none can be obtained. This statement is very well illustrated by the Indiana case, holding that no power or authority had been conferred upon the licensing board to issue a license for sales to be made below low-water mark on the Ohio River, and yet a sale made there was illegal and subjected the salesman to punishment.<sup>1</sup> Statutes confer the power upon local boards or courts to grant licenses under certain conditions; and unless such power is conferred, no board or court can grant the prayer of an applicant for a license; and if it attempt to do so its action will be void and confer no rights or protection.<sup>2</sup> There is no constitutional objection to granting such powers to the courts, where the courts must find certain facts to exist before it orders the license issued; for the finding of these facts is the exercise of judicial powers.<sup>3</sup> It might be otherwise if the duty imposed on the court was merely clerical, requiring it to issue a license to all applicants regardless of fitness and without discretion. In England justices of the peace for the local municipal division, when assembled for that purpose grant or refuse the application for a license.<sup>4</sup>

<sup>1</sup> Welsh v. State, 126 Ind. 71; 25 N. E. 883; 9 L. R. A. 664; see State v. Hall, 2 Bailey (S. C.), 151.

<sup>2</sup> State v. Fort (Mo. App.), 81 S. W. 476.

<sup>3</sup> Intoxicating Liquor Cases, 25 Kan. 751; 37 Am. Rep. 284; Commonwealth v. Petri, 122 Ky. 20; 90 S. W. 987; 25 Ky. L. Rep.

940; Bryan v. DeMoss, 34 Ind. App. 473; 73 N. E. 156; Bryan v. Jones, 34 Ind. App. 703; 73 N. E. 1135; State v. Gorman, 171 Ind. 58; 85 N. E. 763.

<sup>4</sup> 6 Edw. 7, c. 42 [1906]; 9 Geo. 4, c. 61, §§ 1 and 9 [1828]; Patterson's Licensing Act, pp. 179, 195, 761.

In that country a transfer of an

The power to grant and issue a license may be conferred upon the clerk of a court,<sup>5</sup> or upon the city council.<sup>6</sup> The authority to grant the license, however, is never divided, and a grant of power to one court or local body, or officer, cannot be exercised by another court, or local body or officer. The grant is an exclusive one.<sup>7</sup> Whatever court, local body or officer is designated to grant the license it or he cannot exceed the limitations conferred by the statute; for if he do, its or his act will be void. Thus a license cannot be issued by it for a place where prohibition prevails, either by positive statute or by the adoption of local option.<sup>8</sup> And if a city council has adopted a rule that no license shall issue unless the application receives the favorable vote of six, a license, so long as this rule stands, cannot be issued upon the vote of four or five.<sup>9</sup> So if only one license can be issued per thousand inhabitants, licenses in excess of this limitation are void.<sup>10</sup> But private arrangements or contracts place no restraints upon a court or licensing board; as where there is a clause in the licensee's deed for the place to be licensed providing that no intoxicating liquor shall be sold thereon. A license for such a place is valid.<sup>11</sup> Although a court may have a superintending general control over county courts authorized to issue a license, yet that will not authorize it to restrain a county court

outlying parish of a county to another county, or other area within it, under the County Police Act of 1840, does not also transfer the licensing jurisdiction. *Regina v. Worcestershire* [1899], 1 Q. B. 59; 68 L. J. Q. B. 109; 62 J. P. 836; 47 W. R. 134; 79 L. T. 393; 15 T. L. R. 45; 19 Cox C. C. 198.

<sup>5</sup> *O'Driscoll v. Viard*, 2 Bay (S. C.), 316; see also *Commonwealth v. Hill*, 127 Pa. 540; 19 Atl. 141; *State v. Rosenblatt*, 9 Mo. App. 587.

<sup>6</sup> *State v. Columbia*, 17 S. C. 80; *People v. Mount*, 186 Ill. 560; 58 N. E. 360; affirming 87 Ill.

App. 194; *Hartig v. Seattle* (Wash.), 102 Pac. 408.

The mayor may give a casting vote on an application for a license. *In re Hastings* (Neb.), 119 N. W. 27.

<sup>7</sup> See *Wiggins v. Varner*, 47 Ga. 583; *Cooke v. Common Pleas*, 51 N. J. L. 85; 16 Atl. 176; *Broomfield v. State*, 10 Mo. 556.

<sup>8</sup> *Jones v. Moore Co.*, 106 N. C. 436; 11 S. E. 514.

<sup>9</sup> *Commonwealth v. Moran*, 148 Mass. 453; 19 N. E. 554.

<sup>10</sup> *Commonwealth v. Hayes*, 149 Mass. 32; 20 N. E. 456.

<sup>11</sup> *State v. Busby*, 44 N. J. L. 627.

from granting one.<sup>12</sup> A statute empowering a city to enact ordinances to license saloons and taverns requires it to enact an ordinance for that purpose before it can exact or grant one.<sup>13</sup> A State may abdicate its right to issue licenses and confer it upon cities and towns to its own exclusion.<sup>14</sup> If a county or district has adopted local option, forbidding the sale of liquors therein, then no board or council can thereafter issue a license to sell liquors in such county.<sup>15</sup> And a license granted contrary to law is no protection.<sup>16</sup> A license granted by two of three licensing commissioners without the presence or consent of the third, and when they are not legally assembled for that purpose, is void.<sup>17</sup> In granting a license a board of county commissioners is not the agent of the State.<sup>18</sup>

### Sec. 365. How license law construed.

Licenses or permits to sell intoxicating liquors at retail or as beverages are regarded rather as grants of privileges on the part of the State than as confirming rights to persons to

<sup>12</sup> State v. Fort, 75 Mo. App. 214; 81 S. W. 476.

A mayor and alderman do not disqualify themselves to act by signing the applicant's petition. Ferguson v. Brown, 75 Miss. 214; 21 So. 603.

<sup>13</sup> Ellis v. Board, 59 N. J. L. 151; 35 Atl. 795; Meyer v. Decatur, 125 Ill. App. 556; *In re Ryan* (Neb.), 112 N. W. 599; Greunbauch v. Lelande, 154 Cal. 679; 98 Pac. 1059.

Members of a board appointed in an unconstitutional manner cannot issue a license when a *de jure* board is in existence. Dienstag v. Fagan, 74 N. J. L. 418; 65 Atl. 1011. A license issued by a *de facto* board is valid. Taber v. New Bedford, 177 Mass. 197; 58 N. E. 640. A city may adopt an ordinance authorizing one of its committees to issue a license,

with the right of appeal to the council. Cooke v. Loper, 151 Ala. 546; 44 So. 78. Or confer the power on a police board. Greunbauch v. Lelande, 154 Cal. 679; 98 Pac. 1059.

<sup>14</sup> State v. Harden, 62 W. Va. 313; 58 S. E. 715; 60 N. E. 394.

<sup>15</sup> Commonwealth v. Pool, 16 Ky. L. Rep (abstract) 351; Young v. Commonwealth, 14 Bush, 161; Badgett v. State, 157 Ala. 20; 48 So. 54.

<sup>16</sup> Commonwealth v. Markoe, 17 Pick. 465.

<sup>17</sup> Palmer v. Doney, 2 Johns. Cas. 346.

Unless power is given to board to grant a license, it cannot grant one. State v. Police Jury, 116 La. 767; 41 So. 85.

<sup>18</sup> State v. Gorman, 171 Ind. 58; 85 N. E. 763.



traffic in intoxicating liquors. This is unquestionably the view taken by the courts and the Legislatures during the last three-quarters of a century. And while a licensee has the right to pursue his trade under his license and be protected therein, if he infringes no law regulating his business, yet he is liable to meet with regulations, even prohibitory legislation, that he would meet with in no other legitimate trade or profession. And while an applicant is entitled to a license if he brings himself within the provisions of the law, yet he must squarely do so before he can bring proceedings to coerce the issuance to him of a license. For these, and perhaps other reasons statutes regulating the sale of intoxicating liquors, especially as beverages, and the process for procuring of a license are strictly construed; and the applicant for a license must comply strictly with their provisions if he would be successful in his application.<sup>19</sup>

### Sec. 366. The application, its form.

It is scarcely necessary to say that the application for a license must be made to the court, board or officer authorized to issue it; for a license issued by any other would be a nullity.<sup>20</sup> The applicant for a license must in all things comply with the requirements of the statute,<sup>21</sup> in order to secure

<sup>19</sup> *In re* Hoyniak License, 9 Kulp. (Pa.) 368; *United States v. Johnson*, 12 U. S. App. D. C. 92. Tax certificates in New York stand upon a little different ground from licenses. *People v. Flynn*, 110 N. Y. App. Div. 279; 96 N. Y. Supp. 655; reversing 48 N. Y. Misc. Rep. 159; 96 N. Y. Supp. 653. Construed strictly against applicants and liberally to carry out their provisions. *In re Hering* (N. Y.), 117 N. Y. Supp. 747; *In re Place*, 27 N. Y. App. Div. 561; 50 N. Y. Supp. 640; *Malken v. Chicago*, 217 Ill. 471; 75 N. E. 548; affirming 119 Ill. App. 542.

<sup>20</sup> *Bingham Co. v. Fidelity & Deposit Co.*, 13 Idaho, 34; 88 Pac. 829; *State v. Moniteau Co.* Ct. 45 Mo. App. 387; *Slater v. Fire & Police Board*, 43 Colo. 225; 96 Pac. 554; *In re Liquor License*, 1 B. & C. (N. S.) 257; *State v. Young*, 17 Kan. 414. To be filed an application need not be marked "filed." *Keller v. Leonard* (Mo.), 116 S. W. 14. A city may require a written application. *Campbell v. Thomasville* (Ga.), 64 S. E. 815.

<sup>21</sup> *In re* Hoyniak License, 9 Kulp. (Pa.) 368; *Green v. Southard*, 94 Tex. 470; 61 S. W. 705; reversing 59 S. W. 839.

it; which means that he must present a sufficient written petition, for all statutes, we believe, require a written application.<sup>22</sup> Petitions, however, lacking in some formalities are not necessarily so defective as to justify the denial of their prayers for licenses. Thus, where the statute provided that applications for licenses should be for the right to retail "liquors, wines or beer," a petition to sell "spirituous or intoxicating liquors, or wine and beer," is sufficient.<sup>23</sup> If the applicant need not be an inhabitant of the political division for which he seeks a license, of course he need not state that he is such an inhabitant in his petition.<sup>24</sup> If the license is to be issued for a particular place, then the petition must contain a reasonably certain description of the place for which the license is sought; but it is sufficient if so reasonably full and certain that it points out the exact location,<sup>25</sup> as the one-story frame building, situated on the east sixty-six feet in length and twenty-five feet in width" of a designated town lot;<sup>26</sup> or "No. 1005 Elizabeth Avenue, the corner of Spring Street, in said city."<sup>27</sup> Upon a petition for a license at one place, a license cannot be granted for another place.<sup>28</sup> The fact that the building to be licensed is not yet built when the application is made is immaterial, if the place be otherwise properly described.<sup>29</sup> A statute required the applicant to designate in his petition the place in which he proposed to retail liquors, the particular place and house to be designated in the license, and it was held in a suit on his bond that a license for sale of liquors in a town where the streets

<sup>22</sup> *Corbett v. Duncan*, 63 Miss. 84; *McCreary v. Rhodes*, 63 Miss. 308; *In re Donmoyer*, 9 Pa. Cr. Ct. Rep. 303.

<sup>23</sup> *State v. Jefferson Co.*, 20 Fla. 425; *Hearn v. Brogan*, 64 Miss. 334; 1 So. 246; *Moss v. Warren* (Tex. Cr. App.), 123 S. W. 1157.

<sup>24</sup> *Murphy v. Board*, 73 Ind. 483.

<sup>25</sup> *Murphy v. Board*, 73 Ind. 483; *Regina v. Peckridge*, 61 L.

J. M. C. 132; 66 L. T. 371; 56 J. P. 87; *Green v. Southard*, 94 Tex. 470; 61 S. W. 705, reversing 59 S. W. 839.

<sup>26</sup> *Ex parte Miller*, 98 Ind. 451; *In re Burns* (Ind.), 87 N. E. 1028.

<sup>27</sup> *Orcutt v. Reingardt*, 46 N. J. L. 337; *State v. Swallum*, 111 Iowa 37; 82 N. W. 439.

<sup>28</sup> *Tanner v. Bugg*, 74 Mo. App. 196.

<sup>29</sup> *Moran v. Creager*, 27 Ind. App. 659; 62 N. E. 61

were not named nor the buildings numbered was valid, though in the application and in such license the place was designated only as such town.<sup>30</sup> It is not sufficient to describe the place as "the lower floor of the front room of the two-story brick building," situated on a certain lot at a street corner, under a statute requiring the applicant to state in his application "the precise location of the premises in which he desires to sell."<sup>31</sup> If the houses in a town be not numbered, failure to give a number is not fatal to the application.<sup>32</sup> A description that the place is "at No. G Building, in the town of H, County of H, on parts of lots Nos. 11 and 12 in block No. 3, division one," does not necessarily cover two separate places of business, and is sufficient.<sup>33</sup> So a description as follows was held sufficient on appeal: "That certain storeroom and dwelling, containing storeroom, three rooms and cellar, and occupied last year as a wholesale liquor store by your petitioner, situate in the Eleventh Ward, Pittsburg, in said county, being ——."<sup>34</sup> An application for a license in a city where the streets are numbered describing the places as "No. — Street, in the city of G, county of G," was held sufficient in the description;<sup>35</sup>

<sup>30</sup> *Green v. Southard*, 94 Tex. 470; 61 S. W. 705, reversing 59 S. W. 839.

<sup>31</sup> The statute "requires not only that the exact location of the room in which he desires to sell be specifically described, but that the room itself be specifically described, and, if there is more than one room in the building, that the room in which the applicant desires to sell be specifically described and located. The building described fronts on two streets, and the words 'the lower floor of the front room of the two-story brick building' do not specifically describe the location of said room in the building. As the words 'lower floor' in said description, apply to the room, and not to the building, any front,

in the basement, or on the ground floor, or any other floor in said building, on either of said streets, would satisfy the description in the application. There is no specific description of the room. It is evident that said application was insufficient." *Mace v. Smith*, 164 Ind. 152; 72 N. E. 1135; *Green v. Southard*, 94 Tex. 470; 61 S. W. 705; reversing (Tex. Civ. App.) 59 S. W. 839.

<sup>32</sup> *Douthitt v. State* (Tex. Civ. App.), 82 S. W. 352; judgment modified, 83 S. W. 795.

<sup>33</sup> *Cox v. Thompson* (Tex. Civ. App.) 85 S. W. 34; *Cox v. State*, (Tex. Civ. App.), 85 S. W. 1199.

<sup>34</sup> *In re Walker's License*, 24 Pa. Super. Ct. 90.

<sup>35</sup> *Douthitt v. State* (Tex. Civ. App.), 87 S. W. 190; *Dougherty*

and so was "Windsor Hotel," situated in United School District, Nos. 2, 100, 103 and 104 in Colored School District No. 192.<sup>36</sup> A defective or insufficient description in the petition may be cured by the order of the court granting the license wherein a correct description of the place is inserted.<sup>37</sup> If the application must be supported by the petition of persons residing within the district, an erasure of the name of the petitioner and a substitution of another name will not authorize the grant of a license;<sup>38</sup> and if the name of the owner of the premises, where the liquor is to be sold, is not stated, when that is necessary, the petition cannot be amended by its insertion nor a new petition be filed;<sup>39</sup> nor can a petition be amended as to a material matter after the time for filing it has passed.<sup>40</sup> If a certain number of persons must endorse the petitioner's application, it is no objection that part of them have endorsed the application of others which is then pending.<sup>41</sup> Where a statute requires the petition to contain at least two names of reputable freeholders of the county, to become the applicant's sureties on his bond, and also a statement that these freeholders are *bona fide* freeholders of land worth over

v. Richmond (R. I.), 74 Atl. 625. Under the Indiana statute it is evident this description would not be sufficient.

<sup>36</sup> *In re Lofland* (Del.), 66 Atl. 361.

The petition may be amended. *Moss v. Warren* (Tex. Cr. App.), 123 S. W. 1157.

<sup>37</sup> *Cravens v. Adair Co. Ct.* (Ky.), 17 Ky. L. Rep. 71; 30 S. W. 414; *State v. Cauthorn*, 40 Mo. App. 94; *Waugh v. Graham*, 47 Neb. 153; 66 N. W. 301.

In England the justices may prescribe the metes and bounds of the licensed premises. *Stringer v. Huddersfield, J. J.*, 40 J. P. 22; 33 L. T. 568. See *Rushton v. Bromley, J. J.*, 52 J. P. 760.

<sup>38</sup> *Polk Co. v. Johnson*, 21 Fla. 577.

<sup>39</sup> *In re Donmoyer*, 9 Pa. Co. Ct. Rep. 303.

<sup>40</sup> *In re Sherry*, 12 Pa. Co. Ct. Rep. 129.

A statement in the application that consents had been previously filed with reference to the premises does not make them a part of the application. *People v. Walker*, 60 N. Y. Misc. Rep. 130; 112 N. Y. Supp. 1021.

<sup>41</sup> *In re Meredith*, 2 Pa. Co. Ct. Rep. 82.

Nor is it if some of them are not qualified, if enough having the qualifications have signed it. *In re Schmidt's License*, 37 Pa. Sup. Ct. 420.



and above all incumbrances a certain sum of money, an application which fails to set forth the names of two freeholders and their qualifications is fatally defective.<sup>42</sup> Where a statute restricted licenses to a person twenty-one years of age or over who was a citizen of the United States, a resident of the State and of good moral character, and requiring the applicant to present a written application containing a full statement that he "may lawfully be licensed," an application which omitted a statement as to these qualifications was held fatally defective.<sup>43</sup> But if the order granting a license recites all the jurisdictional facts, the license is valid, notwithstanding the defects in the petition.<sup>44</sup> In Missouri, where taxpayers were required to sign a petition for a license to be granted to a particular person, it was held not necessary for the applicant to sign the application.<sup>45</sup> Usually it is not necessary for the application to contain a statement concerning what qualities of liquors the applicant desires to sell.<sup>46</sup> The fact that the petition is directed to an authority not empowered to issue a license is immaterial if it is presented to the proper authority, and it accepts and acts upon it, granting the license,<sup>47</sup> though it may refuse to accept it. If the petitioner must first obtain the written consent of the owners of real estate situated within a certain distance of the place to be licensed, then his

<sup>42</sup> *In re* Bailey, 5 Pa. Dist. Rep. 172.

<sup>43</sup> *People v. Board*, 9 Hun 94; 36 N. Y. Supp. 678; *Jones v. Thro*, 2 Mo. App. 1303; *Corbett v. Duncan*, 63 Miss. 84; *McCreary v. Rhodes*, 63 Miss. 308.

<sup>44</sup> *State v. Cauthorn*, 40 Mo. App. 94.

<sup>45</sup> *State v. Heege*, 37 Mo. App. 338.

<sup>46</sup> *Hearn v. Brogan*, 64 Miss. 334; 1 So. 246; *Brown v. Lutz*, 36 Neb. 527; 54 N. W. 860.

In Pennsylvania it was held that a corporation applying for a license need not state that its charter is of record in the re-

corder's office, under a statute requiring all charters of corporations to be so recorded. *In re* Gulf Brewing Co., 11 Pa. Co. Ct. Rep. 346; nor, for a wholesale license, "the name and present address of the applicant, and how long he had resided there." *In re* Brewing Co., 14 Pa. Super. Ct. 188.

<sup>47</sup> *Slater v. Fire and Police Board*, 43 Colo. 225; 96 Pac. 554.

In Pennsylvania the names of the persons to be licensed must be given, or the license petition will be fatally defective. *Appeal of Miller*, 13 Pa. Super. Ct. 272; 13 York Leg. Rec. 199.



application must contain a statement that he has the requisite number of assents, by stating the number of owners within that area and the number who have given their consent, or possibly, by stating that a majority within that area have consented thereto in writing.<sup>48</sup> Where a statute required a petition to be signed by at least thirty resident freeholders if there were sixty resident freeholders in the district, a petition signed by a majority of the resident householders was held sufficient where less than sixty resident freeholders resided in the district.<sup>49</sup> Where a bond for the license had to be filed with the application, and reference in the application made to the sureties, it was held inadmissible to fill the blank spaces for them with the names of the sureties after the application was filed.<sup>50</sup> But where the spaces for the names of the sureties in the petition were left blank, but on the same sheet was a properly executed bond with sureties, it was held that the petition could be amended, it being shown that it was sworn to after the bond had been executed.<sup>51</sup> A license granted upon a petition in which a material fact is defectively stated is not void, if there has been a full and prior hearing upon it; as where the applicant must be a hotel proprietor, and he did not expressly state he was the proprietor.<sup>52</sup> So where an applicant had to be a citizen of the United States, and it was so alleged, but it was also alleged that he was born in Ireland, it was held that it was not fatally defective on the ground that

<sup>48</sup> *In re Bridge*, 56 N. Y. Supp. 1105; 36 N. Y. App. Div. 533; 25 Misc. Rep. 213; 55 N. Y. Supp. 54.

<sup>49</sup> *Somers v. Vlasney* (Neb.), 89 N. W. 1036.

<sup>50</sup> *In re Matthew*, 213 Pa. 269; 63 Atl. 837; reversing 28 Super. Ct. 384.

*In re Regan*, 213 Pa. 279; 62 Atl. 841; reversing 28 Super. Ct. 386.

<sup>51</sup> *In re Oberfell*, 28 Pa. Super. Ct. 68.

In the same State it is held that the certificate relating to the

pecuniary ability of the sureties need not be set forth in the petition. *In re Fonnev*, 28 Pa. Super. Ct. 71; and that it is not a fatal defect to omit to allege that the hotel for which a license is requested had at least four bedrooms, as the law required. *In re Knoblauch*, 28 Pa. Super. Ct. 323; but in view of the above cited cases in the Supreme Court, these two cases may be regarded as of doubtful authority.

<sup>52</sup> *Appeal of Burns*, 76 Conn. 395; 56 Atl. 611.

it omitted to state how he became a citizen of the United States.<sup>53</sup> Where an ordinance required the licensing board to investigate the qualification of the applicant and the suitability of the premises, and at least five freeholders should sign the petition, it was held not necessary for the petitioner to state the signers were freeholders.<sup>54</sup> However, it is necessary that the petition be sufficient to contain allegations of facts, to confer jurisdiction on the board granting the license, whatever they may be, or the proceedings and the license will be void.<sup>55</sup>

### **Sec. 367. Delegation of power to license.**

No one except the authority empowered can grant or issue a license; that authority cannot delegate its power, and if it attempt to do so the license issued under the delegated power will be a nullity. Such was adjudged to be the case where the Board of County Commissioners attempted to empower the county attorney to grant the application of a petitioner for a license,<sup>56</sup> or the county clerk, although he was the clerk of the board.<sup>57</sup> Nor can a city council delegate its power to license to the mayor of the city.<sup>58</sup> The rule, however, that the authority to grant or issue a license does not apply to the mere clerical work in issuing it, aside from the signing; and when the license is signed by the officer designated by law it is the act of the board or court ordering it issued.<sup>59</sup>

<sup>53</sup> *In re Walsh*, 208 Pa. 582; 57 Atl. 933; reversing 24 Pa. Super. Ct. 87.

<sup>54</sup> *Hayes v. Board*, 6 Cal. App. 520; 92 Pac. 492.

<sup>55</sup> *State v. Fort*, 107 Mo. App. 567; 81 S. W. 476.

Upon one application two licenses for distinct barrooms in separate buildings cannot probably be granted. In such an instance a separate license for each barroom must be taken out. *Huber v. Commonwealth* (Ky.), 112 S. W. 583; 33 Ky. L. Rep. 1031.

Under the Kentucky statute if

a license be refused a second application cannot be made for one year thereafter. *Commonwealth v. Schoenthaler* (Ky.), 122 S. W. 828.

<sup>56</sup> *Hennepin Co. v. Robinson*, 16 Minn. 381.

<sup>57</sup> *Thorn v. Atlanta*, 77 Ga. 661; *Mayson v. Atlanta*, 77 Ga. 662; *McCrea v. Billingslea*, 89 Md. 767; 43 Atl. 42.

<sup>58</sup> *State v. Bayonne*, 44 N. J. L. 114.

<sup>59</sup> *In re Bickerstaff*, 70 Cal. 35; 11 Pac. 393.

### Sec. 368. Oath of applicant.

In Alabama, under a statute of 1882-83, the applicant was required to file with his application an oath or affidavit that he would not violate the liquor laws in certain of its provisions, and it was held that the oath was necessary to give the licensing board jurisdiction, and if it was not filed any license issued on the application was void.<sup>60</sup> An affidavit or oath is sometimes required as to the genuineness of the signatures of consent filed with the petition, and when this is the case the affidavit or oath must be made upon personal knowledge, not upon knowledge ascertained from others.<sup>61</sup>

### Sec. 369. Notice of application.

In almost all States notice of the application for a license must be given. In all instances it is held that this notice is necessary to give the licensing board jurisdiction; and in this respect the law must be fully complied with, for a compliance in part is not sufficient. The full time of the notice must run before any action can be taken.<sup>62</sup> The notice must be published in the English language and in an English newspaper when a notice must be published in a newspaper unless the statute otherwise provides.<sup>63</sup> Where the statute required two weeks' notice, and the first publication was on the fifth of the month for a hearing on the eighteenth, but on that day on objections of remonstrators, the hearing was adjourned

<sup>60</sup> Russell v. State, 77 Ala. 89.

<sup>61</sup> State v. Sumter Co., 22 Fla. 364.

When a statute required the applicant to present an affidavit as to the value of his stock, it was held that this affidavit need not accompany the application. State v. Seibert, 97 Mo. App. 212; 71 S. W. 95. It was also held that an order annulling the license because an insufficient affidavit on this point had been filed, was erroneous.

<sup>62</sup> Pelton v. Drummond, 21 Neb. 492; 32 N. W. 593; State v. Murphy, 51 N. J. L. 250; 17 Atl.

157; Zielke v. State, 42 Neb. 750; 60 N. W. 1010; Hochfeld v. Sutherland, 15 Juta 101; Parsens v. George, 17 Juta 192; Muncey v. Collins (Iowa), 106 N. W. 262; Ormerod v. Chadwick, 16 M. & W. 687; 2 N. Sess. 697; Regina v. James, 12 J. P. 262; Regina v. Hayhurst, 61 J. P. 88; *Ex parte* Clayton, 63 J. P. 688; *In re* O'Connor, Temp Wood (Manitoba), 284; Pisar v. State, 56 Neb. 455; 76 N. W. 869; Goodwine v. Flint, 28 Ind. App. 36; 60 N. E. 1102.

<sup>63</sup> State v. Jersey City, 54 N. J. L. 437; 24 Atl. 571.

until the twenty-second, it was held that the license was void.<sup>64</sup> If a daily paper be used, then there must be daily publications of the notice; but if a weekly paper be used, then publication by the week is sufficient.<sup>65</sup> When the first publication was on the twenty-second of the month, for a hearing on the sixteenth, it is sufficient, though the paper be not mailed until the following day, where no action is taken until a day thereafter on the application of remonstrants.<sup>66</sup> The publication may be shown by the affidavit of the printer.<sup>67</sup> Unless the statute authorize it, the licensing board cannot select the newspaper in which the notice shall be published.<sup>68</sup> Where a statute required the notice to be published in a newspaper having the largest circulation in the county, it was held that the decision of the applicant on that point would be respected, in the absence of a charge of fraud.<sup>69</sup> In some instances the names of those petitioning must be published;<sup>70</sup> but a failure to publish their marks, when they so sign is immaterial.<sup>71</sup> If a license

<sup>64</sup> *Pelton v. Drummond*, 21 Neb. 492; 32 N. W. 593.

<sup>65</sup> *State v. South Omaha*, 33 Neb. 856; 51 N. W. 291; *In re Hedgreen* (Neb.), 111 N. W. 786; *Feil v. Kitchen Bros. Hotel Co.*, 57 Neb. 204; 77 N. W. 344.

<sup>66</sup> *Brown v. Lutz*, 36 Neb. 527; 54 N. W. 860; *Feil v. Kitchen Bros. Hotel Co.*, 57 Neb. 204; 77 N. W. 344.

<sup>67</sup> *Rosewater v. Pinzenham*, 38 Neb. 835; 57 N. W. 563. This case discusses the question of the several editions of a newspaper, without any particular determination of the question, except that it is a question for the licensing board.

<sup>68</sup> *Rosewater v. Pinzenham*, 38 Neb. 835; 57 N. W. 563; *Feil v. Kitchen, etc. Co.*, 47 Neb. 204; 77 N. W. 344.

<sup>69</sup> *Feil v. Kitchen, etc. Co.*, 57 Neb. 204; 77 N. W. 344; *Lambert v. Stevens*, 29 Neb. 283; 45 N.

W. 263; *In re Hedgren* (Neb.), 111 N. W. 786.

But in Oklahoma, on a remonstrance, the applicant must prove that the two newspapers in which the notice was published had the largest circulation in the county. *Smith v. Young*, 13 Okla. 134; 74 Pac. 104.

It may be remarked that unless a statute requires it, a notice need not be given. *State v. Moniteau Co. Ct.*, 45 Mo. App. 387, and that a statute requiring a notice for retail license has no application to a wholesale license. *Evans v. Commonwealth*, 95 Ky. 231; 24 S. W. 632.

<sup>70</sup> *Ex parte Smeltzer*, 17 W. N. (N. S. W.), 190.

<sup>71</sup> *State v. Sumter Co.*, 22 Fla. 1. So is a failure to publish the names of the attesting witnesses. *Ferguson v. Brown*, 75 Miss. 214; 21 So. 603.



be granted on an insufficient notice, it may be revoked.<sup>72</sup> Where a statute required a notice to be posted at the court house door and at four public places in the neighborhood where the liquor was to be sold; and the applicant swore he posted four notices ten days before the day of hearing, hanging one on a tack on the front door of his dwelling house, one on a tree opposite on the margin of the highway and two on the telegraph poles three hundred yards away, but no one saw the notice on the door nor the one on the tree, and it was proven the applicant posted the notice after dark, and several citizens swore they never saw any notice, although they were on the outlook for them, it was held that there had not been such a "posting" of a notice as the law required.<sup>73</sup> In England, where notices must be given to certain police officers twenty-one days before the licensing justices meet, the mode of computing the twenty-one days is to exclude the day of holding the general annual meeting or the adjournment day when the licensing can be granted, and to also exclude the day on which the notice is given.<sup>74</sup> So in that country notice for certain hours on two consecutive Sundays, "within the space of twenty-eight days before such application is made," the applicant must cause a notice of his application to be posted "on the principal door or on one of the doors of the church or chapel of the parish." This is construed to mean a Church of England, and if posted on the "notice board" near the door that will be sufficient.<sup>75</sup> The notice must also be posted on the principal door of his shop; but it is held that a notice affixed to the floor boards in the doorway of an incomplete building will be sufficient.<sup>76</sup> Where the application was for one kind of

<sup>72</sup> Commonwealth v. Redman, 121 Ky. 158; 88 S. W. 1073; 28 Ky. L. Rep. 117.

<sup>73</sup> Commonwealth v. Redman, *supra*.

<sup>74</sup> Regina v. Aberdare, 14 Q. B. 854; Regina v. Shropshire, 8 A. & E. 173; Young v. Higgin, 6 M. & W. 49; Chambers v. Smith, 12 M. & W. 2; Robinson v. Waddington, 13 Q. B. 753; Norton v.

Salisbury, 4 C. B. 32; *In re Railway Sleepers Co.*, 29 Ch. Div. 204; Regina v. Powell, 62 L. J. M. C. 174 [1893]; 2 Q. B. 158; 5 R. 486; 70 L. T. 138; 57 J. P. 24.

<sup>75</sup> Empson v. Met. Board, 25 J. P. 677; 3 L. T. 624.

<sup>76</sup> Regina v. Sharp, 42 Sol. J. 572.



license, an "on" license, and the notice was for another kind, an "off" license, the discrepancy was held immaterial, for the matter of sales was only a difference in the manner of sales.<sup>77</sup> In some countries notice must be given to a police officer. In England "to one of the overseers of the parish" or township, and formally to the superintendent of police of the district. In one case a petty sessional division included a borough that had a chief constable, and the rest of the division a superintendent of police; and it was held that the notice was rightly served on the superintendent in whose part of the division the house was situated.<sup>78</sup> This notice must be served personally, or at the residence or office of the superintendent of police, and it is not enough to serve it by leaving it at the residence of one of the police officers of his district which he occasionally visited, and not at his residence or office.<sup>79</sup> Where an Irish statute required service of notice of the application to be made upon the two next resident magistrates, service at the place of business where a magistrate ordinarily transacts his commercial business, and where he is found during working hours of the day, was held sufficient.<sup>80</sup> Where a notice was given by the secretary of a company, but it did not contain an expressed statement that he gave it on behalf of the company, the notice was held sufficient.<sup>81</sup> In Indiana a notice is required to be published in a weekly newspaper at least twenty days before the meeting of the board of county commissioners at which the application will be presented; and it is held that only one publication twenty days before the board meets is sufficient.<sup>82</sup> Where a notice was published in a newspaper sixteen miles away, in another county, from the town for which a license was sought and mailed in bulk to a person residing in the town, who remailed them to subscribers, and only three copies were sent to the township in which the

<sup>77</sup> *Ex parte* Clayton, 63 J. P. 788. So see *Regina v. Blackburn*, J. J., 42 J. P. 775; 43 J. P. 111; *Regina v. Darwen J. J.*, 39 L. T. (N. S.) 444.

<sup>78</sup> *Regina v. Birley*, 55 J. P. 88.

<sup>79</sup> *Regina v. Riley*, 53 J. P. 452; *Regina v. Birley*, 55 J. P. 88.

<sup>80</sup> *Rex v. Tyrone Justice* [1901], 2 Irish Rep. 497.

<sup>81</sup> *Regina v. Lyon*, 62 J. P. 357.

<sup>82</sup> *Perdue v. Gill*, 35 Ind. App. 99; 73 N. E. 844.

town was situated, and in the seven nearest townships thereto the circulation of the paper did not exceed a dozen copies, the notice was published but once, and only one copy of the paper in which it was published came to the township, and that was received by the applicant; and other newspapers of general circulation were printed and published in the county and town for which the license was to be issued, and the applicant testified that his purpose in using the newspaper he did was to defeat the people of the township who opposed the granting of the license, it was held that the notice given was insufficient. "Notice in the case at bar," said the court, "was not only published with the intent to avoid giving actual notice to the voters of Pike Township, but the paper in which it was published had *no* circulation among the parties in interest, and wholly failed of the purpose for which notice by publication is intended. The notice not only did not comply with the plain meaning of the statute,<sup>83</sup> but was fraudulent in its purpose and design."<sup>84</sup> If additional names be added to the petition after notice has been published, a new notice is not necessary.<sup>85</sup> When the statute requires the applicant to give the notice, the county clerk with whom his application must be filed cannot give the notice.<sup>86</sup> In a number of States a description of the place for which a license is sought must

<sup>83</sup> The applicant "shall give notice to the citizens of the township, town, city, or ward in which he desires to sell, by publishing, in a weekly newspaper in the county, a notice, stating the precise location" of the place for which the license is desired. Burns R. S. 1901, § 7278.

<sup>84</sup> Goodwine v. Flint, 28 Ind. App. 36; 60 N. E. 1102.

"The purpose of the statute, namely, that notice may reach the party interested, should be kept in view. So it has been held that where the publication has been made by design in an obscure paper, with the obvious intent to

avoid giving actual notice to the party in interest, the proceedings based upon such notice may be held voidable, even though the letter of the statute has been observed." Lynn v. Allen, 145 Ind. 584; 44 N. E. 646; see Webber v. Curtis, 104 Ill. 309.

<sup>85</sup> Thompson v. Egan, 70 Neb. 169; 97 N. W. 247.

<sup>86</sup> Watkins v. Grieser, 11 Okla. 302; 66 Pac. 332.

As a rule, the liquor licensing acts control the manner of giving notice and not the general statutes on legal notices. Sun, etc., Co. v. Bennett, 26 Pa. Super. Ct. 243.

be inserted in the notice. In this respect there is no difference between the description that must be inserted in the application than that inserted in the notice; but we note a few cases. Thus a notice for a license in a building on lot 23, Main Street, in the town of B is insufficient if there is a "Lot East 23" and a "Lot West 23," both on Michigan Street, and there is no Main Street.<sup>87</sup> "A certain building on lot 1, block 14," is sufficient, where the particular location of the place where the business is carried on must be given.<sup>88</sup> Where a statute required the name of the applicant to be published in full, the class of a license he desired and a description of the premises, giving street and number, if practicable, and designating the building or the part of the building to be used, it was held that a notice giving the first and surname of the applicant, with his middle initial, the class of license desired, and describing his place of business as "in a building known as 'Kenwood's Block,' on the east side of Marceed Street, at the corner of South Street," was sufficient, the applicant occupying a room in the block, the third from the corner of the two streets, with a druggist's sign in front of the room, neither the block nor the street being numbered, and wrote his name as it was used in the notice.<sup>89</sup> But describing the premises as "the first floor of a building situated on the easterly side of South Main Street, owned by Catharine Bearce," is not sufficient under the same statute.<sup>90</sup> Nor is a notice under this statute to secure a license for "J. F. Bearce & Son" sufficient.<sup>91</sup> A notice describing the place as a room fronting on Main Street in a building situated on part of a lot described by the ordinary description, giving the part of the lot where the building is situated, is sufficient.<sup>92</sup> A statute requiring a description of the place to be licensed to be published must be complied with to give the licensing board jurisdiction.<sup>93</sup> In

<sup>87</sup> Barnard v. Graham, 120 Ind. 135; 22 N. E. 112.

<sup>88</sup> Whitlock v. Bartholomew, 91 Iowa, 246; 59 N. W. 76.

<sup>89</sup> Breconier v. Packard, 136 Mass. 50.

<sup>90</sup> Commonwealth v. Bearce, 150 Mass. 389; 23 N. E. 99; Dexter v.

Cumberland, 17 R. I. 222; 21 Atl. 347.

<sup>91</sup> Commonwealth v. Bearce, *supra*.

<sup>92</sup> Kunkel v. Abell, 170 Ind. 305; 84 N. E. 503.

<sup>93</sup> Muncey v. Collins (Iowa), 106 N. W. 262.

England it is held that the situation of the premises need not be described as strictly as in a conveyance; thus a notice for a license for "house or shop at the market place in C" was held sufficient, although there were seventeen houses not numbered in the market place.<sup>94</sup> The fact that the building is not in existence when the notice is given is immaterial, if it is in existence when the license is issued.<sup>95</sup> In Iowa, upon filing a general denial to the petition containing the consents of electors, the county attorney must "cause notice thereof to be served on the person or persons filing said statement of consent." This is held not to require notice to the persons who filed the consent of the city council nor to the resident freeholders within fifty feet of the site of the proposed saloon; nor to the county auditor, the statute containing no such requirement.<sup>96</sup>

### Sec. 370. Recommendation of applicant.

In some States the applicant must present to the licensing board a recommendation of his fitness to hold a license. This recommendation differs from an assent or consent to the granting of the license, for in the latter instance a recommendation is not necessarily involved, though it may be if this statute is broad enough to make it so. If a recommendation is required, it must be furnished, for its existence is a jurisdictional fact. The recommendation must comply with the terms of the statute; it must be a full statutory recommendation.<sup>97</sup> And the fact that the statute requiring the production of a recommendation from a majority of the householders

<sup>94</sup> *Regina v. Penkridge*, 56 J. P. 87; 66 L. T. 371; 61 L. J. M. C. 132.

<sup>95</sup> *Moran v. Creagan*, 27 Ind. App. 659; 62 N. E. 61.

<sup>96</sup> *Fitzgibbon v. Macy*, 118 Iowa, 440; 92 N. W. 78.

A license granted by a city council at a special meeting on a few hours' notice, without notice of the object of the meeting, will be an-

nulled. *McNeal v. Ryan*, 56 N. J. L. 443; 28 Atl. 552.

<sup>97</sup> *Long v. State*, 27 Ala. 32; *Ex parte Cox*, 19 Ark. 688; *Purdy v. Sinton*, 56 Cal. 133; *State v. D'Alemberto*, 30 Fla. 545; 11 So. 905; *Metcalfe v. State*, 76 Ga. 308; *Darling v. Boesch*, 47 Iowa, 702; 25 N. W. 887; *House v. State*, 41 Miss. 737; *Eureka v. Davis*, 21 Kan. 578; *Read v. Board* (N. J. L.), 71 Atl. 120.



of a district does not provide any means or method of obtaining such recommendation or of ascertaining such majority does not render it void.<sup>98</sup> A statute requiring the production of a recommendation of a certain percentage of the householders and freeholders residing within the corporate limits of the town for which the license is to be issued is not complied with by producing a petition containing the requisite percentage of householders and freeholders of the "town and district," and mandamus proceedings based thereon to compel the issuance of a license must fail because of this variance.<sup>99</sup> Where a license could issue only upon the recommendation of the grand jury, it is the duty of the grand jury to discriminate between proper and improper persons; and they cannot refuse to recommend anyone because they did not want to discriminate between the applicants.<sup>1</sup> A statute requiring an applicant to produce a petition recommending him as a person "of good reputation and a sober and suitable person to receive" a license; the application is insufficient, if it omit the statement that the petitioner is "of good reputation."<sup>2</sup> Under this same statute a petition which contains an averment that a partnership is of good reputation, but contains no averment that such are the reputations of the individual members of the firm, is insufficient.<sup>3</sup> A statute requiring a city auditor to issue a license to an applicant producing an endorsement on his application of the board of police commissioners that he has proven himself to be a person of good moral character, repeals a prior ordinance of such city that the applicant should obtain the written consent of the majority of the adjacent property holders before obtaining his license, although the statute provided that all ordinances in force at the time the statute was adopted, and not inconsistent with its provisions, should remain in force.<sup>4</sup> Signing a recommendation for one kind of license

<sup>98</sup> Jones v. Hilliard, 69 Ala. 300.

<sup>99</sup> Glenn v. Lynn, 89 Ala. 608;  
7 So. 924; *In re Cohn* (Neb.), 121  
N. W. 107.

<sup>1</sup> Cohen v. Jarrett, 42 Md. 571.

<sup>2</sup> Corbet v. Duncan, 63 Miss. 84.

<sup>3</sup> Loeb v. Duncan, 63 Miss. 89.

<sup>4</sup> *Ex parte Joffee*, 46 Mo. App.  
360.

A statute authorizing a board of excise to grant a license to any person of good moral character approved by it, on a written application signed by him, repeals



does not disqualify a person from signing a recommendation for another kind.<sup>5</sup> Petitioners cannot withdraw their names after license is refused in order to defeat mandamus proceedings.<sup>6</sup> Under its general powers a city may require an applicant to present a certificate of four municipal electors as to his good moral character and honesty, and also a certificate from the proper officers that he has paid the license fee and signed a bond conditioned to abide by the by-laws of the city council for the regulation of the sale of liquors.<sup>7</sup> If a license be granted without the requisite number of signatures, the licensing officer may refuse to sign the license, notwithstanding the licensing board or municipal council has granted it.<sup>8</sup>

### Sec. 371. Consent to granting of license.

In some of the States statutes are in force requiring the applicant for a license to secure the assent of a certain number, or a certain percentage, of the voters, residents or inhabitants of the district in which he desires to retail liquors. Occasionally a statute requires him to secure the consent of a certain number of those residing within a designated distance of the place where he proposes to open his establishment for their sale. In whatever form they are drawn, this consent is a

a prior statute requiring a petition of twenty freeholders to be presented before the license can be granted. *People v. Hartman*, 10 Hun, 602.

<sup>5</sup> *Oreutt v. Reingardt*, 46 N. J. L. 337.

<sup>6</sup> *Harlan v. State*, 136 Ala. 150; 33 So. 858.

A blank form of petition, not addressed to any court, nor designating any town where the signers reside, not asking for the granting of a license to any person, the signers named being appended to blank books independent of any petition, is insufficient. *State v. Tulloch*, 108 Mo App. 32; 82 S. W. 645.

<sup>7</sup> *In re Greystock*, 12 Up. Can. 458; *In re Hunter*, 24 Ont. 522; reversing 24 Ont. 153.

<sup>8</sup> *Welsford v. Weidlein*, 23 Kan. 601.

Affidavits are incompetent to prove the qualifications of the petitioners. *In re Klamm* (Neb.), 117 N. W. 991.

The wife of an applicant, though a freeholder, cannot sign his application. *In re Powell* (Neb.), 119 N. W. 9.

A statute requiring "freeholders" to sign the application requires *bona fide* freeholders, and not such as are made freeholders merely to enable them to sign the application. *In re Powell*, *supra*.

jurisdictional factor, and without it the licensing board cannot proceed and cannot grant the license. If it do, the license will be void.<sup>9</sup> But if the petition have not a sufficient number of signatures when filed, others may be added before the license is granted, and then when it is granted it will be valid.<sup>10</sup> A statute which requires the signature to be written in the presence of two witnesses does not require them to attest the signature.<sup>11</sup> Statutes sometimes require the applicant to file his affidavit that he of his own knowledge knows that the persons whose names are attached to his petition did actually sign it; and when that is the case he cannot base his affidavit upon the information of others.<sup>12</sup> A petition and consent entitled "Petition and consent, under section 17, known as the 'Mulet' " law, and stating: "The undersigned residents and voters of O, respectively petition and consent that said city of O shall be put under the operation of the provisions of said law," is sufficient under a statute, requiring that a "written statement of consent signed by a majority of the voters"

<sup>9</sup> *Ex parte Cox*, 19 Ark. 688; *Purdy v. Sinton*, 56 Cal. 133; *Metcalf v. State*, 76 Ga. 308; *Darling v. Boesch*, 67 Iowa, 702; 25 N. W. 887; *House v. State*, 41 Miss. 737; *State v. Weber*, 20 Neb. 467; 30 N. W. 531; *State v. Moore*, 46 N. C. 276; *Hillsboro v. Smith*, 110 N. C. 417; 14 S. E. 972; *State v. Seibert*, 98 Mo. App. 212; 71 S. W. 95; *Cooper v. Hunt*, 103 Mo. App. 9; 77 S. W. 483; *Martens v. People*, 85 Ill. App. 466; affirmed 186 Ill. 314; 57 N. E. 871; *Wiseman v. St. Laurent*, 3 Man. S. C. 108; *In re Forest*, 23 Pa. Super. Ct. 600; *Backman v. Phillipsburg*, 68 N. J. L. 552; 53 Atl. 620; *Tanner v. Bugg*, 74 Mo. App. 196; *State v. Higgins*, 71 Mo. App. 180; *Van Nortwich v. Bennett*, 62 N. J. L. 151; 40 Atl. 689; *Davanney v. Hanson*, 60 W. Va. 3; 53 S. E. 603; *Tattersal*

*v. Nevels*, 77 Neb. 843; 110 N. W. 708; *State v. New Orleans*, 117 La. 715; 42 So. 245; *Commonwealth v. Elmore* (Ky.), 58 S. W. 369; 22 Ky. L. Rep. 510; *Welsford v. Weidlein*, 23 Kan. 601; *State v. Wooten* (Mo. App.), 122 S. W. 1101.

<sup>10</sup> *State v. Jefferson Co.*, 20 Fla. 425; *Livingston v. Corey*, 33 Neb. 366; 50 N. W. 263; *Backman v. Phillipsburg*, 68 N. J. L. 552; 53 Atl. 620. *Contra, In re Bridge*, 36 N. Y. App. Div. 533; 25 N. Y. Misc. Rep. 213; 55 N. Y. Supp. 54; 56 N. Y. Supp. 1105; *In re Forst*, 208 Pa. St. 578; 57 Atl. 991; affirming 23 Pa. Super. Ct. 600.

<sup>11</sup> *State v. Sumter Co.*, 22 Fla. 1.

<sup>12</sup> *State v. Sumter Co.*, 22 Fla. 364; *Scott v. Naacke* (Iowa), 122 N. W. 824.

be filed with the county auditor.<sup>13</sup> If an applicant circulate several petitions, having materially different captions, he cannot combine the several names under one caption in order to secure the requisite number.<sup>14</sup> A person who has signed both the petition and counter-petition may withdraw his name from the latter by signing a second petition for the granting of the license.<sup>15</sup> A name cannot be withdrawn from a petition if it would defeat the board's jurisdiction, unless the board consent thereto.<sup>16</sup> Consents to the issuance of the order cannot be filed after the petition is filed even under an order of the court.<sup>17</sup> Consent of at least a majority of the property owners and tenants in the block where the saloon will be located, means the entire block from street to street and not from the street to an alley.<sup>18</sup> A "block" within the meaning of a statute requiring the consent of a majority of the owners of real estate "within the frontage of the block in which such liquors are to be sold" means more than a square made up of two platted subdivisions, one-half of which is designated as a block in one of these subdivisions.<sup>19</sup> In such a case consent therefor must be signed by the owners of a majority of the frontage of the block on all the streets enclosing it; and it is not sufficient if signed only by a majority on the side of the block where the saloon is to be located.<sup>20</sup> The county treasurer receiving the fee and issuing the tax certificate in New York may determine the fact whether the applicant is entitled to a license without regard to the statements made in his

<sup>13</sup> *State v. Meter*, 94 Iowa, 42; 62 N. W. 684; *White v. McCullough* (Neb.), 123 N. W. 1034.

In Iowa the sufficiency of this petition may be determined on collateral attack; for it is a mere ministerial act. *State v. Achert*, 95 Iowa, 210; 63 N. W. 557.

<sup>14</sup> *Collins v. Barrier*, 64 Miss. 21; 8 So. 164; *State v. Scott*, 96 Mo. App. 620; 70 S. W. 736.

<sup>15</sup> *Perkins v. Henderson*, 68 Miss. 631; 9 So. 897; see *Tuttle v. Poechert* (Iowa), 121 N. W. 1057.

<sup>16</sup> *Orcutt v. Reingardt*, 46 N. J. L. 337; see *Scott v. Naacke* (Iowa), 122 N. W. 824.

<sup>17</sup> *In re Lord*, 32 N. Y. Misc. 223; 66 N. Y. Supp. 252.

<sup>18</sup> *Perkins v. Loux*, 14 Idaho, 607; 95 Pac. 694.

<sup>19</sup> *Slater v. Fire and Police Board*, 43 Colo. 225; 96 Pac. 554.

<sup>20</sup> *Slater v. Fire and Police Board*, *supra*; *Harrison v. People*, 195 Ill. 466; 63 N. E. 191; reversing 97 Ill. App. 421; *People v. Griesbach*, 211 Ill. 35; 71 N. E. 874; reversing 112 Ill. App.

petition.<sup>21</sup> A consent signed by the husband without authority and without her knowledge, is not invalid when he owns the building.<sup>22</sup> Parol evidence is not admissible to change the effect of a written petition.<sup>23</sup> If a freeholder sign a permit and then sell his freehold, at the beginning of the next tax year, the licensee must file a new statement of consent by the purchaser, although if there had been no sale another statement would be unnecessary.<sup>24</sup> Under a statute requiring the written consent of the nearest *bona fide* residents, at least five of whom must be freeholders, irrespective of county lines, means nearest the proposed place of sale; those who reside nearest the place are those who must give their consent, whether they reside in the county next where the application is made or in a city or town, even though the act specifically provides that it shall not apply to incorporated towns or cities.<sup>25</sup> Where a statute required a consent to contain the proper names of two-thirds of the assessed tax-paying citizens in the block where the saloon is to be located "as shown by the last previous annual assessment and vote of the city," un-

192; *Chicago v. O'Hare*, 124 Ill. App. 290; *Theuer v. People*, 211 Ill. 296; 71 N. E. 997; affirming 113 Ill. 628. (In this case it was held that the park commissioners had power to sign for park frontage.)

<sup>21</sup> *People v. Haag*, 11 N. Y. App. Div. 74; 42 N. Y. Supp. 886.

In New York the assent may be revoked at any time before the county treasurer acts upon the petition and issues his tax certificate. *In re Advance*, 59 N. Y. App. Div. 440; 69 N. Y. Supp. 314. As to in Iowa, see *Kane v. Grady*, 123 Iowa, 260; 98 N. W. 711.

<sup>22</sup> *In re Bullard*, 113 N. Y. App. Div. 159; 98 N. Y. Supp. 1011.

<sup>23</sup> *Griesbach v. People*, 226 Ill. 65; 80 N. E. 734; affirming 127 Ill. App. 462.

In Montana a petition for a second license on the expiration of the old one is necessary. *State v. Settles*, 34 Mont. 448; 87 Pac. 445.

A city, under its general powers, may require an applicant to present a petition having therein the written assent of property owners in the vicinity. *Baton Rouge v. Butler*, 118 La. 73; 42 So. 640.

<sup>24</sup> *Conway v. Fayette Co.*, 132 Iowa, 510; 109 N. W. 1074; *State v. New Orleans*, 117 La. 715; 42 So. 245.

<sup>25</sup> *Ballew v. State*, 84 Ga. 138; 10 S. E. 623; but see *State v. Greenway*, 92 Iowa, 472; 61 N. W. 239; *Tuttle v. Poechert*, 121 N. W. 1057.



less such a consent is presented showing the qualifications of the subscribers the licensing board must refuse to issue a license.<sup>26</sup> Where a certain percentage of the voters at the last preceding election, as shown by the poll lists, must sign the consent, the names on such consent paper must appear on the poll books of such election, and names appearing on the written consent not identical with the corresponding names on the poll list cannot be counted.<sup>27</sup>

### **Sec. 372 Consents where saloon has been abandoned or discontinued.**

In New York "when the nearest entrance to the premises described in" the petitioner's "statement as those in which traffic in liquor is to be carried on is within two hundred feet, measured in a straight line, of the nearest entrance to a building or buildings occupied exclusively for a dwelling," it is necessary to file the written consents of at least two-thirds of the owners of such building or buildings; but it is provided that "such consent shall not be required in cases where such traffic in liquor was actually lawfully carried on in said premises so described in said statement on March 23, 1896, nor shall such consent be required for any place described in said statement which was occupied as a hotel on said last mentioned date, notwithstanding such traffic in liquors was not

<sup>26</sup> State v. Packett (Mo.), 119 S. W. 25.

Under the Iowa statute a signature by a mark must be witnessed to be counted. Scott v. Naaeke (Iowa), 122 N. W. 824.

<sup>27</sup> Scott v. Naaeke (Iowa), 122 N. W. 824.

Where an ordinance limited a license to sell "near beer" to a space of 900 yards on a single street, including the parks and intersecting streets, and requiring the consent of all owners and occupants of stores and residences within a radius of ten miles from

the place selected for its sale, it was held void, because prohibitory and not a regulation of the sale. Campbell v. Thomasville (Ga.), 64 S. E. 15.

In New York, if the application is correct in form, the county treasurer must issue the certificate unless it appears by the certified statement of the result of an election that such certificate cannot be issued; but this certified statement need not be filed with the county treasurer. *In re Krumbholz*, 60 N. Y. Misc. Rep. 534; 113 N. Y. Supp. 1060.



then carried on thereat." The privileges thus conferred to maintain a saloon without the consent of property owners does "not attach to the property in perpetuity and is not a thing that necessarily runs with the land. It may be lost by abandonment or non-use, when the facts or circumstances are such as to justify the conclusion that the owner intended to discontinue the liquor traffic at the place. When that intention is clearly established the period of time during which the place is vacant or used for other purposes is immaterial."<sup>28</sup> Accordingly it was held that the fact that a tenant prior to the application, whose lease expired May 6, 1899, moved out sixteen days before his lease expired, was not such a discontinuance of the liquor traffic as amounted to an abandonment of the premises, and that consents of owners of dwelling houses within two hundred feet were not necessary.<sup>29</sup> And a like holding was made where the tenant was ejected for non-payment of his rent.<sup>30</sup> This statute, in its exception, does not extend or apply to buildings afterwards purchased and annexed to the hotel.<sup>31</sup> And while the statute requires a

<sup>28</sup> *In re* Hawkins, 165 N. Y. 168; 58 N. E. 884; reversing 28 N. Y. Misc. Rep. 383; 59 N. Y. Supp. 888; 60 N. Y. Supp. 1141; 66 N. Y. Supp. 1132; *In re* Kleveshall, 30 N. Y. Misc. Rep. 361; 63 N. Y. Supp. 741; *In re* Ritchie, 18 N. Y. Misc. Rep. 341; 40 N. Y. Supp. 1106; *People v. Lanmerti*, 18 N. Y. Misc. 341; 40 N. Y. Supp. 1107; affirmed 14 N. Y. App. Div. 628; 43 N. Y. Supp. 1161; 18 N. Y. Misc. Rep. 343; *In re* Bridges, 25 N. Y. Misc. Rep. 213; 55 N. Y. Supp. 54; affirmed 36 N. Y. App. Div. 533; 55 N. Y. Supp. 54; *People v. Hamilton*, 25 N. Y. App. Div. 428; 49 N. Y. Supp. 605; *In re* Lyman, 34 N. Y. App. 390; 54 N. Y. Supp. 294; *In re* Kessler, 28 N. Y. Misc. Rep. 336; 59 N. Y. Supp. 888; 163 N. Y. 205; 57 N. E. 402; *In re*

McVicker, 21 N. Y. Misc. Rep. 383; 45 N. Y. Supp. 1008; *In re* Seranely, 40 N. Y. Supp. 1106; 18 N. Y. Misc. Rep. 341; *In re* Laper, 165 N. Y. 618; 59 N. E. 1125; *In re* Moulton, 168 N. Y. 645; 61 N. E. 1135; *In re* Clements, 52 N. Y. Misc. 325; 102 N. Y. Supp. 178; affirmed 118 N. Y. App. Div. 575; 103 N. Y. Supp. 157.

<sup>29</sup> *In re* Hawkins, 165 N. Y. 188; 58 N. E. 884. (In Kessler's case, 163 N. Y. 205; 57 N. E. 402; reversing 28 N. Y. Misc. Rep. 383; 59 N. Y. Supp. 888, the question was not raised.)

<sup>30</sup> *In re* Moulton, 59 N. Y. App. Div. 25; 69 N. Y. Supp. 14.

<sup>31</sup> *In re* Haight, 33 N. Y. Misc. 544; 68 N. Y. Supp. 920; *In re* Ireland, 41 N. Y. Misc. Rep. 425; 84 N. Y. Supp. 1100.

particular statement of the dwellings, churches and school-houses within two hundred feet, yet if it be shown that the place was a licensed place on March 23, 1896, and had been continuously used since, it is not necessary to insert any allegations with reference to such buildings; and if a willfully false allegation in reference thereto be inserted, it being immaterial, will not prevent the issuance of a license.<sup>32</sup>

### Sec. 373. Saloon near dwelling—Consent of owners.

Statutes frequently require the consent of the owners of a dwelling house within a certain distance of the proposed site of a saloon, and others forbid the location of a saloon within a certain distance of a church or schoolhouse. These statutes are enacted chiefly concerning saloons in cities and towns. A statute of this kind has been frequently before the courts in New York. This statute of that State requires the consent of owners of a dwelling, the "nearest entrance" of which is within two hundred feet, measured in a straight line.

Under the New York statutes, if a saloon burn down, and two months are taken to rebuild it, it is not a building in continuous use as a saloon, and new consents are required. *In re Kesler*, 28 N. Y. Misc. Rep. 336; 59 N. Y. Supp. 888. See where tenant vacated a saloon without his landlord's consent, and new consents were held not necessary. *In re Laper*, 53 N. Y. Div. 576; 66 N. Y. Supp. 13; affirmed 165 N. Y. 618; 59 N. E. 1131.

For instances where a licensee, by discontinuance of his business, did or did not lose his right to continue such business, see *In re Zinzow*, 18 N. Y. Misc. Rep. 653; 43 N. Y. Supp. 714; *People v. Hamilton*, 25 N. Y. App. Div. 428; 49 N. Y. Supp. 605; *People v. Hamilton*, 21 Misc. Rep. 375; 47 N. Y. Supp. 190; *In re Hawk-*

*ins*, 165 N. Y. 188; 58 N. E. 884; reversing 54 N. Y. App. 617; 66 N. Y. Supp. 1132; *In re Place*, 27 N. Y. App. Div. 561; 50 N. Y. Supp. 640; *In re Place*, 34 N. Y. App. Div. 389; 54 N. Y. Supp. 294; *In re Salisbury*, 19 N. Y. Misc. Rep. 340; 44 N. Y. Supp. 291.

<sup>32</sup> *In re Hawkins*, 165 N. Y. 168; 58 N. E. 884; reversing 66 N. Y. Supp. 1132; *In re Kessler*, 163 N. Y. 205; 57 N. E. 402; *In re Moulton*, 59 N. Y. App. Div. 25; 69 N. Y. Supp. 14.

What is a "new place" for a liquor license under the New Jersey statute. *Wright v. Board*, 75 N. J. L. 28; 66 Atl. 1061.

What is an abandonment, see *Quigley v. Monsees*, 56 N. Y. Misc. Rep. 110; 106 N. Y. Supp. 167; and *In re Cowles*, 34 N. Y. Misc. Rep. 447; 69 N. Y. Supp. 756.

of the "nearest entrance \* \* \* to the premises described in said statement [or application for a tax certificate or permit] as those in which liquor is to be carried on."<sup>33</sup> Another provision of the statute requires the applicant to describe "the premises where such business is to be carried on, stating the street and number if the premises have a street and number, and otherwise such apt description as will reasonably indicate the locality thereof, and also the specific location on the premises of the bar or place at which liquors are to be sold." Under the construction given this act in determining the distance the saloon must be located from a dwelling house the nearest entrance of such house must be the one taken into account, though there be several other entrances to it, and it makes no difference that this nearest entrance is a side or rear entrance and not the front entrance.<sup>34</sup> So in determining the "nearest entrance" of the saloon to the dwelling house, that one must be taken which is nearest, though it be a rear or side door or front door, no difference being made between a front entrance or any other entrance.<sup>35</sup> In ascertaining the distances between the two entrances a straight line must be used, "disregarding all other obstructions."<sup>36</sup> If a rear door or any other door be permanently closed it cannot be considered an "entrance."<sup>37</sup> Where an owner of a dwelling cut a

<sup>33</sup> Laws 1897, p. 220, c. 312, § 17, subdiv. 8.

This statute is strictly construed against applicants and liberally construed to carry out its provisions. *In re Hening* (N. Y.), 117 N. Y. Supp. 747; *In re Place*, 27 N. Y. App. Div. 561; 50 N. Y. Supp. 610.

<sup>34</sup> *In re Sanderson*, 34 N. Y. Misc. Rep. 375; 69 N. Y. Supp. 928; *In re Veeder*, 31 N. Y. Misc. Rep. 569; 65 N. Y. Supp. 517; *In re Cheney*, 35 Misc. Rep. 598; 72 N. Y. Supp. 134; *In re McMonagle*, 41 N. Y. Misc. Rep. 407; 84 N. Y. Supp. 1068; *In re Malaghan*, 184 N. Y. 253; 77 N. E. 12; affirming 108 N. Y. App. Div. 355;

95 N. Y. Supp. 1142; *In re Rupp*, 54 N. Y. Misc. Rep. 1; 105 N. Y. Supp. 467.

<sup>35</sup> *In re McMonagle*, 41 N. Y. Misc. Rep. 407; 84 N. Y. Supp. 106.

<sup>36</sup> *In re McMonagle*, 84 N. Y. Supp. 106; *In re Ruland*, 21 N. Y. Misc. Rep. 504; 47 N. Y. Supp. 561; *In re Bridge*, 36 N. Y. App. Div. 533; 55 N. Y. Supp. 54; 25 N. Y. Misc. Rep. 54; 56 N. Y. Supp. 1105.

<sup>37</sup> *In re Malaghan*, 184 N. Y. 253; 77 N. E. 12; affirming 108 N. Y. Supp. 355; 95 N. Y. Supp. 1142; *In re Purdy*, 40 N. Y. Div. 133; 57 N. Y. Supp. 629.

new door in his dwelling, after an application had been made and on the day the license was granted, with the evident intent to prevent the issuance of a license, it was held that his action did not prevent the issuance of the license nor call for its cancellation upon his petition therefor.<sup>38</sup> Where a liquor dealer was unable to secure the consent of the necessary number of property owners within two hundred feet for a saloon in his basement, erected a partition therein of ceiling lumber, leaving a dead space between the partition and the basement wall, useless and unoccupied; and his new room was a few inches beyond the two hundred foot limit, it was held that this was a mere subterfuge to evade the statute, and that he must have the consent of the owner whose property lay within two hundred feet of the room as it was before it was changed.<sup>39</sup> An applicant for a license cannot evade the law requiring him to procure the consents of owners of dwellings within a certain distance of his saloon by putting upon them small business signs, in order to create the impression that they were business houses.<sup>40</sup> Where there is an entrance to the saloon from a rear yard, but there is no entrance to the yard except through the rear entrance of the house, the nearest "entrance" as designated in the New York statute is not this rear entrance.<sup>41</sup>

### Sec. 374. What is a dwelling requiring consent of owners.

In New York the statute requires the owners of a building used exclusively as a dwelling or church to give their consent to the location of a saloon within a certain distance of it, and if it is not exclusively used as a dwelling or church no consent is required. Under this statute it was held that the fact that a dressmaker used a house, working therein, but having out no sign, did not deprive it of its exclusive character as a dwelling house;<sup>42</sup> and of course, this statute does not require the

<sup>38</sup> *In re Cheney*, 35 N. Y. Misc. Rep. 598; 72 N. Y. Supp. 134.

<sup>39</sup> *McColl v. Rally*, 127 Iowa, 633; 103 N. W. 972.

<sup>40</sup> *In re Rasquin*, 37 N. Y. Misc. Rep. 693; 76 N. Y. Supp. 404.

<sup>41</sup> *In re Rupp*, 122 N. Y. App. Div. 891; 106 N. Y. Supp. 1163; affirming 55 N. Y. Misc. Rep. 313; 106 N. Y. Supp. 483.

<sup>42</sup> *In re Ruland*, 21 N. Y. Misc. Rep. 504; 47 N. Y. Supp. 561.



consent of the owners of a business building.<sup>43</sup> Woodsheds of rough boards, loosely joined and unplastered and never used for living purposes until the evening before the application was filed are not dwelling houses.<sup>44</sup> But owners of vacant dwellings must be counted, and all vacant houses intended for dwellings.<sup>45</sup> Under this statute a house may be a dwelling though used occasionally for washing.<sup>46</sup> The fact that the dwelling is an addition to a business block, having no inside communication, but used exclusively for a dwelling, having its own street number, does not deprive it of its character as a dwelling.<sup>47</sup> Unfinished dwellings cannot be counted as dwellings.<sup>48</sup> If the house be double, it may be treated as two houses in ascertaining the requisite number of consents;<sup>49</sup> though the building may be so constructed as to prevent that.<sup>50</sup> Thus, a frame building (this one was on the rear end of the lot), costing about twelve hundred dollars, divided into seven equal parts by wooden partitions, each part about eight feet wide, was held to be only a single building.<sup>51</sup> A small house, costing only thirty-five dollars, of one room and moved within two hundred feet of the site of the proposed saloon, is not a building "occupied exclusively as a dwelling."<sup>52</sup> But it may be otherwise if occupied permanently.<sup>53</sup> And letting rooms by the week or month does not deprive the house of its character as a dwelling.<sup>54</sup>

### Sec. 375. Signers to consent or recommendation.

The statute prescribes who shall sign the consent or recom-

<sup>43</sup> *In re* Ireland, 41 N. Y. Misc. Rep. 425; 84 N. Y. Supp. 1100.

<sup>44</sup> *In re* Lyman, 24 N. Y. Misc. Rep. 552; 53 N. Y. Supp. 577.

<sup>45</sup> *In re* Ruland, 21 N. Y. Misc. Rep. 504; 17 N. Y. Supp. 561.

<sup>46</sup> *In re* Lyman, 26 N. Y. Supp. 568; 57 N. Y. Supp. 488.

<sup>47</sup> *In re* Lyman, 26 N. Y. Supp. 568; 57 N. Y. Supp. 488.

<sup>48</sup> *In re* Clements, 58 N. Y. Misc. Rep. 638; 111 N. Y. Supp. 1073.

<sup>49</sup> *In re* Patterson, 43 N. Y. Misc. Rep. 498; 89 N. Y. Supp. 437.

<sup>50</sup> *In re* Clement, 118 N. Y. App. Div. 575; 103 N. Y. Supp. 157; affirming 103 N. Y. Supp. 447.

<sup>51</sup> *In re* Patterson, 43 Misc. Rep. 498; 89 N. Y. Supp. 437; see also *In re* Clement, 18 N. Y. App. Div. 575; 103 N. Y. Supp. 157.

<sup>52</sup> *In re* Vail, 38 N. Y. Misc. Rep. 392; 77 N. Y. Supp. 903.

<sup>53</sup> *In re* Ryan, 85 N. Y. App. Div. 621; 83 N. Y. Supp. 123; affirming 39 N. Y. Misc. Rep. 698; 80 N. Y. Supp. 1114.

<sup>54</sup> *In re* Veeder, 31 N. Y. Misc. Rep. 569; 65 N. Y. Supp. 517.



mentation; and only such can be counted as have the proper qualifications in determining whether a sufficient number have signed it, although if others sign it that would not avoid the consent or recommendation. Where a statute required that the application should "be signed by a majority of the registered voters of the election district, as shown by the registration list at the date of the application," this list must be considered in determining whether a majority had signed the application; and if they had not, the issuance of a license cannot be coerced.<sup>55</sup> If the applicant be a registered voter he must be considered the same as any other registered voter, and may sign his own petition.<sup>56</sup> Where a statute requires "resident householders" within fifty feet of the place of business to give their consent, only persons residing in the city by which the license is granted are included.<sup>57</sup> But a statute requiring the consent of the nearest *bona fide* residents, five of whom should be freeholders, irrespective of county lines, nearest the place of business, includes persons residing nearest the place of business although in the adjoining county.<sup>58</sup> Unless the statute requires it, the freeholders nearest the place of business, to be qualified to sign the petition or give their consent, need not reside upon their freeholds.<sup>59</sup> A statute requiring the assent of a majority of the "assessed tax-paying citizens" of a town, includes married and single women assessed for taxes and minors owning property who have guardians, but not citizens residing outside the town though owning property in and assessed therein.<sup>60</sup> Under this statute mere taxpayers are not qualified; the signers must be "as-

<sup>55</sup> State v. D'Alemberte, 30 Fla. 545; 11 So. 905; Scott v. Naacke (Iowa), 122 N. W. 824.

<sup>56</sup> State v. Sumter Co., 22 Fla. 1.

<sup>57</sup> State v. Greenway, 92 Iowa, 472; 61 N. W. 239.

<sup>58</sup> Ballew v. State, 84 Ga. 138; 10 S. E. 623.

<sup>59</sup> State v. Meteer, 94 Iowa, 42; 62 N. W. 684.

A person who owns the fee of a street in front of premises for which a license is sought, is, not-

withstanding the easement of the public to use the street for travel, the "owner of real estate" within twenty-five feet of the premises, and so may object to the granting of the license. Morian v. Gallagher, 199 Mass. 486; 85 N. E. 579.

<sup>60</sup> State v. Howard Co. Ct., 90 Mo. 593; 2 S. W. 788; see State v. Meyers, 80 Mo. 601; Scarritt v. Jackson, 89 Mo. App. 585; Thompson v. Egan (Neb.), 97 N. W. 247.

sessed, tax-paying citizens.”<sup>61</sup> A conveying of valueless land, without consideration, cannot make the grantees respectable citizens and freeholders to be counted with others giving their consent when the statute requires those consenting to have those qualifications.<sup>62</sup> A person occupying a house as a resident is a house holder under a statute requiring the consent of *bona fide* householders.<sup>63</sup> A statute requiring the consent of a majority of *bona fide* householders “or” property owners is satisfied by the consent of either.<sup>64</sup> Where a statute required the signatures of thirty freeholders to a petition before a license could be granted, it was held that if there was less than sixty freeholders in the district, a majority of those therein was sufficient.<sup>65</sup> A minor’s consent to a saloon, if he be a property owner, may be given by his guardian, but he personally cannot give it.<sup>66</sup> One joint tenant may give the consent of all his co-tenants.<sup>67</sup> An owner of a lot whose consent has been purchased cannot be counted.<sup>68</sup> A property

<sup>61</sup> *State v. Heege*, 37 Mo. App. 338; *State v. Kingsburg*, 105 Mo. App. 22; 78 S. W. 641; see *State v. Moniteau Co. Ct.*, 45 Mo. App. 387.

<sup>62</sup> *Smith v. Board*, 46 N. J. L. 312; *Austin v. Atlantic City*, 48 N. J. L. 118; 3 Atl. 65; *Colglazier v. McClary* (Neb.), 98 N. W. 670; *Bennett v. Otto*, 68 Neb. 652; 94 N. W. 807; *Backman v. Phillipsburg*, 68 N. J. L. 552; 53 Atl. 620; *Dye v. Posen*, 79 Neb. 149; 112 N. W. 332.

A statute disqualifying freeholders who have signed a petition from signing a second petition within a year therefrom, has no application to freeholders who signed a petition before its passage. *Williams v. Bayonne*, 55 N. J. L. 60; 25 Atl. 407.

Under a Pennsylvania statute, persons so illiterate that they cannot write their own names can-

not sign the petition; signing by mark is not sufficient. *In re Grant*, 2 Pa. Co. Ct. Rep. 87; *In re Faulkner*, 2 Pa. Co. Ct. Rep. 86.

<sup>63</sup> *Shephard v. New Orleans*, 51 La. Ann. 847; 25 So. 542.

<sup>64</sup> *Shephard v. New Orleans*, *supra*.

<sup>65</sup> *Somers v. Vlasney*, 64 Neb. 383; 89 N. W. 1036.

<sup>66</sup> *People v. Griesbach*, 211 Ill. 35; 71 N. E. 874; reversing 112 Ill. App. 192.

<sup>67</sup> *People v. Griesbach*, *supra*.

But in the case of joint owners it has been held that he must have their consent. *In re Cowles*, 34 N. Y. Misc. Rep. 447; 59 N. Y. Supp. 756.

<sup>68</sup> *Theurer v. People*, 211 Ill. 296; 71 N. E. 997; affirming 113 Ill. App. 628. In this case before hearing a signer withdrew his signature, and it was held that he could not be counted. The

owner may sign by an authorized agent if no statute expressly forbids it;<sup>69</sup> and so may an executor with power to sell.<sup>70</sup> In determining whether a petition has a sufficient number of signers, signatures of partnerships cannot be counted.<sup>71</sup> A statute requiring a majority of assessed, tax-paying citizens and guardians in the block to sign the petition does not require a majority of the male taxpayers, a majority of the female taxpayers, and a majority of the guardians to sign it, but only a majority of all these three classes of persons.<sup>72</sup> The petition need not recite that it is signed by a majority of the assessed taxpayers; it is sufficient that the order of the board recite that fact.<sup>73</sup> In Nebraska the homestead, the title to which is in the husband and on which his wife lives, and also when the title to it is hers, and they live on it jointly together, is not a freehold within the meaning of the liquor law.<sup>74</sup> A widower entitled to the use of his deceased wife's real estate during his life is such a freeholder as may sign a recommendation for a license.<sup>75</sup> In Georgia, a statute requiring a certain number of citizens to sign the petition, only voters are regarded as citizens.<sup>76</sup> A city may adopt an ordinance specifying the number of persons and their qualifications who must sign a petition for a license, and it will be bound thereby so long as the ordinance is not repealed; and the granting of a license by the common council is not a repeal of the ordinance.<sup>77</sup> In South Africa the majority of voters must be

purchase in this case was where an owner of property filed a protest, and then the applicant leased of him his premises, the payment of rent being upon the condition that a license be issued; and it was held that the rent was paid to the owner for his signature.

<sup>69</sup> *Theurer v. People*, *supra*; *In re McCoy*, 104 N. Y. App. Div. 215; 93 N. Y. Supp. 401.

<sup>70</sup> *In re McCoy*, 104 N. Y. App. Div. 215; 93 N. Y. Supp. 401.

<sup>71</sup> *In re Forest*, 23 Pa. Super.

Ct. 600; affirmed 208 Pa. St. 578; 57 Atl. 991.

<sup>72</sup> *State v. Fort*, 107 Mo. App. 328; 81 S. W. 476.

<sup>73</sup> *State v. Fort*, *supra*. *Contra*, *Tanner v. Bugg*, 74 Mo. App. 196.

<sup>74</sup> *Cobbey's Ann. St.*, § 7175; *Campbell v. Moran*, 71 Neb. 615; 99 N. W. 498.

<sup>75</sup> *Harlan v. State*, 136 Ala. 150; 33 So. 858.

<sup>76</sup> *Wray v. Harrison*, 116 Ga. 93; 42 S. E. 351.

<sup>77</sup> *Bachman v. Phillipsburg*, 68 N. J. L. 552; 53 Atl. 620.

determined by the voters' official roll, and evidence *aliunde* is inadmissible.<sup>78</sup> In Mississippi, voters signing a petition must be voters under the constitutional provision regarding the payment of their taxes, but payment of such taxes by the proposed licensee, with their consent, does not disqualify them.<sup>79</sup> A statute provided that any freeholder who had recommended a person for a license could not within that year recommend any other person, was held to prevent him recommending any other person during any part of the year covered by the first application.<sup>80</sup> Mere possession of real estate does not make a person such a freeholder that he may sign a petition.<sup>81</sup> Where a statute requires a signer of a petition to read it or have it read to him, a person signing it who does not read it, nor to whom it is read, cannot be counted as a signer;<sup>82</sup> and if a license be issued upon a petition containing an insufficient number of competent signers, it may be revoked.<sup>83</sup> The husband owning land may consent, though his wife does not join him.<sup>84</sup> Under the statute proof that the signer is a freeholder need not be as conclusive as in an ejectment proceeding.<sup>85</sup> A husband is not the agent of his wife to such an extent that he may give her consent where he and she hold an estate by entireties.<sup>86</sup> Partners in real estate must consent as individuals and not as partners, so that all must sign the written

<sup>78</sup> *Gibson v. Manley*, 11 Jut., 191.

<sup>79</sup> *Ferguson v. Brown*, 75 Miss. 214; 21 So. 603.

<sup>80</sup> *Cope v. Somers Point*, 73 N. J. L. 376; 64 Atl. 156.

<sup>81</sup> *Swihart v. Hansen*, 76 Neb. 727; 107 N. W. 862.

<sup>82</sup> *In re Veasey* (Del.), 63 Atl. 801.

<sup>83</sup> *In re Bullard*, 113 N. Y. App. Div. 159; 98 N. Y. Supp. 1011.

<sup>84</sup> *In re Bullard*, 113 N. Y. App. Div. 159; 98 N. Y. Supp. 1011.

<sup>85</sup> *Starkey v. Palm*, 80 Neb. 393; 114 N. W. 287.

In New York the consent must

be filed "simultaneously" with the application; and a consent filed with an application by one person cannot be used twenty days later for an application filed by another person. *In re Griffin*, 56 N. Y. Misc. Rep. 21; 106 N. Y. Supp. 24.

Signatures preceding the consenting clause cannot be counted under a statute requiring the written consent to be "executed" and acknowledged as a deed. *In re Griffin*, *supra*.

<sup>86</sup> *Quigley v. Monsees*, 56 N. Y. Misc. Rep. 110; 106 N. Y. Supp. 167.



consent.<sup>87</sup> A lessee cannot give consent though he represents the owner as a general real estate agent, and though he may also be interested in the profits on a sale of such real estate.<sup>88</sup> A lessee cannot sign the consent petition.<sup>89</sup> Where a statute provided that if objections be filed by the occupants or owners of the greater part of the land within two hundred feet of the proposed site of the saloon no license should be granted, account must be taken of a park owned by the city, for the city is its owner or occupant within the meaning of the statute;<sup>90</sup> but the park board could give its assent thereto on behalf of the city.<sup>91</sup>

### Sec. 376. Saloon near schoolhouse—Distance, how measured.

Statutes in several States forbid the maintenance of a saloon within a certain distance of a church or place of worship; and other statutes have a like prohibition with relation to colleges and schoolhouses. Likewise a few statutes may be found with similar prohibitory clauses with reference to other public buildings, as an orphan asylum or a soldiers' home. All such statutes are constitutional, and within the circle thus prescribed no license can be granted; and all licenses attempted to be granted are void.<sup>92</sup> The chief questions in

<sup>87</sup> *Close v. O'Brien*, 135 Iowa, 305; 112 N. W. 800.

<sup>88</sup> *In re Rupp*, 54 N. Y. Misc. Rep. 1; 105 N. Y. Supp. 467.

<sup>89</sup> *American Woolen Co. v. North Smithfield*, 28 R. I. 546; 69 Atl. 293; *In re Sherry*, 25 N. Y. Misc. Rep. 361; 55 N. Y. Supp. 421.

<sup>90</sup> *Dexter v. Sprague*, 22 R. I. 324; 47 Atl. 889.

<sup>91</sup> *Theuer v. People*, 211 Ill. 296; 71 N. E. 997; affirming 113 Ill. App. 628.

Paying tax so voters could become qualified to sign petition. *Ferguson v. Brown*, 75 Miss. 214; 21 So. 603.

<sup>92</sup> *Sexton v. Board* (N. J. L.), 69 Atl. 470; *State v. Pawtucket* (R. I.), 46 Atl. 1047.

Such a law is not a tax. *In re Place*, 27 N. Y. App. Div. 561; 50 N. Y. Supp. 640.

A law prohibiting a saloon within 200 feet of a church or schoolhouse, except in a place occupied by a hotel, was amended by providing that the prohibition should not apply to a place occupied as a hotel when the former act took effect. This was held to be a legislative interpretation of the first statute, which, therefore, related to a place occupied for a hotel when it took effect. *In re Place*, *supra*.

A license granted within the prohibited area is void. *Commonwealth v. Whelan*, 134 Mass. 206.



this connection to be considered are what buildings come within the definitions of the statute and by what rule of measurement shall the prohibited distance be ascertained. As a rule, in the case of a church, little difficulty can arise. However, a few cases of contest have arisen on this point. Thus, where "Faith Curists," an organized body of men and women, held meetings for Bible study and also for secular and religious instruction of the young, in a building occupied on the first floor in the rear for storage purposes, the upper part as a dwelling, and the front room downstairs for their meetings, it was held that such building was not a church nor did such persons constitute a church organization within the meaning of a liquor statute forbidding a saloon within two hundred feet of a church.<sup>93</sup> Some of these statutes apply to camp-meetings or "incorporated camp-meetings."<sup>94</sup> Under a statute prohibiting a saloon within a certain distance of "a building occupied exclusively as a church," a building ten by sixteen feet, located on an alley and occasionally used by an unincorporated association for religious purposes, and which was built and used in order to defeat the grant of a license, the society having headquarters elsewhere in the town, is not such a building as the statute describes.<sup>95</sup> Under a statute prohibiting a saloon within a certain distance "of a building occupied exclusively as a church," a lot owned by a religious society on which a building has been commenced but not completed does not come within its prohibition.<sup>96</sup> But if the main floor of a building is occupied exclusively as a church it is a church, notwithstanding its basement may be used by other

<sup>93</sup> *Geo v. Board* (N. J. L.), 63 Atl. 870.

<sup>94</sup> *Sexton v. Board* (N. J. L.), 69 Atl. 470.

In this case a special city charter empowering the city to license saloons was held to be subject to a previous general statute prohibiting saloons within one mile of an "incorporated camp-meeting." The camp-meeting in this case was Asbury Park, N. J. See

also *Foster v. Speed* (Tenn.), 111 S. W. 925.

A camp-meeting is "a place set apart for the worship of Almighty God." *State v. Hall*, 2 Bailey (S. C.), 151.

<sup>95</sup> *In re Vail*, 38 N. Y. Misc. Rep. 392; 77 N. Y. Supp. 903.

<sup>96</sup> *People v. Lammerts*, 18 N. Y. Misc. Rep. 343; 40 N. Y. Supp. 1107; *In re Rupp*, 54 N. Y. Misc. Rep. 1; 105 N. Y. Supp. 467.

religious and charitable organizations.<sup>97</sup> A dwelling house was bought by a society and used, without alteration, for religious purposes. The pastor occupied the second story as a dwelling. Church services and Sunday-school were held on the parlor floor. A woman with her children occupied the third floor, and to some extent superintended the work on the premises. It was held that this was not a building used "exclusively as a church" within the meaning of the statute.<sup>98</sup> But in the case of a Jewish synagogue, where the upper floor was used exclusively for church purposes, the lower floor for Sunday-school services and as a meeting place of three lodges of a benevolent and fraternal character, each of which paid rent to the synagogue, the membership in the lodges being limited to Jews by birth, though not to members of the congregation, it was held that the building was "exclusively occupied as a church."<sup>99</sup> The occupation of the basement of a church by societies of a charitable, literary and patriotic character, at various fixed times, their membership being principally composed of members of the congregation, and the object being to raise money for the church, will not deprive the building of its characteristics as a church.<sup>1</sup> Upon the question of a cancellation of a license because issued within too close a distance of a church, it is immaterial how long it has been or will be used as a church, if it was so used before the application for a license was made.<sup>2</sup> In all these instances the question of distance is usually the chief one discussed. Where a statute forbade the issuance of a license within two hundred feet of the curtilage of a church edifice, it was held that the measurement must be made from its nearest point to the nearest point of the premises to be licensed, although the entrance to the latter building was more than two hundred feet from the church's curtilage.<sup>3</sup> Where the limit was two

<sup>97</sup> *In re* Zinow, 18 N. Y. Misc. Rep. 653; 43 N. Y. Supp. 714.

<sup>98</sup> *In re* Finley, 58 N. Y. Misc. Rep. 639; 110 N. Y. Supp. 71.

<sup>99</sup> *In re* McCusker, 47 N. Y. App. Div. 111; 62 N. Y. Supp. 201.

<sup>1</sup> *In re* Liquor Tax Certificate, 23 N. Y. Misc. Rep. 446; 51 N. Y. Supp. 281.

<sup>2</sup> *In re* Korndorfer (N. Y.), 49 N. Y. Supp. 559.

<sup>3</sup> *Lanning v. Board* (N. J. L.), 68 Atl. 1083.

hundred feet from a church, it was held that closing the entrance to the saloon and making another next the street and more than that distance from the church did not make it lawful to maintain the saloon.<sup>4</sup> Where the entrance to the church must be two hundred feet from a saloon, then any saloon within a circle having such entrance as its center and a radius of two hundred feet will forbid its maintenance.<sup>5</sup> In determining the distance between the nearest entrance of the church and the saloon the shortest and most direct distance between the two points must be taken, without regard to the way the streets run between them.<sup>6</sup> Such is the case under an act of Congress<sup>7</sup> forbidding the sale of liquor within one mile of the soldiers' home property located in the District of Columbia—the measurement to be made in a level plane from the outside walls of the enclosure in a straight line, and not by the shortest avenue of travel between the nearest entrance and the place to be licensed.<sup>8</sup> In the case of a church it was held from the nearest point of the church edifice.<sup>9</sup> If there is any serious doubt which of two places is the actual entrance, the courts will usually hold that the one within the prohibited distance is the one and prohibit the maintenance of the saloon.<sup>10</sup> Where a special statute forbade the sale of liquor within three miles of a specially named church, and after its enactment a new church building was erected, it was held that the new building must be accepted as the point

<sup>4</sup> *In re Zinzow*, 18 N. Y. Misc. Rep. 653; 43 N. Y. Supp. 714.

<sup>5</sup> *In re Cheney*, 35 N. Y. Misc. Rep. 598; 72 N. Y. Supp. 134; *Meyer v. Baker*, 120 Ill. 567; 12 N. E. 79; *Kramer v. Marks*, 64 Pa. St. 151.

<sup>6</sup> *In re Liquor Tax Certificate*, 23 N. Y. Misc. Rep. 446; 51 N. Y. Supp. 281; *Commonwealth v. Jones*, 143 Mass. 573; 8 N. E. 603; *In re Liquor Locations*, 13 R. I. 733; *Commonwealth v. Everson*, 140 Mass. 434; 5 N. E. 155; *Commonwealth v. Jenkins*,

137 Mass. 572; *Commonwealth v. Heaganev*, 137 Mass. 574; *In re Lewis*, 26 N. Y. Misc. Rep. 532; 57 N. Y. Supp. 676.

<sup>7</sup> 26 U. S. Stat. at Large, 797.

<sup>8</sup> *United States v. Johnson*, 12 App. D. C. 92; *In re Veeder*, 31 N. Y. Misc. Rep. 569; 65 N. Y. Supp. 517.

<sup>9</sup> *Geo v. Board* (N. J. L.), 63 Atl. 870.

<sup>10</sup> *In re Finley*, 58 N. Y. Misc. Rep. 639; 110 N. Y. Supp. 71. See *Commonwealth v. Whelan*, 134 Mass. 206.

from which to begin the measurement of the three mile limit.<sup>11</sup> If the statute prohibits sales within three miles of two churches, then a sale within the limit of one of them though more than three miles from the other is prohibited.<sup>12</sup> Where the statute forbids sales within three miles of a named railroad during its construction, the zone covered by this three miles was construed to be a moving one and to apply only to that part of the road under construction for the time being.<sup>13</sup> Subterfuges to evade the statute are usually unsuccessful. Thus, where a person licensed to sell liquor just beyond the prescribed limits, cut an opening between it and his adjoining building and rented the latter for saloon purposes, it was held that this was a clear invasion of the terms of the statute.<sup>14</sup>

### Sec. 377. Saloon near schoolhouse.

Where a statute forbade sales within a certain distance of any academy, university or institution of learning, it was held that it did not apply to a public school supported by the

<sup>11</sup> State v. Eaves, 106 N. C. 752  
11 S. E. 370.

<sup>12</sup> Carlisle v. State, 91 Ala. 1;  
8 So. 386.

<sup>13</sup> State v. Hampton, 77 N. C.  
526.

While a number of the cases cited are instances of illegal sales, yet they are applicable to the granting of licenses; for as the sales were prohibited by statute, no license could make them legal. *Alvon v. Pawtucket (R. I.)*, 16 Atl. 1047.

<sup>14</sup> *In re Place*, 27 N. Y. App. Div. 561; 50 N. Y. Supp. 640.

A statute forbidding the granting of a license to sell liquors in a place of amusement, does not forbid the granting of a license for a part of the premises not having any communication be-

tween it and the other part. *In re Martz*, 12 Pa. Super. Ct. 521.

In Rhode Island a statute forbade the granting of a license for a saloon where the owners of the greater part of the land within 200 feet of the site objected. This was held to include land in another State within the two hundred feet limit; and objections filed by those residing in the granting State owning the greater part of the land within 200 feet was not sufficient. *American Woolen Co. v. North Smithfield*, 28 R. I. 546; 68 Atl. 719.

An ordinance which provides that no new saloon should be located within 500 feet of a church, but leaves the old saloons free to carry on the business, is void. *Mandeville v. Bard*, 111 La. 806; 35 So. 915.



State, even though taught in a building formerly used as a college.<sup>15</sup> A school building having a library room in which charitable, temperance and religious societies meet, paying a nominal rent, is still a building occupied "exclusively" as a schoolhouse.<sup>16</sup> In some States, even though no statute cover the subject, the licensing board may refuse a license for a saloon to be located near a public school.<sup>17</sup> Where a statute forbids the location of a saloon within two hundred feet of a parochial or public school, nor "in such proximity to a charitable institution as may be detrimental to the same," a parochial school supported by private funds is such an institution as the statute covers.<sup>18</sup> Under such a statute the licensing board have a discretion to renew a license where the statute permits a renewal; but it is held that no place is suitable for a saloon which is so near a charitable institution building that

<sup>15</sup> *Blackwell v. State*, 36 Ark. 178.

<sup>16</sup> *In re Lyman*, 48 N. Y. App. Div. 275; 62 N. Y. Supp. 846.

<sup>17</sup> *In re Curtin*, 19 Vict. L. R. 12; 14 Austr. L. T. 228; *Eslinger v. East*, 100 Ind. 434. "In determining the fitness or unfitness of an applicant, it was proper for the board of commissioners to take into account the place where he desired to sell intoxicating liquors, its proximity to the court house, schoolhouse, churches and all other surroundings, for the reason that it might be that only a man possessed of an extraordinary degree of circumspection and caution could fitly conduct the business at that place on account of the situation and surroundings." *State v. Gerhardt*, 145 Ind. 439; 44 N. E. 469; *Haggart v. Stethlin*, 137 Ind. 43; 35 N. E. 997; 22 L. R. A. 577; *Harrison v. People*, 222 Ill. 150; 78 N. E. 52; *Queen v. McPherson*, 24 Nov.

Sec. 378; *In re Quinn*, 32 Nov. Sec. 542.

The same rule was applied to a reformatory for girls, though there was a wall ten feet high between the saloon site and the reformatory grounds. *Kretzmann v. Dunne*, 228 Ill. 31; 81 N. E. 790; affirming 130 Ill. App. 469.

Under a power enabling a park board to forbid any offensive business within a certain distance of a park, it may forbid a saloon. *In re Arszman*, 40 Ind. App. 218; 81 N. E. 680.

A statute prohibiting sales of liquor within half a mile of any "building premises or land," occupied by a State hospital, includes a garden kept by the State hospital on contiguous premises owned by it. Such a statute is liberally construed. *In re Brady* (N. Y.), 106 N. Y. Supp. 921.

<sup>18</sup> Appeal of *Schusler*, 81 Conn. 276; 70 Atl. 1029.

it will be detrimental to the interests of the institution; and the fact that the site for the parochial school was bought after the saloon had been located did not deprive the licensing board of its power to refuse to renew the license.<sup>19</sup> A saloon and a schoolhouse were situated within a triangle formed by three streets, A, B and C, and within four hundred feet of each other. The saloon stood on a lot on C street, and this lot ran through to A street, the latter having a lower grade than C street, so that there was a cellar basement in the building with doors opening into the lot on A street side, where the building was thirty feet distant from the street. The barroom in the building opened into a common hallway, from which stairs led into the basement. The schoolhouse faced an angle made by the junction of A and B streets, and had entrances from both, the lot being inclosed by a fence with a gate at the entrance from each street. It was held that it was competent for the jury to find that the saloon and schoolhouse were on the same street, and that being true they were within less than four hundred feet of each other.<sup>20</sup> Where a statute forbade the location of a saloon within two hundred feet of a schoolhouse, but provided that it should not apply to buildings then in existence and used respectively for school and saloon purposes, and the business of saloon keeping in the building having been abandoned, after the passage of the statute, by the proprietor, who was a lessee of the building and who removed therefrom leaving such building vacant, it was held that thereafter a new saloon could not be established in such building, not coming within its exception.<sup>21</sup> Such a statute does not apply to a nurse training school.<sup>22</sup>

<sup>19</sup> Appeal of Schusler, *supra*.

Evidence of a renewal of another license for a place near the school was held in this case immaterial; for the board was unfettered by what had been done in dealing with any other applicant for a renewal.

<sup>20</sup> Commonwealth v. Heaganey, 137 Mass. 574.

<sup>21</sup> *In re Lewis*, 26 N. Y. Misc. Rep. 532; 57 N. Y. Supp. 676. See also *In re Heming* (N. Y.), 117 N. Y. Supp. 747.

What evidence is sufficient to show a school is a public school, see *Commonwealth v. Whelan*, 134 Mass. 206.

<sup>22</sup> *Matter of Townsend*, 129 N. Y. App. Div. 909; 114 N. Y. Supp. 1149.

**Sec. 378. Saloon near fair or factory.**

Where a statute forbade sales within a certain distance of an agricultural fair, it was said that a place where manufactured and agricultural products were received and placed on exhibition for the purpose of awarding premiums for their excellence was an agricultural fair, although conducted for a profit.<sup>23</sup> Inasmuch, however, as an agricultural fair is of a temporary character, the question whether a license shall be granted within a certain distance of it is not covered by statutes; it is usually a sale of liquor within a certain distance that is prohibited; and when that is the case even a licensed saloon keeper may not sell liquor when the fair is being held.<sup>24</sup> Where a statute forbade sales within a prescribed distance of a factory, and a mortgage on it was foreclosed and the factory sold to others, the prohibition was held to still continue, not being personal to the original ownership.<sup>25</sup>

**Sec. 379. Saloon in resident part of city.**

Statutes occasionally are enacted forbidding the location of a saloon in a residence part of a city or town. Thus, a statute authorized a municipality to exclude sales of liquors from "the suburban or residence portion of such city, and confine the places where such sales may be made to the business portion of such city," and an ordinance adopted in pursuance of this power thus given declared that it should "be unlawful for any person or persons to sell any intoxicating liquors to be used in or upon the premises in the residence portion of said city of Muncie, but all such sales shall be excluded from such portions of such city, and all places where such sales may be made shall be confined to the business portion thereof." The statute was not questioned, but the ordinance, it was contended, was invalid because vague, and because it did not define the residence and business portions of the city. The court, however, did not agree with the contention, holding the ordinance valid, and also holding that what was a resi-

<sup>23</sup> State v. Long, 48 Ohio St. 509; 28 N. E. 1038.

<sup>24</sup> Heck v. State, 44 Ohio St. 536; 9 N. E. 305.

<sup>25</sup> Ashurst v. State, 79 Ala. 276.

dence portion of a city was a question of fact for the court; and the same was true of the business portion.<sup>26</sup> In a subsequent case the ordinance defined the resident and business portions of the city by specific boundaries; and it was held that the city could do this, but it was also held that the ordinance was only *prima facie* evidence of what territory within the resident boundaries was a resident territory, and that evidence was admissible to show that it was not, the council not being able to define conclusively what was and what was not the resident portion of a city. The court took occasion to say that the words "residence" and "suburban" did not mean the same thing, saying: "The suburban portion of a city is the outlying part, that portion which is remote from the center of trade and population, where the houses are, generally, more or less scattered, and where many of the improvements and advantages enjoyed by the central and more densely populated parts of the city are wanting. The suburban part of a city may be used for business, or it may be occupied by residences, or it may be used for both residence and business purposes. But in either case, police surveillance and protection are usually less thorough and efficient than in the central parts of the city, and, however occupied, the same reasons exist for excluding from such portions of the city places of resort and offensive occupations which may breed disorder and threaten the quiet and safety of the neighborhood."<sup>27</sup> Where a statute forbade the granting of a license for a saloon to be located in a "purely residential part of a town," it was held a portion of a street, eleven hundred feet long, having thereon fifty-eight buildings, such portion of the street being very thickly settled, the houses small and for the most part occupied by Italians and negroes, this portion of the street containing four small groceries in buildings occupied also as dwellings, and also containing two licensed saloons, was not such a portion of the city as the statute defined.<sup>28</sup>

<sup>26</sup> *Shea v. Muncie*, 148 Ind. 14: 46 N. E. 138.

Such a statute is constitutional. *Andreas v. Beaumont* (Tex. Civ. App.), 113 S. W. 614.

<sup>27</sup> *Rowland v. Greencastle*, 157 Ind. 591; 62 N. E. 474.

<sup>28</sup> *Appeal of Hewitt*, 76 Conn. 685; 58 Atl. 231.

As to discrimination in the



### Sec. 380. Moral qualification of applicant.

Statutes not infrequently require the licensee to be a man of good moral character,<sup>29</sup> or forbid the granting of a license to a person not fit to be entrusted with the sale of intoxicating liquors, or to a person in the habit of becoming intoxicated. Such is the case in Indiana.<sup>30</sup> Under the Indiana statute the fitness of the applicant is a question of fact,<sup>31</sup> and a witness cannot usurp the right of the court or board or jury hearing the application by stating that the applicant is or is not a fit person.<sup>32</sup> The applicant's unfitness may be proven by specific acts of immorality and by the kind of saloon he formerly kept or is then keeping.<sup>33</sup> It may be shown that he has violated the criminal laws of the State.<sup>34</sup> But a single conviction of an applicant of having violated the liquor laws does not necessarily show that he is an unfit person to be licensed.<sup>35</sup> Immoral conduct covers other kinds of immorality than the habit of becoming intoxicated and may be made the grounds of a remonstrance.<sup>36</sup> Thus, as bearing on this question, it may be shown that the saloon will be located near a school or college, as evidence from which the court or jury may determine of his fitness to there sell liquors.<sup>37</sup> But the court cannot say to a jury trying the question that a single

amount of licenses between places being void, see *Howard v. State* (Fla.), 47 So. 963.

<sup>29</sup> Character means the estimation in which a man is held by those who are acquainted with him. *Leader v. Yell*, 33 L. J. M. C., p. 233.

<sup>30</sup> Burns R. S. 1908, §§ 8319, 8324.

<sup>31</sup> *Keiser v. Lines*, 57 Ind. 431; *Hardesty v. Hine*, 135 Ind. 72; 34 N. E. 701; *Pelley v. White*, 141 Ind. 688; 41 Ind. 354.

<sup>32</sup> *Stockwell v. Brent*, 97 Ind. 474.

<sup>33</sup> *Stockwell v. Brent*, 97 Ind. 474; *Bolton v. Hegner*, 82 Neb. 772; 118 N. W. 1096.

<sup>34</sup> *Groseup v. Rainier*, 111 Ind. 361; 12 N. E. 694; *Bronson v. Dunn*, 124 Ind. 252; 24 N. E. 749; *Hardesty v. Hine*, 135 Ind. 72; 34 N. E. 701; *Bourjohn's Application*, 2 Pa. Co. Ct. Rep. 33; *Meitzler's Application*, 2 Pa. Co. Ct. Rep. 37; *Appeal of Wright*, 1 Wilcox, 85.

<sup>35</sup> *Golden v. Bingham*, 61 Ind. 198. But frequent violations are sufficient. *In re Quirek*, 17 Pa. Co. Ct. Rep. 327.

<sup>36</sup> *Grummon v. Holmes*, 76 Ind. 585; *Groseup v. Rainier*, 111 Ind. 361; 12 N. E. 694.

<sup>37</sup> *Eslinger v. East*, 100 Ind. 434.

act of intoxication shows such immoral conduct as renders the applicant unfit; nor does it, in fact, show him to be a person in the habit of becoming intoxicated.<sup>38</sup> Occasional drinking does not show the applicant is an unfit person to be licensed.<sup>39</sup> If trial of the applicant's fitness is had by a jury, then the court must not instruct the jury what is necessary to show him to be a fit man to be licensed, for that is a question for the jury.<sup>40</sup> The burden is upon the applicant to show that he is not an immoral man and that he is not in the habit of becoming intoxicated, though that involves proof of a negative; and he must produce evidence of those facts if he desires to secure a license unless it is waived or the facts are admitted.<sup>41</sup> And if he shows himself to be such a man he is entitled to his license;<sup>42</sup> and it cannot be denied him upon the ground that any man who will engage in the sale of intoxicating liquors is an immoral man.<sup>43</sup> A common gambler or a man who frequents gambling houses may be denied a license, although not specified under the statute referred to as one of the causes for refusing him a license; but such conduct may be regarded as acts of immorality.<sup>44</sup> If two petition for a license, the fact that one absconds does not necessarily defeat the application of the other.<sup>45</sup> Habitual violations of the liquor law are sufficient to defeat the application,<sup>46</sup> as are repeated violations of the criminal laws of the State.<sup>47</sup> In Nebraska the statute makes an applicant unfit to receive a

<sup>38</sup> *Lynch v. Bates*, 139 Ind. 206; 38 N. E. 806.

<sup>39</sup> *Calder v. Sheppard*, 61 Ind. 219.

<sup>40</sup> *Keiser v. Lines*, 57 Ind. 431; *Hardesty v. Hine*, 135 Ind. 72; 34 N. E. 701; *Pelly v. Willis*, 141 Ind. 688; 41 N. E. 354.

<sup>41</sup> *Goodwin v. Smith*, 72 Ind. 113; *Castle v. Bell*, 145 Ind. 8; 44 N. E. 2; *Chandler v. Ruebels*, 63 Ind. 139; *Regina v. Pilgrim*, L. R. 6 Q. B. 96; 35 J. P. 169; 40 L. J. M. C. 3; 23 L. T. 410; 19 W. R. 99.

<sup>42</sup> *Miller v. Wade*, 58 Ind. 91.

<sup>43</sup> A juror so thinking is incompetent to sit on the trial of the application. *Chandler v. Ruebels*, 83 Ind. 139.

<sup>44</sup> *Groscap v. Rainier*, 111 Ind. 361; 12 N. E. 694; *Stockwell v. Brent*, 97 Ind. 474.

<sup>45</sup> *Polk Co. v. Johnson*, 21 Fla. 578.

<sup>46</sup> *Brunson v. Dunn*, 124 Ind. 252; 24 N. E. 749.

<sup>47</sup> *Bourjohn's Application*, 2 Pa. Co. Ct. Rep. 33; *Meitzler's Application*, 2 Pa. Co. Ct. Rep. 37; *Bolton v. Becker*, 82 Neb. 772; 119 N. W. 14.

license if within a year before his application he has violated the liquor law in a single instance; and under it a single sale to an habitual drunkard is sufficient to defeat the application;<sup>48</sup> and other things tending to show the applicant's unfitness may be shown, though not enumerated in the statute.<sup>49</sup> It may be shown that the applicant permitted gambling to be carried on in his premises, or gamblers and dissolute persons to frequent there,<sup>50</sup> or kept gambling instruments.<sup>51</sup> It is not a sufficient reason, however, for refusing a license, that a former proprietor had violated the law.<sup>52</sup> If a corporation can be licensed, the moral character of the applicant is not a question to be considered.<sup>53</sup> If the licensing board improperly grant a license where the applicant has violated the law that does not prevent it denying a second application because of such violation.<sup>54</sup>

### Sec. 381. Residence of applicant.

Statutes require, often, that the applicant be a resident or inhabitant of the State, or even of the licensing district; and that is a jurisdictional fact which either gives or withholds

<sup>48</sup> *State v. Kaso*, 25 Neb. 607; 41 N. W. 558; *State v. Cass Co.*, 12 Neb. 54; 10 N. W. 571; *Livingston v. Corey*, 33 Neb. 366; 50 N. W. 263; *In re Phillips*, 82 Neb. 45; 118 N. W. 1098.

<sup>49</sup> *State v. Hanlon*, 24 Neb. 608; 39 N. W. 780.

<sup>50</sup> *Stockwell v. Brent*, 97 Ind. 474; *Bolton v. Hegner*, 82 Neb. 772; 118 N. W. 1096; *Hardesty v. Hine*, 135 Ind. 72; 34 N. E. 701; *Woods v. Garvey*, 82 Neb. 776; 118 N. W. 1114.

<sup>51</sup> *Pelley v. Wills*, 141 Ind. 688; 41 N. E. 354.

<sup>52</sup> *Appeal of Dorbemeck*, 1 Pa. Super. Ct. 99; 38 Wkly. N. C. 90.

<sup>53</sup> *In re Prospect Brewing Co.*, 127 Pa. 523; 17 Atl. 1090; 24 W. N. C. 177.

<sup>54</sup> *Louisville v. Hendricks* (Ky.), 116 S. W. 747. In this case it was held that a board was not justified in rejecting an application because the applicant had kept a disorderly house on one day by permitting disorderly persons engaged in election frauds to assemble on election day in his saloon; for the keeping of a disorderly house on one day was not evidence that a disorderly house was kept within the statute; see also *United States v. Johnson*, 12 App. D. C. 545.

Where the applicant must be a taxpaying male citizen, that fact he must show to get a license. *State v. Cooper County*, 66 Mo. App. 96.

jurisdiction to or from the licensing board. A license granted in violation of the statute in this respect is void, not voidable, although if granted the presumption is that the licensee was a proper person to receive it.<sup>55</sup>

### Sec. 382. Remonstrance.

The form and substance of a remonstrance is seldom regulated by statute; but the terms of the statute not infrequently require certain specifications to be made in order to defeat a license. Of course, the remonstrance must be presented to the licensing board, and not infrequently it must be filed a certain length of time before the date of hearing. This is eminently fair; for, as the remonstrance usually brings forward new matter—matter not stated in the application, or only incidentally stated—the applicant ought to be given time to meet the charges made in it against him. Where a statute required that an application for a license should lie over for a month “for consideration and the reception of counter petitions,” it was held that after the month thus required a counter petition may be presented, but it must be done before the license is granted.<sup>56</sup> Nor can a remonstrance be filed on appeal;<sup>57</sup> but it may be amended by making the objections more specific and by adding new specifications under the original objections, where no new parties are introduced.<sup>58</sup> If there be only a

<sup>55</sup> McGee v. Beal, 63 Miss. 455; People v. Davis, 45 Barb. 494; 36 N. Y. 77. See State v. Cooper County, 66 Mo. App. 96; and *In re Burns* (Ind.), 87 N. E. 1028.

<sup>56</sup> Rogers v. Hahn, 63 Miss. 578; Flynn v. Taylor, 145 Ind. 533; 44 N. E. 546; Conwell v. Overmeyer, 145 Ind. 698; 44 N. E. 548; Vanderlip v. Derby, 19 Neb. 165; 26 N. W. 707.

Where a statute allows a remonstrance to be filed on a certain day, a remonstrator has the whole of such day to file his remonstrance, up to twelve o'clock, midnight. *Sexton v. Goodwine*, 33

Ind. App. 329; 68 N. E. 929; 70 N. E. 999. Sunday must be counted as a day. *Shaffer v. Stern*, 160 Ind. 375; 66 N. E. 1004; *Lee v. Schull* (Ind.), 88 N. E. 521.

<sup>57</sup> *Miller v. Wade*, 58 Ind. 91; *List v. Padgett*, 96 Ind. 126; *Sana-sack v. Aden*, 168 Ind. 559; 78 N. E. 675; 79 N. E. 457; 80 N. E. 151; *State v. Gorman*, 171 Ind. 58; 85 N. E. 763.

<sup>58</sup> *Stockwell v. Brent*, 97 Ind. 474; *Hardesty v. Hine*, 135 Ind. 72; 34 N. E. 701; *Bryan v. Jones*, 34 Ind. App. 701; 73 N. E. 1136.



single remonstrator and he dismiss his remonstrance on appeal, a new party cannot then appear and file a new remonstrance,<sup>59</sup> nor, in fact, sign the old remonstrance and thus make it his own. Resistance against the granting of a license can only be made by a remonstrance;<sup>60</sup> and a remonstrance can only be filed for the causes specified in the statute.<sup>61</sup> Its sufficiency may be tested by a demurrer for want of necessary allegations of facts sufficient to constitute a remonstrance, but not by a motion to strike it from the files.<sup>62</sup> The allegations of a remonstrance should be specific, not general. They must set forth the particulars wherein the applicant is not entitled to a license. Thus, to remonstrate simply "on account of immorality" is not a sufficient allegation. "This may mean the immorality of the applicant or the immorality of the traffic. A remonstrance on the immorality of the applicant, or of his unfitness otherwise to be entrusted with the sale of intoxicating liquors, ought to set forth the particulars of the immorality imputed to him, of his unfitness otherwise, with such reasonable degree of certainty as will advise him of the nature of the charge against him, so that he may be able to meet it."<sup>63</sup> This ruling was made, it should be observed, where the applicant for a license must have been "a fit person to be entrusted with the sale of intoxicating liquor," and "not in the habit of becoming intoxicated."<sup>64</sup> The remonstrance must be directed against the granting of a license to a particular person, and it cannot be made against the granting of any license;<sup>65</sup> but a remonstrance against the granting of a license to "J W or any applicant" is good as against

<sup>59</sup> *Miller v. Wade*, 58 Ind. 91.

<sup>60</sup> *Ex parte Miller*, 98 Ind. 451;  
*State v. Moniteau*, 45 Mo. App. 387.

<sup>61</sup> *Gates v. Hern*, 150 Ind. 370;  
 50 N. E. 299; *State v. Moniteau*,  
 45 Mo. App. 387; *In re Justin*, 2  
 Pa. Co. Ct. Rep. 22. *Contra*,  
*Watkins v. Grieser*, 11 Okla. 302;  
 66 Pac. 332.

<sup>62</sup> *Fletcher v. Crist*, 139 Ind.

121; 38 N. E. 472; *Ehrenfried v. Kenney*, 14 N. Z. L. R. 19.

<sup>63</sup> *Grummon v. Holmes*, 76 Ind. 585.

<sup>64</sup> *Groscup v. Rainier*, 111 Ind. 361; 12 N. E. 694; *Watkins v. Grieser*, 11 Okla. 302; 66 Pac. 332.

<sup>65</sup> *State v. Gerharat*, 145 Ind. 439; 44 N. E. 469; *Massey v. Dunlap*, 146 Ind. 350; 44 N. E. 641; *Pize v. Fraser*, 17 Ont. Rep. 635.

“J. W.”<sup>66</sup> But where the statute provided that “no license shall be granted to any person residing within any town or township where a majority of the freeholders in such town or township shall remonstrate against granting the same,” it was held that a general remonstrance against the granting of a license to any one, not naming any person whatsoever, was sufficient.<sup>67</sup> But this was a local option law under the right of remonstrance. Separate remonstrances, identical or not identical, may be filed against the same applicant by different remonstrators.<sup>68</sup> If a statute requires the remonstrance to be verified by affidavit, a remonstrance filed without an affidavit will not be considered.<sup>69</sup> Where a statute provided “that no license should be granted to authorize the sale of liquors at any building or place where the owners or occupants of the greater part of the land within two hundred feet of such building or place shall file with the board their objection,” it was held that it was sufficient to allege “that the undersigned were [are] the owners of the greater part of the property” within that distance.<sup>70</sup> If a remonstrance be filed in time but at the session of the licensing board at which notice was given that it would be heard and the applicant does not bring it on for a hearing, but gives a new notice that it will come up at the next session, the remonstrance remains on file and must be passed upon at such second session.<sup>71</sup> A single remonstrance against two or more applicants cannot be con-

<sup>66</sup> *Thompson v. Hiatt*, 145 Ind. 530; 44 N. E. 486. (These Indiana decisions were under a statute providing that on the filing of a remonstrance, it should be unlawful “to grant such license to such applicant therefor.”) *Collins v. Barrier*, 64 Miss. 21; 8 So. 164.

<sup>67</sup> *Woods v. Pratt*, 5 Blackf. 377.

<sup>68</sup> *Wilson v. Mathias*, 145 Ind. 493; 44 N. E. 486; *Flynn v. Taylor*, 145 Ind. 533; 44 N. E. 546.

<sup>69</sup> *In re Palmer*, 3 Pa. Co. Ct. 314.

Upon a mandamus to compel the licensing board to hear a remonstrance, it is no defense to the issuing of the writ that the remonstrance is untrue; for that question can only be heard upon the hearing on the remonstrance. *State v. Reynolds*, 18 Neb. 431; 25 N. W. 610; *State v. Pearce*, 31 Neb. 562; 48 N. W. 391.

<sup>70</sup> *Lonsdale Co. v. Cumberland*, 18 R. I. 5; 25 Atl. 655.

<sup>71</sup> *McLaughlin v. Wisler*, 28 Ind. App. 61; 62 N. E. 73; *Rhode Island Perkins, etc., Co. v. Dwyer*, 19 R. I. 643; 36 Atl. 2.

sidered; a remonstrance must be filed against each applicant.<sup>72</sup> In England it may be shown that the applicant had kept a disorderly house.<sup>73</sup> The remonstrance need not state the political division for which the application has been made; it is sufficient if it identify the application.<sup>74</sup> A remonstrance must be filed with the licensing board; but if sent to the board, and they order it preserved in its files, that is a sufficient filing.<sup>75</sup> Where a statute provides that if a majority of the voters of the district remonstrate against the granting of a license to an applicant, no license shall be granted, no grounds or cause of remonstrance need be stated.<sup>76</sup> A remonstrance remains on file after the petition for a license is withdrawn, and on renewal of an application it is applicable thereto and must be considered.<sup>77</sup> Where a statute provided that a remonstrance shall be *prima facie* evidence that the names upon it have been properly and lawfully signed and that their owners qualified to sign the remonstrance unless the right to sign shall be denied by a pleading under the oath of the applicant; upon filing such a pleading the burden is upon the remonstrators to establish their qualifications as well as the authority of the persons by whom their names were signed and attached to the remonstrance.<sup>78</sup> The use of the initials of the Christian name is sufficient;<sup>79</sup> and a signature may be corrected, even if signed by an attorney in fact.<sup>80</sup>

<sup>72</sup> Massey v. Dunlap, 146 Ind. 350; 44 N. E. 641.

<sup>73</sup> Regina v. Miskin Higher, J. J. [1893] 1 Q. B. 275; 5 R. 121; 67 L. T. 680; 41 W. R. 252; 57 J. P. 263; Cogill v. Queenstown 21 Jut., 262.

<sup>74</sup> Bryan v. DeMoss, 34 Ind. App. 473; 73 N. E. 156; Bryan v. Jones, 34 Ind. App. 473; 73 N. E. 1135.

<sup>75</sup> Moores v. State, 69 Neb. 653; 96 N. W. 225.

<sup>76</sup> Boomersshine v. Uline, 159 Ind. 500; 65 N. E. 513; Miller v.

Resler (Ind.), 88 N. E. 516; Behler v. Achley (Ind.), 88 N. E. 877.

<sup>77</sup> Rhode Island, etc., Co. v. Dwyer, 19 R. I. 643; 36 Atl. 2.

<sup>78</sup> Miller v. Reeder (Ind.), 88 N. E. 516; Honey v. Guillaume (Ind.), 88 N. E. 937.

<sup>79</sup> Miller v. Reed, *supra*; Carelton v. Rug, 149 Mass. 550; 22 N. E. 55; 5 L. R. A. 19; 14 Am. St. Rep. 446.

<sup>80</sup> Miller v. Reed, *supra*.

### Sec. 383. Signatures to remonstrance—Power of attorney to sign—Revocation.

The remonstrance must be in writing and duly signed by the remonstrator. His signature is essential. But the signature may be written with a pen or pencil or a typewriter, unless a statute prevents the use of the latter. A printed signature is sufficient.<sup>81</sup> An attorney duly authorized by those entitled to remonstrate may execute a remonstrance for them against the granting of a license; and this he may do by having his agent or clerk or typewriter sign the remonstrance.<sup>82</sup> Under powers of attorney one person may be authorized to sign the names of remonstrants not only to one remonstrance but to any number of remonstrances. It is not necessary that the power of attorney should be to sign a remonstrance against a particular application, but it may be against any

<sup>81</sup> *Arderly v. State*, 35 Ind. App. 94; 73 N. E. 840; *Hamilton v. State*, 103 Ind. 96; 53 Am. Rep. 491; *Williams v. McDonald*, 58 Cal. 527; *Hancock v. Bowman*, 49 Cal. 413; *Pennington v. Baehr*, 48 Cal. 565; *Herrick v. Morrill*, 37 Minn. 250; 33 N. W. 849; 5 Am. St. Rep. 841; *Mezchen v. More*, 54 Wis. 214; 11 N. W. 534.

Where a statute required the Secretary of State to sign warrants, the Attorney General gave an opinion that a warrant printed from a copper plate with his signature engraved thereon was sufficient, saying: "There would be great difficulty in maintaining the proposition as a legal one, that when the law required signing, it means that it must be done with pen and ink. No book has laid down the proposition, or even given color to it. I believe that a signature made with straw dipped in blood would be equally valid and obligatory; and if so, where is the legal restriction on

the implement which the signer may use?—a polygraph, for example or types, or a stamp.

\* \* \* The law requires signing merely as an indication and proof of the parties' assent." 1 *Opinions of Attorney General*, 670. "The typewriter is a modern convenience. The signature made by it was in this case the signature of the attorney, the operator being in fact his agent, exactly as the keys and the types were his agent. It has the same validity as if written by his own hand—indeed, within the meaning of the law, it becomes his proper handwriting." *Arderly v. Smith*, 35 Ind. App. 94; 73 N. E. 849 (citing *Nye v. Lowry*, 82 Ind. 316; *Croy v. Busenbark*, 72 Ind. 48).

<sup>82</sup> *Arderly v. Smith*, 35 Ind. App. 94; 73 N. E. 840; *Shaffer v. Stern*, 160 Ind. 375; 66 N. E. 1004; *Jones v. Nugent*, 31 Ind. App. 697; 67 N. E. 195; *McClanahan v. Breeding* (Ind.), 88 N. E. 695.



and all applications then pending before the licensing board or at any time thereafter presented without any designation of the applicants against whom the remonstrances are to be presented. Such a power of attorney continues in force until revoked.<sup>83</sup> In some States, however, the statutes make certain requirements concerning signatures, as where a signature by mark must be attested; and when that is true, unattested signatures cannot be considered.<sup>84</sup> A power of attorney executed by several persons is several as to each one; and the death of one or more of them does not work its revocation.<sup>85</sup> A power of attorney to sign the name of the person executing it "to any and all remonstrances against persons who may give notice of an intention to apply for a license and also to sign his name to remonstrance or remonstrances against the granting of a license to any person to sell intoxicating liquors in the township" is an unlimited remonstrance in time, being in the nature of a trust after its acceptance, and is not dis-

<sup>83</sup> *Ludwig v. Cory*, 158 Ind. 582; 64 N. E. 14.

In this case the power of attorney was as follows: "Know all men by these presents, that we, the undersigned legal voters of Lawrence Township, Marion County, Indiana, have constituted and appointed, and do hereby constitute and appoint, Perry C. Apple, of Lawrence Township, Indiana, our true and lawful attorney for us, and in our names, place and stead, to sign any and all necessary papers and remonstrances against the granting by the board of commissioners of Marion County, Indiana, to any applicant therefor, any license to sell spirituous, vinous, malt or other intoxicating liquors under the laws of the State of Indiana, with the privilege of allowing the same to be drunk on the premises, at any and all places or locations within

said Lawrence Township." See also *Castle v. Bell*, 145 Ind. 8; 44 N. E. 2; *Coehill v. Reynolds*, 156 Ind. 14; 58 N. E. 1029; *White v. Ferguson*, 29 Ind. App. 144; 64 N. E. 49; *Rogle v. Mattox*, 159 Ind. 584; 65 N. E. 743; *Fried v. Nelson*, 30 Ind. App. 1; 65 N. E. 216; *Anderly v. Smith*, 35 Ind. App. 94; 73 N. E. 840; *Shaffer v. Stern*, 160 Ind. 375; 66 N. E. 1004; *Cain v. Allen*, 168 Ind. 8; 79 N. E. 201, 896; *Regdance v. Haines*, 168 Ind. 140; 79 N. E. 752.

<sup>84</sup> *Faber v. Wilder*, 70 Ark. 449; 69 Ark. 260.

A power of attorney to sign a remonstrance may be revoked as to past and future signing by filing a revocation with the licensing board. *Davis v. Affleck*, 34 Ind. App. 572; 73 N. E. 283.

<sup>85</sup> *Shaffer v. Stern*, 160 Ind. 375; 66 N. E. 1004.

cretionary as to its execution.<sup>86</sup> But, as a rule, a power of attorney to sign a remonstrance is at an end when the remonstrance, duly signed, is filed with the licensing board or its clerk.<sup>87</sup> Names appended to a remonstrance under a power of attorney may be withdrawn by those executing the power of attorney who authorized their signatures attached thereto, at any time before the licensing board have acted upon the remonstrance.<sup>88</sup> This may be done by filing with the board a revocation of their signatures.<sup>89</sup> Such a power is not one coupled with an interest; and it may be revoked at any time;<sup>90</sup> and this may be done by signing another power of attorney authorizing a person to withdraw the signature from the remonstrance.<sup>91</sup> But until the power to withdraw the signature has been executed, it is no objection to a person who has remonstrated that he cannot sign the remonstrance because of his having executed a power of attorney authorizing the withdrawal of his name.<sup>92</sup> The revocation of a power of attorney takes place from the time the agent has actual notice of it.<sup>93</sup> Persons who in no way signed a remonstrance cannot withdraw therefrom.<sup>94</sup>

### Sec. 384. Who may remonstrate.

The statutes usually designate who may remonstrate against the granting of a license, and when they do no other person can remonstrate. In Iowa, any citizen may appear and remonstrate or oppose the granting of a license;<sup>95</sup> and in Indiana the board of county commissioners who have refused to grant the license may appear on appeal and oppose its granting.<sup>96</sup> The remonstrance need not set forth the quali-

<sup>86</sup> McClanahoun v. Breeding (Ind.), 88 N. E. 695.

<sup>87</sup> Miller v. Resler (Ind.), 88 N. E. 516. See Nichols v. Lehman, 42 Ind. App. 384; 85 N. E. 786.

<sup>88</sup> Lee v. Schull (Ind.), 88 N. E. 521.

<sup>87</sup> Miller v. Ressler (Ind.), 88 N. E. 516.

<sup>90</sup> Miller v. Ressler, *supra*

<sup>91</sup> Miller v. Ressler, *supra*; Lee v. Schull (Ind.), 88 N. E. 521.

<sup>92</sup> Miller v. Ressler, *supra*.

<sup>93</sup> Honey v. Guillaume (Ind.), 88 N. E. 937; Behler v. Achley (Ind.), 89 N. E. 877.

<sup>94</sup> Behler v. Achley (Ind.), 89 N. E. 877.

<sup>95</sup> Darling v. Boesch, 67 Iowa, 702; 25 N. W. 887; Leighton v. Maury, 76 Va. 865.

<sup>96</sup> Murphy v. Monroe Co., 73 Ind. 483.

fications of the remonstrators; it need not show that they are voters, or that they constitute a majority of the voters in the licensing district where a majority is necessary to be effective, for a remonstrator cannot know when he signs the remonstrance that the requisite majority will sign it.<sup>97</sup> It need not show the residences of those remonstrating.<sup>98</sup> If, pending the proceedings, a remonstrator ceases to possess the qualifications enabling him to sign the remonstrance, his name must be stricken out, although that defeat the whole remonstrance proceedings.<sup>99</sup> If more than one remonstrance be filed, and those signing one of them are not qualified to remonstrate, that one may be stricken out, but it is not error to refuse to do so unless their names are essential to make up the requisite number of remonstrators in order to defeat the application.<sup>1</sup> In Rhode Island a railroad company may remonstrate in its corporate name by its superintendent on direction of its general manager who has the right to so direct; and no formal vote of the board of directors is necessary to authorize him to give such direction.<sup>2</sup> In Virginia any citizen may remonstrate and appeal, and by so doing he will render himself liable for costs;<sup>3</sup> and a still later statute allows any person who may feel himself aggrieved the right to object.<sup>4</sup> It is no objection to a remonstrator that he is personally interested in the result, as where a newspaper proprietor objects that the notice should have been printed in his newspaper, because it had the largest circulation, and not in that of a rival proprietor.<sup>5</sup> Where no statute prescribed the qualifications of the remonstrators it was held that any resident of the territory, or a non-resident who was a taxpayer therein, might

<sup>97</sup> Head v. Doehleman, 148 Ind. 145; 46 N. E. 585; Bryan v. Jones, 34 Ind. App. 701; 73 N. E. 1135; Little v. Thompson, 24 Ind. 146; Bryan v. DeMoss, 34 Ind. App. 473; 73 N. E. 156. *Contra*, *In re Law and Order Society*, 185 Pa. 572; 40 Atl. 92.

<sup>98</sup> Bryan v. DeMoss, 34 Ind. App. 473; 73 N. E. 156.

<sup>99</sup> List v. Padgett, 96 Ind. 126.

<sup>1</sup> Fletcher v. Crist, 139 Ind. 121; 38 N. E. 472.

<sup>2</sup> Lonsdale Co. v. Cumberland, 18 R. I. 5; 25 Atl. 655.

<sup>3</sup> Leighton v. Maury, 76 Va. 865.

<sup>4</sup> Lester v. Price, 83 Va. 648; 3 S. E. 529.

<sup>5</sup> Feil v. Kitchen Bros. Hotel, 57 Neb. 204; 77 N. W. 344. See *In re Law and Order Society*, 185 Pa. 572; 40 Atl. 92.

remonstrate.<sup>6</sup> A statement that the remonstrators are "residents and voters" sufficiently states that they are "legal voters."<sup>7</sup> A statute provided that if a remonstrance signed by a majority of the voters of any township, or ward in any city, should be filed, no license shall be granted, was re-enacted after the Supreme Court had held that remonstrators must be voters of the ward of a city wherein the applicant desired to locate his saloon; and it was held that it would be presumed the statute was re-enacted with that construction, nothing to the contrary being contained in the amendment.<sup>8</sup>

### **Sec. 385. Withdrawal of signatures from remonstrance.**

A remonstrator is not at liberty to withdraw his name from the remonstrance at any time he may see fit. Thus, where the statute provided that, "If, three days before any regular session of the board of commissioners of any county, a remonstrance in writing, signed by a majority of the legal voters of any township or ward in any city, situated in said county, shall be filed with the auditor of the county, against the granting of a license to any applicant for the sale of spirituous, vinous, malt, or other intoxicating liquors, under the law of the State of Indiana, with the privilege of allowing the same to be drunk on the premises where sold, within the limits of said township, or city ward, it shall be unlawful thereafter to grant such license to such applicant," it was held that within this three days period a remonstrant could not withdraw his name; but "until the beginning of this three day period, whether the remonstrance has been placed on file or not, any remonstrator must be deemed to have the absolute right by some affirmative act of his own to

<sup>6</sup> Watkins v. Grieser, 11 Okla. 302; 66 Pac. 332; Somers v. Vlasney, 64 Neb. 383; 89 N. W. 1036.

<sup>7</sup> Head v. Doehleman, 148 Ind. 145; 46 N. E. 585.

<sup>8</sup> Miller v. Givens, 41 Ind. App. 401; 83 N. E. 1018.

In Arkansas any private citizen may remonstrate. Whissen v.

Furth, 73 Ark. 366; 84 S. W. 500; 68 L. R. A. 161.

Where a remonstrator did not testify fully as to his qualifications, it was held that his disqualification might be shown on cross-examination. Miller v. Ressler (Ind.), 88 N. E. 516.



withdraw his name from such remonstrance. But," added the court, "if this right is not exercised prior to the beginning of the first day of this three days' period, it no longer exists."<sup>9</sup> And the court makes this quotation from a similar case showing the reasons why a remonstrator should not be then allowed to withdraw his name: "This motion came too late. Rights had been acquired and money expended on the faith of the order made upon the first report [in the ditch proceedings], and justice requires that a petitioner should not be allowed to destroy rights which his own act had been the means of creating. The case is not at all like that of an ordinary civil action, for, in such a proceeding as this, the public and many persons have a common interest, and he who sets on foot the proceedings cannot be permitted to end it to the injury of the public and others by dismissing the petition."<sup>10</sup> In Arkansas, after petition has been filed for a revocation of an order entered to prohibit the sale of liquors, the petitioners may not withdraw their names, even for good cause shown; but they may protest against the granting of the prayer of their own petition on the ground that it does not contain the names of a sufficient number of qualified inhabitants within the territory.<sup>11</sup> If remonstrators have signed the remonstrance by an attorney in fact, they may file a statement with the licensing board, after the remonstrance is filed, revoking the powers of attorney, as to past and future

<sup>9</sup> *State v. Gerhardt*, 145 Ind. 439; 44 N. E. 469; *Davis v. Affleck*, 34 Ind. App. 572; 73 N. E. 283.

<sup>10</sup> *Carr v. Boone*, 108 Ind. 241; 9 N. E. 110; *State v. Reingardt*, 46 N. J. L. 337; *In re Sargeant*, 13 Nat. Bank Reg. 144; *Noonan v. Orton*, 31 Wis. 265; *Loring v. Brackett*, 3 Pick. 403; *Winslow v. Newlan*, 45 Ill. 145; *White v. Prifogle*, 146 Ind. 64; 44 N. E. 926; *Sutherland v. McKinney*, 146 Ind. 111; 45 N. E. 1048; *Conwell v. Overmeyer*, 145 Ind. 698; 44 N. E. 548; *State v. Coleman*, 34 Neb. 440; 51 N. W. 1025; *Sexton*

*v. Godwine*, 33 Ind. App. 329; 68 N. E. 929; 70 N. E. 999; *Wiseman v. Dugas*, 6 Mon. S. C. 133; 6 Quebec Q. B. 133; *Simpson v. Commonwealth (Ky.)*, 97 S. W. 404; 30 Ky. L. Rep. 132.

<sup>11</sup> *Phillips v. Goe*, 85 Ark. 304; 108 S. W. 207.

In Illinois any person consenting to the issuance of a license may withdraw his name at any time before the application is finally passed upon. *Theurer v. People*, 211 Ill. 296; 71 N. E. 997; 113 Ill. App. 628.

acts of such attorney, and withdraw their names from the remonstrance.<sup>12</sup> Where a statute gives a remonstrator, until three days before the day set for hearing the application for a license, the right to withdraw his name from the remonstrance, he must exercise his right prior to the beginning of the first day of this three day period.<sup>13</sup>

### Sec. 386. A majority remonstrance.

Statutes sometimes provide that if a majority of the voters or inhabitants of the political district for which a license is sought shall file a remonstrance before it is issued, no license shall be granted; and in Indiana the statute goes so far as to prevent not only a license issued to the applicant, but one issued to any person for a period of two years thereafter, when what is called a "blanket" remonstrance is filed. This is local option under another form, and such a law is constitutional.<sup>14</sup> Under the Indiana statute the remonstrance must be "signed by a majority of the legal voters of any township, or any ward, in any city situated in" the county wherein the application is made.<sup>15</sup> Under this statute no one but a legal voter of the ward of a city, or of the township, can sign the remonstrance;<sup>16</sup> and the remonstrator need not assign any objection to the applicant nor assign any reason for the objection.<sup>17</sup> A majority of the voters of the licensing district must sign the remonstrance;<sup>18</sup> and when that is done no license can be issued.<sup>19</sup> This remonstrance need not be filed at the

<sup>12</sup> Davis v. Affleck, 34 Ind. App. 572; 73 N. E. 283.

<sup>13</sup> Sexton v. Goodwine, 33 Ind. App. 329; 68 N. E. 929; 70 N. E. 999.

<sup>14</sup> State v. Gerhardt, 145 Ind. 439; 44 N. E. 469; Cain v. Allen, 168 Ind. 8; 79 N. E. 201; Wilcox v. Bryant, 159 Ind. 379; 59 N. E. 1049; Boomersshine v. Uline, 159 Ind. 500; 65 Ind. 513; Hoop v. Affleck, 162 Ind. 554; 70 N. E. 978.

<sup>15</sup> Burns R. S. 1908, § 8332; Acts 1895, p. 248, § 9.

<sup>16</sup> Massey v. Dunlap, 146 Ind. 350; 44 N. E. 641.

<sup>17</sup> Boomersshine v. Uline, 159 Ind. 500; 65 N. E. 513. See also Davis v. Board, 7 Cal. App. 571; 95 Pac. 170.

<sup>18</sup> Moran v. Cregan, 27 Ind. App. 659; 62 N. E. 61.

<sup>19</sup> Wilcox v. Bryant, 156 Ind. 379; 59 N. E. 1049; Shaffer v. Stern, 160 Ind. 375; 66 N. E. 1004. See also *In re Connors*, Temp Wood (Manitoba), 284, 993; Woods v. Pratt, 5 Blackf. 377.

same session of the licensing board at which the application is made; but if it is on file when the application is made, no license can be granted.<sup>20</sup> Under this Indiana statute voters may remonstrate against the grant of a license to any applicant or against all applicants; and if a proper number has signed the remonstrance the board of county commissioners—the licensing board—have no power to proceed any farther, but must refuse a license; and no license can be issued for two years if the remonstrance is a “blanket” remonstrance. Upon filing this “blanket” remonstrance the remonstrators become adverse parties to all subsequent applicants, and each side is entitled to a hearing thereon, the burden being upon the remonstrators to show that a majority of the voters had signed the remonstrance. If an applicant has been denied a license he cannot apply until two years thereafter has expired; but a new applicant may, and he may contest the validity of a prior remonstrance which the board has held sufficient, for he has not had his day in court. The “blanket” remonstrance cannot be filed until an application for a license has been made, and until the application is made the board has no jurisdiction to determine the sufficiency of a remonstrance. Under this statute voters may authorize an agent or attorney to sign for them a special or “blanket” remonstrance. Voters have no right to withdraw from the general or “blanket” remonstrance after the beginning of the three day period prior to the commencement of the sessions of the board before which the remonstrance must be filed.<sup>21</sup>

<sup>20</sup> *McLaughlin v. Wisler*, 28 Ind. App. 61; 61 N. E. 73.

<sup>21</sup> *Cain v. Allen*, 168 Ind. 8; 79 N. E. 201; *Jones v. Alexander*, 167 Ind. 395; 79 N. E. 368; *Ragadanz v. Haines*, 168 Ind. 140; 79 N. E. 359, 1085; *Anderson v. Webber*, 39 Ind. 443; 79 N. E. 1055; *Kunkle v. Abel*, 167 Ind. 434; 79 N. E. 753; *State v. Gerhardt*, 145 Ind. 439; 44 N. E. 469; *White v. Prifogle*, 146 Ind. 64; 44 N. E. 926; *Sutherland v.*

*McKinney*, 146 Ind. 611; 45 N. E. 1048; *Sexton v. Goodwine*, 33 Ind. App. 329; 68 N. E. 929; *Davis v. Affleck*, 34 Ind. App. 572; 73 N. E. 283; *Ragle v. Mattox*, 159 Ind. 584; 65 N. E. 743; *Lee v. Shull (Ind.)*, 88 N. E. 521; *Miller v. Resler (Ind.)*, 88 N. E. 516; *Honey v. Guillaume (Ind.)*, 88 N. E. 937; *McClanahan v. Breeding (Ind.)*, 88 N. E. 695.

If because a majority of legal voters remonstrate against granting a license to an applicant to sell liquors a license is refused, and the applicant appeals, and before the cause is tried in the court to which an appeal was taken a majority of the legal voters file with the county board, as provided by law, a remonstrance against granting licenses to all persons, and that fact is duly presented to the Appellate Court, the appeal of the applicant will be dismissed, thus leaving him without a license.<sup>22</sup> Filing a remonstrance on Friday next before the meeting of the county board on the next Monday is soon enough, under the provision requiring the remonstrance to be filed three days before the board meets.<sup>23</sup> This statute provides that "the number to constitute a majority of voters shall be determined by the aggregate vote cast in said township or ward for candidates for the highest office at the last election preceeding the filing of such remonstrance,"<sup>24</sup> and it is construed to require the remonstrance to be signed by a majority of the aggregate vote cast in the township for candidates at the general election last preceeding the filing of the remonstrance where an application is made to conduct a saloon at some place in the township outside of the limits of an incorporated city; but where the applicant desires to obtain a license to operate a saloon in a ward of an incorporated city, then the majority of voters is determined by an aggregate of the vote of that particular ward as cast at the general city election preceeding the filing of the remonstrance, for the highest municipal office to be filled at such election. The phrase "candidates for the highest office at the last election" means the governor, if a governor was elected at the last State election preceeding the filing of the remonstrance, if the applicant desired to obtain a license to sell in a township beyond the limits of an incorporated city; in the event a governor was not elected at that election, then the votes cast for Secretary of State become the standard. When the application is for a license to conduct a saloon in an in-

<sup>22</sup> *Sanasack v. Ader*, 168 Ind. 559; 78 N. E. 675; 79 N. E. 457.

<sup>23</sup> *Flynn v. Taylor*, 145 Ind. 533; 44 N. E. 546; *Shaffer v. Stern*,

160 Ind. 375; 66 N. E. 1004; *Ston v. Goodwine*, 33 Ind. App. 329; 68 N. E. 929.

<sup>24</sup> Acts 1905, p. 248, § 9.



incorporated city, a majority of the legal voters of the ward is determined by the aggregate vote cast therein for mayor at the last preceding election, and in the event no mayor was elected at that election, then the majority is determined in like manner by the vote cast in the ward for councilman.<sup>25</sup> The change of the boundaries of a city ward does not prohibit the voters therein from remonstrating against an application, but the voters taken from the ward cannot be counted on the remonstrance, and they should be deducted from the vote of the ward in estimating the total number of voters. The number to be deducted must be ascertained by parol evidence of witnesses who are able to testify who the voters cut off from the ward are.<sup>26</sup> If a remonstrator die before a

<sup>25</sup> Massey v. Dunlap, 146 Ind. 350; 44 N. E. 145; 46 N. E. 585; Shaffer v. Stern, 160 Ind. 375; 66 N. E. 1004; Kunkle v. Abell, 167 Ind. 434; 79 N. E. 753. The "last election preceding the filing of the remonstrance" means a general and not a special election. Kunkle v. Abell, *supra*.

<sup>26</sup> Abbott v. Inman, 35 Ind. App. 262; 72 N. E. 284.

The statute prescribes the form, and all that is necessary is to use the form thus given. Cain v. Allen, 167 Ind. 8; 79 N. E. 201, 896; Ragadanz v. Haines, 168 Ind. 140; 79 N. E. 352.

An *ex parte* determination of the validity of a remonstrance is a nullity. Jones v. Alexander, 167 Ind. 395; 79 N. E. 368.

After the decision in Massey v. Dunlap, *supra*, the statute was amended so as to read: "The number to constitute a majority of the voters herein referred to shall be determined by the *greatest* aggregate vote cast in said township or ward for candidates for *any* office at the last election pre-

ceding the filing of such remonstrance." The word "greatest" was inserted before aggregate and "any" substituted for "highest." This was held to require the standard to be that by which the number of voters required to sign the remonstrance in a township must be tested or measured is a majority of the greatest aggregate vote cast for all candidates for any particular office at the last preceding election. Where an application is made for a license to sell in a township outside of an incorporated city therein, the test under the section as amended is not now confined alone to the aggregate vote cast at said general election for all the candidates for governor or Secretary of State, as the case might be, but the test must be the greatest aggregate vote cast for all candidates for any office, regardless of the rank of such office. The vote cast for candidates upon the State ticket is not alone to be the test; but if the greatest aggregate vote cast at the election is for candi-

remonstrance is considered, his name cannot be considered in order to make up the requisite number.<sup>27</sup> Where a voter may sign an applicant's petition, if he thereafter sign a remonstrance, his name cannot be counted on either side.<sup>28</sup>

### **Sec. 387. Day for hearing application, appointing.**

Statutes prescribe the time, usually, when the application for a license will be heard, as at the next term of the licensing board, or its next sitting as fixed by the statute. Under the English statute notice is given of the place, day and hour when the licensing justices will sit to hear applications; and when they meet they may adjourn over to a time and place, of which notice must be given.<sup>29</sup> In some States on filing of

dates upon either the State, county or township ticket, such vote, under the circumstances, must be the test or standard by which the required number of votes must be measured. In case a general remonstrance is filed against granting a license in a ward of a city, then the number of remonstrators "must at least constitute a majority of the greatest aggregate or combined vote cast in such ward for all candidates for any city office, regardless of the rank of such office, at the last election held preceding the filing of the remonstrance." *Kunkle v. Abell*, 167 Ind. 434; 79 N. E. 753.

When the remonstrance is against granting the license in the township, voters in the towns and cities in the township must be counted in determining the aggregate number of voters in the township. *Moran v. Creagan*, 27 Ind. App. 659; 62 N. E. 61.

<sup>27</sup> *Strydon v. Yaudale*, 20 *Juta*, 385.

<sup>28</sup> *Fotheringham v. George*, 19 *Juta*, 532.

Under a Kentucky statute, when a remonstrance is made against the grant of a license, the court must make an order defining the neighborhood, after which the burden is on the Commonwealth to show that all those signing the remonstrance constitute a majority of the legal voters of that neighborhood. *Guinn v. Cumberland Co. Ct. (Ky.)*, 99 S. W. 274; 28 Ky. L. Rep. 759. Where sixty-nine voters were in the neighborhood, and forty-three signed a remonstrance, four of whom withdrew their names, it was held that the application should be withdrawn, though ten of the signers had also signed the petition for the license. *Simpson v. Commonwealth (Ky.)*, 97 S. W. 404; 30 Ky. L. Rep. 132.

As to sufficiency of number of remonstrators in a New York village, see *People v. Lyman*, 48 N. Y. App. Div. 484; 62 N. Y. Supp. 902; affirmed 163 N. Y. 602; 57 N. D. 1120.

<sup>29</sup> See *Regina v. Anglesey*, 59 J. P. 743; 65 L. J. M. C. 12; 15 R. 614; *Regina v. Armstrong*, 65

a remonstrance the licensing board must set the application down for hearing and give notice of the time of hearing; and if it refuse to do this mandamus lies to compel it to do it. And a license granted without a hearing may be canceled by the courts.<sup>30</sup> Under such a statute reasonable time must be given the parties to produce their evidence.<sup>31</sup> If all parties concerned consent before the board to a time for a hearing, they cannot afterwards object that they did not have notice.<sup>32</sup> A failure to give notice of the hearing deprives a party of a reasonable opportunity to be heard, and the action of the licensing board may be set aside or annulled.<sup>33</sup> No objections can be made to the granting of a license before the day for the hearing if all remonstrances are withdrawn, and it is too late to file any other remonstrances.<sup>34</sup> Where by statute a licensing board cannot meet until 9 A. M., an order dismissing a remonstrance made at 8 A. M. is void.<sup>35</sup>

L. J. M. C. 35; Licensing Act 1828, 9 Geo. 4, c. 61, §§ 2, 5; Patterson's Licensing Acts, pp. 186, 191.

<sup>30</sup> State v. Reynolds, 18 Neb. 431; 25 N. W. 610; State v. Hanlon, 24 Neb. 608; 39 N. W. 780; Vanderlip v. Derby, 19 Neb. 165; 26 N. W. 707.

<sup>31</sup> Clark v. State, 24 Neb. 263; 38 N. W. 752; State v. Coleman, 34 Neb. 440; 51 N. W. 1025. From 10 P. M. to 9 A. M. next morning is not a reasonable time. State v. Weber, 20 Neb. 467; 30 N. W. 531.

<sup>32</sup> Hollenbeck v. Drake, 37 Neb. 680; 56 N. W. 296.

<sup>33</sup> Trustees v. Board, 56 N. J. L. 411; 29 Atl. 150; Hinchman v. Stoepel, 54 N. J. L. 486; 24 Atl. 401; State v. Mathews, 51 N. J. L. 253; 17 Atl. 154; McNeal v. Ryan, 56 N. J. L. 443; 28 Atl. 552; *In re* Bowman, 167 Pa. 644; 31 Atl. 932.

Where an application can be acted upon only after the expiration of two weeks after the giving of notice, the granting of a license fourteen days after the first publication is premature. *Pisar v. State*, 56 Neb. 455; 76 N. W. 869.

The application may usually be continued until the next term. *Cox v. Burnham*, 120 Iowa, 43; 94 N. W. 265; but see *Rhode Island, etc., Co. v. Board (R. I.)*, 46 Atl. 1063.

<sup>34</sup> *Middlekauff v. Adams*, 76 Neb. 265; 107 N. W. 232.

<sup>35</sup> *Swan v. Wilderson*, 10 Okla. 547; 62 Pac. 422.

A license granted by a city council at a special meeting, of which no general notice has been given, but only one of a few hours had been given to one citizen who had made a request to be heard, was annulled. *McNeal v. Ryan*, 56 N. J. L. 443; 28 Atl. 552.

### Sec. 388. Hearing application.

The hearing must be at the time fixed by the statute or as designated in the notice, and the application cannot be heard and the license granted at any other time.<sup>36</sup> It must be a public one given to all the parties.<sup>37</sup> Both the petitioners and the remonstrants must be given a reasonable opportunity to prove the allegations or representations made in his application or in their remonstrance.<sup>38</sup> If no opportunity be given and the license be granted without a hearing, it may be set aside in a proper proceeding.<sup>39</sup> Thus, a license granted at a special meeting of the board, of which no general notice had been given, but a notice of a few hours was given to a single citizen who had requested a hearing, was held void.<sup>40</sup> The board cannot act upon the face of the application, as a rule, nor upon the face of the remonstrance.<sup>41</sup> The board cannot violate its own rules and grant a license at a time when they require the application to be heard at another time.<sup>42</sup> The board may be compelled by mandamus to grant a hearing and hear testimony, though its decision cannot thereby be controlled.<sup>43</sup> If it be charged that the notice of

<sup>36</sup> *State v. Kennedy*, 1 Ala. 31; *Dilkes v. Pancoast*, 53 N. J. L. 553; 22 Atl. 122; *Hinchman v. Stoepel*, 54 N. J. L. 486; 24 Atl. 401; *State v. Mitchell*, 127 Mo. App. 455; 105 S. W. 655.

<sup>37</sup> *Dufford v. Nolan*, 46 N. J. L. 87; *State v. Mathews*, 51 N. J. L. 253; 17 Atl. 154; *Trustees, etc., v. Board*, 56 N. J. L. 411; 29 Atl. 150.

<sup>38</sup> *State v. Coleman*, 34 Neb. 440; 51 N. W. 1025; *State v. Hanlan*, 24 Neb. 608; 39 N. W. 780; *Dufford v. Nolan*, 46 N. J. L. 87; *Steinkraus v. Hurlbert*, 20 Neb. 519; 30 N. W. 940; *Ararey v. Smith*, 35 Ind. App. 94; 73 N. E. 840; *Watkins v. Grieser*, 11 Okla. 302; 66 Pac. 332; *Swan v. Wilderson*, 10 Okla. 547; 62 Pac. 422.

<sup>39</sup> *State v. Mathews*, 51 N. J. L.

253; 17 Atl. 154; *State v. Hanlan*, 24 Neb. 608; 39 N. W. 780; *Brown v. Mathews*, 51 N. J. L. 253; 17 Atl. 154; *Dufford v. Nolan*, 46 N. J. L. 87.

<sup>40</sup> *McNeal v. Ryan*, 56 N. J. L. 443; 28 Atl. 552; *State v. Weber*, 20 Neb. 467; 30 N. W. 531.

<sup>41</sup> *Dufford v. Nolan*, 46 N. J. L. 87; *State v. Reynolds*, 18 Neb. 431; 25 N. W. 610; *State v. Mathews* 51 N. J. L. 253; 17 Atl. 154; *Dilkes v. Pancoast*, 54 N. J. L. 486; 24 Atl. 401.

<sup>42</sup> *Trustees v. Board*, 56 N. J. L. 411; 29 Atl. 150; *In re Bowman*, 167 Pa. 644; 31 Atl. 932.

<sup>43</sup> *Steinkraus v. Hurlbert*, 20 Neb. 519; 30 N. W. 940; *State v. Mathews*, 51 N. J. L. 253; 17 Atl. 154; *Dufford v. Nolan*, 46 N. J. L. 87.



the application was not published in the two newspapers of the county having the largest circulation, the applicant must prove that they did have such circulation.<sup>44</sup> If a petition for a license must have a certain number of the signatures of resident taxpayers upon it, and a remonstrance is filed alleging that some of those signing the petition are not resident taxpayers, the applicant must prove that they are, or that a sufficient number of competent taxpayers had signed it.<sup>45</sup> Considerable latitude must be permitted on the hearing in order that facts may be developed and the intent and purpose of the law observed.<sup>46</sup> The fact that the applicant to carry on the liquor traffic in a hotel had held a previous license for the same place does not prevent an inquiry as to whether he conducts such a hotel as the law requires a licensee to have.<sup>47</sup> A refusal of a licensing board to hear evidence does not dispense with an offer of it, where the action of the board is subject to review for error by an appellate court.<sup>48</sup> Where a statute provides that if a remonstrance be filed by a majority of the voters of the township wherein the license is to be granted no license shall thereafter be granted, the burden is on the remonstrators to show that the requisite number of *bona fide* voters have signed the remonstrance they put on file.<sup>49</sup> If a license be granted, and thereafter, on the same day even, a remonstrance be filed, the board cannot then adjourn until a future day and then revoke its action.<sup>50</sup> Where a statute permits a druggist to take out a license, upon

<sup>44</sup> *Watkins v. Grieser*, 11 Okla. 302; 66 Pac. 332.

<sup>45</sup> *Watkins v. Grieser*, 11 Okla. 302; 62 Pac. 332.

<sup>46</sup> *Watkins v. Grieser*, *supra*.

<sup>47</sup> *United States v. Johnson*, 12 App. D. C. 545; *Louisville v. Hendricks* (Ky.), 116 S. W. 747; *State v. Higgins*, 84 Mo. App. 531.

<sup>48</sup> *In re Phelps* (Neb.), 116 N. W. 681.

<sup>49</sup> *Jones v. Alexander*, 168 Ind. 140; 78 N. E. 368; *Cain v. Allen*, 167 Ind. 8; 79 N. E. 201; *Ragandanz v. Haines*, 168 Ind. 140; 79 N.

E. 352; *Colglazier v. McClary* (Neb.), 98 N. W. 679.

<sup>50</sup> *Rhode Island, etc., Co. v. Board* (R. I.), 16 Atl. 1063.

The provisions of the Indiana Civil Code concerning an "agreed case" has no application to a hearing for a license in the Circuit Court on appeal. *North v. Barringer*, 147 Ind. 224; 46 N. E. 531. Nor is the court bound by an agreement of the parties in entering into stipulations concerning the evidence. *State v. Board*, 76 Neb. 741; 108 N. W. 122.

satisfactory proof that he is in good faith a druggist, he has the burden to show that fact.<sup>51</sup> If the statute requires the application to be made a certain number of days before the first day of the term of the court, and the application be not filed in time, the license will be void;<sup>52</sup> but the court may permit, under its rules, additional petitions and remonstrances to be filed after that time, giving all concerned ample time to examine them and prepare for the hearing.<sup>53</sup>

### Sec. 389. Continuance of hearing—Adjourned meetings.

Whether or not the hearing may be continued until another time must depend upon some statute, as a rule, although it may be safely said that a continuance may always be had unless some positive statute forbids it.<sup>54</sup> In England the justices are required "to continue such meeting by adjournment to such day or days, and to such place or places within the division or place for which such meeting shall be holden, as such justices may deem most convenient and sufficient for enabling persons keeping inns within such division to apply for such license."<sup>55</sup> Under this power it is said that the justices should so augment the adjournment days as to allow a person who has not given notice for the general annual licensing meeting to give such notice in time for the adjournment day, it being the evident object of the Legislature that justices should facilitate applications rather than render them difficult.<sup>56</sup> So that, where an applicant applied at the general meeting for a spirit dealer's retail license, and failed because he had not then taken out the dealer's license, it was held that he might take out such license and give full notices for the adjournment day.<sup>57</sup> So where the premises

<sup>51</sup> *Hodges v. Metcalf Co.* Ct. 117 Ky. 619; 78 S. W. 177, 460; 25 Ky. L. Rep. 1553, 1706.

<sup>52</sup> *In re Crawford*, 33 Pa. Super. Ct. 338.

<sup>53</sup> *In re Reznor Hotel Co.*, 33 Pa. Super. Ct. Rep. 525.

<sup>54</sup> *Ex parte Hatzen's League*, 5 Quebec, Q. B. 160; *Baxter v. Leche*, 79 L. T. 138; 62 J. P. 630.

<sup>55</sup> Ale House Act, 1828, 9 Geo. 4, c. 61, § 3; *Patterson's Licensing Acts*, p. 188.

<sup>56</sup> *Regina v. West Riding*, J. J. L. R. 5 Q. B. 33; 34 J. P. 44; L. J. M. C. 17; 10 B. & S. 840.

<sup>57</sup> *Regina v. Kirkdale*, J. J. 1 Q. B. Div. 49; 40 J. P. 39; 45

were not of sufficient annual value at the date of the general meeting, it was held they could be made sufficient in time for the adjourned meeting.<sup>58</sup> The adjourned meetings under this English act is but a continuation of the general licensing meeting; these two meetings form together, in contemplation of law, but one meeting.<sup>59</sup> If the licensing justices *bona fide* entertain doubt as to the propriety of granting an application, they may, at any such meeting, adjourn the consideration of the application, although the applicant has received no notice of objection before the meeting and no objection is formally made at the meeting. The licensing justices may discuss the question of any adjournment in private and announce their decision so to adjourn the case without stating any reasons.<sup>60</sup> Where the justices declined to grant an application for a license because of the bad character of the house, being frequented by prostitutes, it was held that they might decline to re-hear the same application on the same materials at the adjournment day, though a sufficient notice had been given.<sup>61</sup>

L. J. M. C. 36; 33 L. T. 603; 24 W. R. 205; *In re Byford*, 69 J. P. 152.

<sup>58</sup> *Regina v. West Riding*, *supra*.

<sup>59</sup> *Regina v. Anglesey*, J. J. 59 J. P. 743; 65 L. J. M. C. 12; 15 R. 614; *Regina v. Armstrong*, 65 L. J. M. C. 35; *Weber v. Brinkhead*, 61 J. P. 664.

<sup>60</sup> *Regina v. Anglessey J. J.*, *supra*.

<sup>61</sup> *Ex parte Rushworth*, 23 L. T. 120; 34 J. P. 676.

For other English cases on unimportant points here, see *Regina v. Bristol J. J.*, 67 J. P. 375; *Rex v. Groom* [1901], 2 K. B. 157; 65 J. P. 452; 70 L. J. K. B. 636; 49 W. R. 484; 84 L. T. 534; 17 T. L. R. 433; *Regina v. Farquhar*, L. R. 9 Q. B. 258.

In Quebec it is held that the licensing commissioners could re-

consider their action and the next year grant the license to the applicant. *Ex parte Hatzen's License*, 5 Q. B. 100 (Quebec).

Under the English statute new business cannot be taken up at an adjourned meeting. *Rex v. Bristol Justices*, 89 L. T. 474; 67 J. P. 375.

Where a license had been refused at a general meeting, and at an adjourned meeting, without notice, it was granted, the license was held void. *Miles v. Rogers*, 36 N. B. 345.

If no meeting be held on date set by the statute, mandamus lies to compel the court to convene and hear the application. *Ex parte Danaher*, 27 N. B. 554; 17 N. B. 44.

Where a statute required the application to be filed ten days

### Sec. 390. Evidence at hearing.

The applicant always has the burden to prove by a preponderance of the evidence, the material statements in his application whether a remonstrance be filed or not.<sup>62</sup> The ordinary rules of evidence, especially on appeal, should be observed. Thus, on an appeal, it was held inadmissible to ask a witness if he considered the applicant a fit person to have a license.<sup>63</sup> But this statement must be received with caution when the hearing is before the licensing board; and especially where that board has a discretion in granting the license, for in the Indiana case just cited the trial was before a jury who were to find whether the applicant was a moral person fit to be entrusted with the privilege of selling liquors at retail. As touching the fitness of the applicant from a moral point of view and his fitness to keep a saloon, the conduct of the persons visiting his place of business may be shown, although he sold without a license and violated no law.<sup>64</sup> So it may be shown that his customers gambled or played cards for money;<sup>65</sup> or that he permitted minors to play pool or billiards in the saloon of which he was the manager; or throw dice when things of value were lost and won; or that he sold liquors to them or to an habitual drunkard.<sup>66</sup> Evidence

"before the first day of court to which it is presented" and laid before the court at the "first term thereafter," it was held that the matter might be heard at a special or adjourned term. *State v. Mitchell*, 127 Mo. App. 455; 105 S. W. 655.

<sup>62</sup> *Goodwin v. Smith*, 72 Ind. 113; 37 Am. Rep. 144; *In re Reu's Appeal* (Pa.), 38 W. N. C. 438; *Chandler v. Ruebels*, 83 Ind. 139; *Brinkworth v. Shembeck*, 77 Neb. 71; 108 N. W. 150; *Appeal of Reed*, 114 Pa. 452; 6 Atl. 910; *Whissen v. Furth*, 73 Ark. 366; 84 S. W. 500; 68 L. R. A. 161; *In re Pollard*, 127 Pa. 507; 17 Atl. 1087; 24 Wkly. N. C. 181;

*In re Prospect Brewing Co.*, 127 Pa. 523; 17 Atl. 1090; 24 Wkly. N. C. 177; *Watkins v. Grieser*, 11 Okla. 302; 66 Pac. 332.

His residence must be proven, unless admitted. *Ex parte Pollock*, 24 N. S. Wales, 144; 7 S. R. 648; *Smith v. Young*, 13 Okla. 134; 74 Pac. 104; *In re Kern's Appeal*, 38 Wkly. N. C. 438.

<sup>63</sup> *Stockwell v. Brant*, 97 Ind. 474; *Watkins v. Grieser*, 11 Okla. 302; 66 Pac. 332.

<sup>64</sup> *Stockwell v. Brant*, 97 Ind. 474.

<sup>65</sup> *Stockwell v. Brant*, 97 Ind. 474.

<sup>66</sup> *Hardesty v. Hine*, 135 Ind. 72; 34 N. E. 701; *Pelley v. Wills*,



as bearing on the moral standing and fitness of the applicant may be given of the surroundings of the site of the proposed saloon, as that it is near a schoolhouse, or a church, or college,<sup>67</sup> and the kind of business he intended carrying on.<sup>68</sup> Where the statute makes the granting of a license a question of the needs of the neighborhood, evidence upon that question may be given,<sup>69</sup> and where the licensee must be a hotel keeper the practice of private individuals entertaining travelers may be shown.<sup>70</sup> The necessity for a place of entertainment is not an indispensable one, but the question what would be the effect upon efforts of those in the neighborhood to secure liquors illegally if the license be refused and they not afforded an opportunity to lawfully secure them cannot be shown.<sup>71</sup> But it is not error to exclude evidence tending to show that freeholders certifying to the applicant's fitness for a license had not sufficient knowledge of the facts.<sup>72</sup> By demurring to the petition a remonstrant does not admit immaterial statements therein.<sup>73</sup> The allegations of the remonstrance, though under oath, are not evidence concerning the matters alleged in the petition.<sup>74</sup> The applicant may be compelled to appear before the board in person and not by attorney and submit to an examination, and if he refuse, his application may be denied.<sup>75</sup> Even though there be no opposition to the granting of the license, yet the applicant must prove the allegations contained in his petition if the board requires it.<sup>76</sup> In

141 Ind. 688; 41 N. E. 354; *In re* Klamme (Neb.), 117 N. W. 991; *In re* Adamek, 82 Neb. 448; 118 N. W. 109.

<sup>67</sup> *Eslinger v. East*, 100 Ind. 434; *State v. Gerhardt*, 145 Ind. 439; 44 N. E. 469; 33 L. R. A. 313.

<sup>68</sup> *State v. Gerhardt*, *supra*.

<sup>69</sup> *In re Brezger*, 34 Pa. Sup. Ct. 469.

<sup>70</sup> *In re Seven*, 2 Pa. Co. Ct. Rep. 75; *Appeal of Reed*, 114 Pa. 452; 6 Atl. 910; *In re Washington Co.*, 8 Pa. Co. Ct. Rep. 169.

<sup>71</sup> *In re Brownell*, 11 Pa. Co. Ct. Rep. 404. Consequently this

statute does not apply to a brewer's or distiller's license. *In re* Reigner, 11 Pa. Co. Ct. Rep. 401.

<sup>72</sup> *State v. Hill*, 52 N. J. L. 396; 19 Atl. 789.

<sup>73</sup> *Devin v. Belt*, 70 Md. 352; 17 Atl. 375.

<sup>74</sup> *In re McCullough*, 51 Ark. 159; 10 S. W. 259.

<sup>75</sup> *In re Wheelin*, 134 Pa. 554; 19 Atl. 755; 26 W. N. C. 72.

<sup>76</sup> *Ex parte Morgan*, 23 L. T. 605; 35 J. P. 37; *Regina v. Pilgrim*, L. R. 6 Q. B. 96; 35 J. P. 169; 40 L. J. M. C. 3; 23 L. T. 410; 19 W. R. 99.

England evidence of convictions against previous occupiers of the house, although the character of the applicant is good, is evidence that the house is of a disorderly character.<sup>77</sup> Though the evidence be insufficient to convict the applicant of the offense he is charged with having committed, yet it is admissible for the purpose of determining whether he is a fit person to be licensed.<sup>78</sup> On the question of immorality, specific acts may be shown.<sup>79</sup> Where a statute requires an officer to canvass in the towns of the county the statements of consent given by voters and determine the result, upon an issue raised by a remonstrance, evidence showing where various voters resided is admissible to show the number of voters in each particular town.<sup>80</sup> Affidavits are inadmissible to prove a controverted fact, for an opportunity must be afforded to cross-examine the witnesses.<sup>81</sup> The fitness of the applicant to be entrusted with the sale of liquors must be considered with reference to the place where he desires to sell, as well as his moral character generally, for a careful and prudent man might be entrusted with the sale of liquor near a schoolhouse, for instance, when a man whose tendencies were to conduct a

<sup>77</sup> *Regina v. Miskin* Higher J. J., 1 Q. B. 275; 57 J. P. 263; *Smith v. Shann* [1898], 2 Q. B. 347; 62 J. P. 354; 67 L. J. Q. B. 819; 79 L. T. 77; 14 T. L. R. 443; *Lattimer v. Birmingham J. J.*, 60 J. P. 660n.

In England, on hearing an application for a new license, the licensing justices have a discretion as to whether they will hear the evidence on oath or not; and if a person desirous of tendering evidence refuses to be sworn, they may refuse to hear him. *Regina v. Sherman* [1898], 1 Q. B. 578; 62 J. P. 296; 67 L. J. Q. B. 460; 78 L. T. 320; 46 W. R. 367; 14 L. T. R. 269. See *Dartford Brewery Co. v. County of London Quarter Sessions* [1906], 1 K. B. 695;

70 J. P. 197; 75 L. J. K. B. 597; 94 L. T. 782.

<sup>78</sup> *Watkins v. Grieser*, 11 Okla. 302; 66 Pac. 332.

<sup>79</sup> *Watkins v. Grieser*, 11 Okla. 302; 66 Pac. 332; *Stockwell v. Brant*, 97 Ind. 474.

<sup>80</sup> *Porter v. Butterfield*, 116 Iowa, 725; 89 N. W. 199; *Watkins v. Grieser*, 11 Okla. 302; 66 Pac. 332.

<sup>81</sup> *Watkins v. Grieser*, 11 Okla. 302; 66 Pac. 332; *In re Klamm* (Neb.), 117 N. W. 991. This of course does not apply to proof of publication of notice.

In Iowa the official register of the State is conclusive evidence as to the number of inhabitants in the city for which a license is desired. *In re Sale of Intoxicating Liquors* (Iowa), 79 N. W. 260.

house which would disturb the neighborhood and expose the children attending the school, might not be a fit man.<sup>82</sup> The fact that the applicant held a former license is not conclusive evidence of his good moral character when a second application is made, and on such second application the licensing board must ascertain his fitness at that time.<sup>83</sup> In determining whether those signing the petition are freeholders, a witness may not testify that the signers told him they were freeholders and that he had examined a list of freeholders of the town prepared by a county official and found their names thereon, where it is necessary to prove that such signers were freeholders.<sup>84</sup> When the question is whether the applicant is an unfit person to be licensed, it is sufficient to show to the judgment of reasonable men that he, or those who may be connected with him in carrying on the business of the place to be licensed, is in any respect unfit for carrying on the business or that his conduct of the business in the past has been improper, illegal or likely to be injurious to the public morals and public decency, and that, therefore, he will probably be unfit to carry on the business in the place, in order to defeat his application.<sup>85</sup> A rule of the board may, in some States, dispense with the production of evidence touching the applicant's fitness or the fitness of the place to be licensed, where there is no remonstrance. Thus, where no such rule had been adopted, but the board announced at the beginning of the hearing a ruling which the applicant might fairly have interpreted to relieve him from the production of oral evidence upon the question of necessity for the license in the locality for which it was desired, and thereafter the board refused the license, this was deemed error; but the error was cured

<sup>82</sup> *Kunkle v. Abell*, 167 Ind. 434; 79 N. E. 753, 896.

<sup>83</sup> *State v. Higgins*, 84 Mo. App. 531; *McNeal v. Ryan*, 56 N. J. L. 443; 28 Atl. 552; *United States v. Johnson*, 12 App. Dec. 545; *Louisville v. Hendricks (Ky.)*, 116 S. W. 747.

<sup>84</sup> *Swihart v. Hansen*, 76 Neb. 727; 107 N. W. 862.

<sup>85</sup> *In re Nolan*, 16 Vict. L. R. 227; 11 Austr. L. T. 156.

The findings of the licensing board will seldom be disturbed upon the weight of the evidence. *In re MacRae*, 75 Neb. 757; 106 N. W. 1020.

by the board setting aside its order of refusal and hearing evidence.<sup>86</sup>

**Sec. 391. Licensing board acting upon its own information.**

A licensing board is not a mere puppet to be moved merely by an application for a license. It is not compelled to shut its eyes to what its members know as individuals. And while it must be governed, as a rule, by the evidence, yet it may refuse a license where the members know the applicant is an unfit person, the statutes providing that upon the production of certain evidence it *may* grant a license. The board is endowed with the duty to protect the community from the evil effects of improper men coming into power to sell intoxicating liquors, and in the exercise of that power it must see that the public is protected. "The law of the land has decided," said the Supreme Court of Pennsylvania, "that licenses shall be granted to some extent, and has imposed the duty upon the court of ascertaining the instances in which the license shall be granted. In order to perform this duty properly, the act of assembly has provided means by which the conscience of the court may be informed as to the facts. It may hear petitions, remonstrances or witnesses; and we have no doubt the court may, in some instances, act of its own knowledge. The mere appearance of an applicant for a license, when he comes to the bar of the court, may be sufficient to satisfy the judge that he is not a fit person to keep a public house. The judge is not bound to grant a license to a man whom he knows to be a drunkard or a thief, or has actual knowledge that his house is not necessary for the public accommodation. The object of evidence in such cases is to inform the conscience of the court so that it can act intelligently and justly in the performance of a public duty. While the act of deciding in such cases is, perhaps, *quasi* judicial, the difference between the granting or withholding of a license and the decision of a question between the parties

<sup>86</sup> *In re* Brezger, 34 Pa. Super. Ct. 409; *In re* Chambers, Ct. 469; *In re* Brown, 18 Pa. Super. Ct. 412.



to a private litigation is manifest.”<sup>87</sup> And in line with this quotation it has been held that the commissioners of the District of Columbia may act upon their own knowledge of the fitness of the applicant and his premises for the sale of liquors—upon personal inspection of the premises and upon the unsworn statements of police officers;<sup>88</sup> and upon their own knowledge that he had violated the liquor laws.<sup>89</sup> Members of a city council granting a license may determine from their own personal knowledge that an applicant is an unfit person to have a license, and may deny his application without further investigation, or no investigation, and without stating the reasons on which it bases its action.<sup>90</sup> And so may an excise officer in refusing a license; and it will be presumed he did act upon his own knowledge, in order to uphold his decision.<sup>91</sup> A statute or ordinance may be so drafted, however, that a licensing board must hear evidence offered and cannot act alone upon its own knowledge. Thus, an ordinance provided that “if, after the due consideration of the same by the board of supervisors, the petition might be favorably acted upon,” it was held that the phrase “due consideration” required the board to hear the application on its merits, and the board could not arbitrarily refuse to hear evidence touching the fitness of the applicant to have a

<sup>87</sup> *In re Raudenbusch*, 120 Pa. St. 328; 14 Atl. 148; *In re Jorgensen*, 75 Neb. 401; 106 N. W. 462; *In re Reznor Hotel Co.*, 34 Pa. Super. Ct. 525.

<sup>88</sup> *United States v. Douglass*, 19 D. C. 99; *United States v. Johnson*, 12 D. C. 545; *Attorney General v. Justices*, 27 N. C. 315; *Burke v. Collins*, 18 S. D. 190; 99 N. W. 1112; *In re Winder*, 24 Pa. Co. Ct. Rep. 90.

<sup>89</sup> *Appeal of Leister* (Pa.), 11 Atl. 387; *In re Raudenbusch*, 120 Pa. St. 328; 14 Atl. 148.

“The justices [in England] have in most cases a large discretion both as to the kind of person and

the kind of house to be licensed, and are bound to see that the requirements of the statutes have been complied with.” *Patterson’s Licensing Acts* (19th Ed.), p. 183.

<sup>90</sup> *McCormick v. Pfeiffer*, 19 S. D. 269; 103 N. W. 31; *In re Indiana Co.*, 6 Pa. Dist. Rep. 358; *Centerville v. Gayken*, 20 S. D. 82; 104 N. W. 910.

<sup>91</sup> *Cooper v. Hunt*, 103 Mo. App. 9; 77 S. W. 483; *Ex parte Slack*, 8 Vict. L. R. 144; *In re Logan*, 22 Australia L. T. 109; 6 Austr. L. R. 253; *In re Chuya*, 20 Pa. Super. Ct. 410; *In re Reznor Hotel Co.*, 34 Pa. Super. Ct. 525.

license.<sup>92</sup> In Pennsylvania where a license for a hotel could only be granted where it was "necessary" to have a hotel at that place, it was held that the judge could deny the application upon his individual opinion that it was not necessary.<sup>93</sup>

### Sec. 392. Discretion of licensing board.

In some of the States if an applicant shows himself to come within the requirements of the statute, the licensing board have no discretion in the granting of a license but must award it.<sup>94</sup> But this cannot be said of all the States, for in many of them the licensing board is vested with a large discretionary power in granting or refusing a license—the facts in such case to be considered and the license granted or refused in the exercise of a sound discretionary power.<sup>95</sup> Some

<sup>92</sup> Reed v. Collins, 5 Cal. App. 494; 90 Pac. 973.

<sup>93</sup> *In re* Thomas, 169 Pa. 111; 32 Atl. 100; McCormick v. Pfeiffer, 19 S. D. 269; 103 N. W. 31.

The licensing board should determine all the circumstances, whether of a general or limited nature. Leighton v. Maury, 76 Va. 865.

<sup>94</sup> Miller v. Wade, 58 Ind. 91; McLeod v. Scott, 21 Ore. 94; 26 Pac. 1061; 29 Pac. 1; State v. Justices, 15 Ga. 408; State v. New Orleans, 113 La. 371; 36 So. 999; Zalone v. Mound City, 11 Bradw. 334; State v. Board, 45 Ind. 501; *Ex parte* Lester, 77 Va. 663; Henry v. Barton, 107 Cal. 535; 40 Pac. 798; Cox v. Jackson, 152 Mich. 630; 116 N. W. 456; Rome v. Duke, 19 Ga. 93; Beach v. Stanstead, 8 Quebec S. C. 178; Adams v. Gormley, 69 Ga. 743; Dougherty v. Commonwealth, 14 B. Mon. 239; Hodges v. Metcalfe Co., 116 Ky. 524; 75 S. W. 381; 25 Ky. L. Rep. 772.

<sup>95</sup> *Ex parte* Whittington, 34 Ark. 394; Schweirman v. Highland Park (Ky.), 113 S. W. 507; *Ex parte* Levy, 43 Ark. 42; 51 Am. Rep. 550; *In re* Clore & Berry, 2 B. C. 131; United States v. Commissioners, 17 D. C. 409; United States v. Douglass, 19 D. C. 99; United States v. Johnson, 12 D. C. 545; Wiggins v. Varner, 67 Ga. 583; State v. Cheyenne (Wyo.), 52 Pac. 975; Stanley v. Monnet, 34 Kan. 708; 9 Pac. 755; Louisville v. Kean, 18 B. Mon. 9; Bradley v. Thurston, 7 Hawaii, 523; Hennepin Co. v. Robinson, 16 Minn. 381; Perkins v. Ledbetter, 68 Miss. 327; 8 So. 507; Hanks v. Packett (Mo.), 119 S. W. 25; Austin v. State, 10 Mo. 591; State v. Holt Co. Ct. 39 Mo. 521; *In re* Nundy, 59 How. Pr. 359; People v. Board (N. Y.), 16 N. Y. Supp. 798; People v. Dalton, 7 N. Y. Misc. Rep. 558; 28 N. Y. Supp. 491; People v. Mills, 91 Hun, 142; 35 N. Y. Supp. 273; People v. Murray, 38

of these cases turn upon the use of the word "may";<sup>96</sup> but in still others the discretionary power is allowed though the word "shall" be used. This will be brought out by attending to a statement of the cases. Thus, it has been held that although a majority of the voters voted "for license," yet the licensing board in its discretion may refuse it;<sup>97</sup> but the board may not grant a license to some and arbitrarily refuse it to others.<sup>98</sup> In the District of Columbia, under the discretionary power given them to grant licenses, it was held that the board of commissioners might adopt a rule that no license to sell at retail should be granted to a grocery or provision store.<sup>99</sup> The exercise of a discretion in refusing a license without giving a reason therefor does not make the act one of arbitrary refusal.<sup>1</sup> Thus, a refusal to license a saloon at a street corner on the ground that the other three corners had each a saloon and no more was needed in that vicinity, is the exercise of such a discretion as will not be

N. Y. Supp. 177; *People v. Murray*, 2 N. Y. App. 607; 37 N. Y. Supp. 1096; *Attorney-General v. Justices*, 27 N. C. 315; *Roy v. Paroisse de St. Paschal*, 9 L. N. (Can.) 275; *Muller v. Buncombe Co.*, 89 N. C. 171; *Hillsboro v. Smith*, 110 N. C. 417; 14 S. E. 972; *Schlandecker v. Marshall*, 72 Pa. 200; *Appeal of Leister (Pa.)*, 11 Atl. 387; *Centre Co. Licenses*, 9 Pa. Co. Ct. Rep. 376; *St. Ames v. St. Francis de Sales*, 1 Quebec S. C. 463; *Appeal of Doberneck*, 1 Pa. Super. Ct. 99; 38 Wkly. N. C. 90; *Appeal of Mead*, 161 Pa. 375; 29 Atl. 21; 34 W. N. C. 373; *Appeal of American Brewing Co.*, 161 Pa. 378; 29 Atl. 22; *Perry v. Salt Lake City*, 7 Utah, 143; 25 Pac. 739, 998; 11 L. R. A. 446; *State v. Stiff*, 104 Mo. App. 685; 78 S. W. 675; *In re Fanning*, 23 Pa. Super. Ct. 622; *In re Trotter*, 24 Pa. Super. Ct. 26.

It does not follow that an applicant is entitled to a license merely because no evidence is offered by the remonstrants. *In re Chuya*, 20 Pa. Co. Ct. Rep. 410.

<sup>96</sup> *Hamilton Co. v. Bailey*, 12 Neb. 56; 10 N. W. 539; *Ailstock v. Page*, 77 Va. 386.

<sup>97</sup> *Ex parte Whittington*, 34 Ark. 394; *Wiggins v. Varner*, 67 Ga. 583.

<sup>98</sup> *Ex parte Levy*, 43 Ark. 42; 51 Am. Rep. 550; *Sarle v. Pulaski Co.*, 76 Ark. 336; 88 S. W. 953; *Reed v. Collins*, 5 Cal. App. 494; 90 Pac. 973; *Meyer v. Decatur*, 125 Ill. App. 556; *Van Nortwick v. Bennett*, 62 N. J. L. 151; 48 Atl. 689.

<sup>99</sup> *United States v. Commissioners*, 17 D. C. 409.

<sup>1</sup> *Stanley v. Monnet*, 34 Kan. 708; 9 Pac. 755; *In re Sperrig*, 7 Pa. Super. Ct. Rep. 131; 42 W. N. C. 37.

reversed.<sup>2</sup> A refusal to allow a licensee to sell liquors in a different locality from that named in the license will not be disturbed on *certiorari* unless "arbitrarily denied, or denied without good and valid reasons therefor," as the statute provides.<sup>3</sup> It is not an abuse of discretion to refuse a license to sell liquor in a hotel when it is shown that the applicant is not a person of good moral character and that his house has not been properly conducted in the past.<sup>4</sup> So it is not an abuse of discretion to refuse a license for premises of bad repute and a place of resort for disorderly persons.<sup>5</sup> And although a statute does not allow a licensing board any discretion in the issuance of a license, yet members of it are entitled to exercise a sound legal discretion, taking into consideration the locality and the wants of the people and the number of retailers in the neighborhood,<sup>6</sup> although the statute provides that it "shall grant" a license "to all properly qualified applicants."<sup>7</sup> In the licensing of a hotel in Pennsylvania the licensing board have a discretion in determining whether there be a necessity for a hotel, and the proper certificate of the standing of the licensee does not affect their right to use that discretion.<sup>8</sup> Where the evidence was overwhelmingly in favor of the

<sup>2</sup> *People v. Board* (N. Y.), 16 N. Y. Supp. 798.

This was under a statute providing that no license should be granted unless the board "shall be satisfied upon examination \* \* \* that a license may properly be granted for such sale in the place proposed." *People v. Dalton*, 7 N. Y. Misc. Rep. 558; 28 N. Y. Supp. 491; *People v. Murray*, 38 N. Y. Supp. 177.

<sup>3</sup> *People v. Board*, 91 Hun, 269; 39 N. Y. Supp. 158.

<sup>4</sup> *People v. Mills*, 91 Hun, 142; 36 N. Y. Supp. 273; *Sharpe v. Wakefield*, 60 L. J. M. C. 73; [1891], App. Cas. 173; 64 L. T. 180; 39 W. R. 551; 55 J. P. 197; *Kay v. Oves Darwen*, 52 L. J. M.

C. 90; 10 Q. B. Div. 213; 47 L. T. 411; 31 W. R. 273; 47 J. P. 388.

<sup>5</sup> *People v. Murray*, 2 N. Y. App. Div. 607; 37 N. Y. Supp. 1096.

<sup>6</sup> *Attorney-General v. Justices*, 27 N. C. 315.

<sup>7</sup> *Miller v. Buncombe Co.*, 89 N. C. 171; *Hillsboro v. Smith*, 110 N. C. 417; 14 N. E. 972; *Perkins v. Loux* (Idaho), 95 Pac. 694.

<sup>8</sup> *Schlandecker v. Marshall*, 72 Pa. 200; *In re Reznor Hotel Co.*, 34 Pa. Super. Ct. Rep. 525; Appeal of Mead, 161 Pa. 375; 29 Atl. 21; 34 W. N. C. 373; Appeal of American Brewing Co., 161 Pa. 378; 29 Atl. 22; *In re Chuya*, 20 Pa. Super. Ct. 410; *Campbell v. Thomasville* (Ga.), 64 S. E. 815. This does not apply to a distil-



necessity of a wholesale license, the court having no personal knowledge of the matter, and there was no objection either to the applicant or his place, it was held that the court had no discretion in the matter and must grant the license.<sup>9</sup> Where an ordinance provided that "if, after due consideration of the same by the board of supervisors," they might act favorably upon the petition of the applicant, the phrase "due consideration" was held to mean a consideration of the application upon its merits, based upon the evidence, and the board held no power to arbitrarily refuse a license without a sufficient hearing of the evidence.<sup>10</sup> Where a statute provides that no license shall be granted if a majority of the voters remonstrate, when such a remonstrance is filed, with a sufficient number of legal names thereto, the board has no discretion, and must refuse the license.<sup>11</sup> But if at an election for license or no license the election results in favor of licenses, then the licensing board or city council have no power to arbitrarily refuse to grant a license.<sup>12</sup> But this vote does not take away from the board its discretion to refuse to license an improper person or to license a saloon at an improper place.<sup>13</sup> Discretion to issue a license is a thing that a licensing board—not even a city—can bargain away.<sup>14</sup> It is not an

ler's license. Appeal of Doylestown Distillery Co., 41 W. N. C. 313.

It may be remarked that the cases of *In re Pollard*, 127 Pa. 507; 17 Atl. 1087; and *In re Prospect Brewing Co.*, 127 Pa. St. 523; 17 Atl. 1090, differ from the other Pennsylvania cases; but these two decisions are based upon local statutes wherein the licensing board was given no discretion.

<sup>9</sup> *In re Winder*, 24 Pa. Co. Ct. Rep. 90.

<sup>10</sup> *Reed v. Collins*, 5 Cal. App. 494; 90 Pac. 973; *In re Reznor Hotel Co.*, 34 Pa. Super. Ct. Rep. 525.

<sup>11</sup> *State v. Gerhardt*, 145 Ind.

439; 44 N. E. 469; 33 L. R. A. 313.

<sup>12</sup> *C. B. George & Bro. v. Winchester*, 118 Ky. 429; 80 S. W. 1158; 26 Ky. L. Rep. 170.

<sup>13</sup> *Riley v. Rowe*, 112 Ky. 817; 66 S. W. 999; 23 Ky. L. Rep. 2168.

<sup>14</sup> *State v. Stiff*, 104 Mo. App. 685; 78 S. W. 675.

In England the discretion of the justices is limited to four grounds named in the statute. *Ex parte Flinn*, 68 L. J. Q. B. 1025 [1899]; 2 Q. B. 607; 81 L. T. 221; 48 W. R. 29; 63 J. P. 740.

In New York county treasury officials cannot refuse to issue tax certificates where a vote in favor of licenses has been taken,

abuse of discretion to refuse to license a saloon situated near a church,<sup>15</sup> nor near a post-office and United States court house, or in any locality where children and women visit for proper purposes.<sup>16</sup> But where a Hawaiian statute provides "that no license shall be issued for any lodging or tenant house, hotel, boarding house or restaurant to be established or maintained in any location which in the opinion of the executive council is unsuited for the purposes, or which the executive council believes to be objectionable," it was held that it was void, for the reason that it subjected the contractual rights of persons to the arbitrary discretion of the council and contained nothing to guide or control the exercise of its discretion.<sup>17</sup> Where a city was empowered to issue only two licenses in every half block, and if there were more than two applications for any half block the council should determine which should be accepted on the question of priority of applications; and there were three applications, the first and third of which were granted; it was held that this fact did not show an abuse of discretion, though the council in acting on the applications did not discuss the priority of filing nor the qualifications of the applicants.<sup>18</sup>

on the ground that the statement of the town clerk as to such vote is legally insufficient. *People v. Hamilton*, 27 N. Y. Misc. Rep. 360; 58 N. Y. Supp. 959; *People v. Hilliard*, 28 N. Y. App. Div. 140; 50 N. Y. Supp. 909.

<sup>15</sup> *Dunne v. Kretzman*, 130 Ill. App. 469; 228 Ill. 31; 81 N. E. 790.

<sup>16</sup> *Jungenheimer v. State Journal Co.*, 81 Neb. 830; 116 N. W. 964; *In re Close & Berry*, 2 B. C. 131; *Harrison v. People*, 222 Ill. 150; 78 N. E. 52, 222.

<sup>17</sup> *Tai Kee v. Minister of Interior*, 12 Hawaii, 164.

A city (or officer) having a discretion to grant a license, is not liable for refusing to grant it.

*Stanstead v. Beach* [1899], 8 Quebec Q. B. 276; overruling 8 Quebec C. S. 178.

<sup>18</sup> *Bergeer v. DeLoach*, 121 S. E. 591.

Where the statute provided that the county court "shall grant" a liquor license on the applicant bringing himself within certain requirements; and then declared that on appeal the circuit court "may grant the license," it was held that the latter words meant that the circuit court must grant the license if the applicant brought himself within the requirements, and the statute did not confer upon it arbitrary power. *Leighton v. Maury*, 76 Va. 865.

### Sec. 393. Character of discretion.

A licensing board, however broad a discretion it may possess, cannot act arbitrarily and deny a license.<sup>19</sup> The discretion that will justify the refusal of a license must be a legal discretion and exercised in a judicial manner.<sup>20</sup> An abuse of discretion may consist in arbitrarily refusing the license where the applicant has decided that the facts exist entitling the applicant to a license.<sup>21</sup> The fact that the number of remonstrants exceeded the number of petitioners for a hotel and a license therein is not conclusive that the license is not a matter of public necessity, its refusal to grant the license does not show an arbitrary use of its discretion.<sup>22</sup> The discretion must be a judicial one and not a mere capricious act, regardless of the special circumstances of each applicant.<sup>23</sup> "Discretion is a science or understanding to discern between falsity and truth, between right and wrong," it has been said, "between shadows and substance, between equity and colorless glasses and pretense, and not to do according to the will and private affections."<sup>24</sup> "Discretion means," said Lord Halsbury, "something is to be done within the discretion of the authorities, that something is to be done within the rules of reason and justice, and not according to private opinions; according to law and not humor. It is to be not arbitrarily vague and fanciful, but legal and regular."<sup>25</sup> No

<sup>19</sup> Appeal of Kelminski, 164 Pa. 231; 30 Atl. 301; 35 W. N. C. 309; Centre Co. License, 9 Pa. Co. Ct. Rep. 376; Appeal of Mead, 161 Pa. 375; 29 Atl. 21; 34 W. N. C. 373; Appeal of American Brewing Co., 161 Pa. 378; 29 Atl. 22.

<sup>20</sup> Appeal of Doberneck, 1 Pa. Super. Ct. 99; 38 W. N. C. 90; Louisville v. Kean, 18 B. Mon. 9; State v. Durein, 70 Kan. 13; 80 Pac. 987; affirming 78 Pac. 152; 70 Kan. 1; State v. Sheasley, 71 Kan. 857; 80 Pac. 997; State v. New Orleans, 113 La. 371; 36 So. 999; *In re Reznor Hotel Co.*, 34

Pa. Super. Ct. Rep. 525; Ensley v. State (Ind.), 88 N. E. 62; Leighton v. Maury, 76 Va. 865.

<sup>21</sup> United States v. Douglass, 19 D. C. 99.

<sup>22</sup> *In re Sparrow*, 138 Pa. St. 116; 20 Atl. 711; *In re King*, 23 W. N. C. 152; 16 Atl. 487.

<sup>23</sup> Regina v. Boteler, 4 B. & S. 959; 33 L. J. M. C. 101; 28 J. P. 453.

<sup>24</sup> Rooke's Case (40 Eliz.), 5 Co. Rep. 503; Keighley's Case (7 Jac. 1), 10 Co. Rep. 501.

<sup>25</sup> Sharp v. Wakefield [1891], App. Cas. 179.

action lies against a licensing board for a refusal to exercise its discretion and grant a license.<sup>26</sup> Under the English Act of 1828<sup>27</sup> the justices may rightly refuse a new license, on the ground that there are already too many ale houses,<sup>28</sup> or that the house is too far removed from police supervision.<sup>29</sup> They do wrong, however, to lay down a rule before hearing the applications, such as they will refuse all licenses, except the party will promise to take out an excise license to sell spirits.<sup>30</sup> Nor can they lay down any general rule beforehand to fetter their discretion, for they ought to consider the circumstances of each case independently.<sup>31</sup> They may refuse a license to a person who does not intend to sell under it.<sup>32</sup> But neither an officer nor a licensing board, though they are endowed with discretionary powers, may refuse a license on the ground of his personal views that the scope of the license law is against public policy.<sup>33</sup>

<sup>26</sup> *Bassett v. Goodchild*, 3 Wils. 121.

<sup>27</sup> 9 Geo. 4, c. 61.

<sup>28</sup> *Regina v. Lancashire J. J.*, L. R. 6 Q. B. 97; 35 J. P. 170; 40 L. J. M. C. 17; 23 L. T. 461; 19 W. R. 204; *Regina v. Howard* [1902], 2 K. B. 363; 66 J. P. 579; 71 L. J. K. B. 754; 86 L. T. 839; 51 W. R. 21; 18 T. L. R. 690.

<sup>29</sup> *Sharp v. Wakefield* [1891], App. Cas. 173; 55 J. P. 197; 60 L. J. Q. B. 209; 64 L. T. 180; 39 W. R. 561; 7 T. L. R. 389.

<sup>30</sup> *Regina v. Sylvester*, 31 L. J. M. C. 93; 26 J. P. 151; 2 B. & C. 322; 5 L. T. 794; 8 Jur. (N. S.) 484.

<sup>31</sup> *Regina v. Walsall*, 24 L. T. (O. S.) 111; 18 J. P. 757; 3 W. R. 69; 3 C. L. R. 100.

<sup>32</sup> *Regina v. Wilkinson*, 10 L. T. 370; 28 J. P. 597.

<sup>33</sup> *In re Indiana Co.*, 6 Pa. Dist. Rep. 358.

In New York are some conflict-

ing decisions upon the right of licensing commissioners to refuse a license in their discretion. If the highest Appellate Court has settled the question, the decision has not come to our notice. Under the law of 1902, c. 401, § 41, no license can be issued if a majority of the voters have voted for prohibition when the question was submitted to them. Without such a vote having been taken, licensing boards refused licenses on the ground that they were elected as "no license" commissioners—no statute providing for such an issue—and it was held in a number of cases that they might so refuse. *People v. Turner*, 4 N. Y. Misc. Rep. 247; 23 N. Y. Supp. 913; judgment affirmed 71 Hun, 614; 24 N. Y. Supp. 1148; *People v. Warsaw*, 4 N. Y. Misc. Rep. 547; 24 N. Y. Supp. 739; *People v. Randolph*, 75 Hun, 224; 27 N. Y. Supp. 41.



**Sec. 394. Discretion of municipalities in granting licenses.**

In the absence of a constitutional inhibition a Legislature may confer upon the municipalities of a State the right to determine the places where saloons may be kept and to determine that question upon each application. In determining such question other considerations than mere locality must often enter into the consideration of the suitability of the place for a saloon, and if the building be so arranged as to render violation of the law easy, or if the saloon is to be kept in connection with a house of prostitution, or if it be not situated upon a street or alley, or if it be one of the upper stories of a building, or in a part of the city occupied for residence purposes only, or near a school, such conditions would certainly afford good reasons for the rejection of an application for a license.<sup>34</sup> But the rule is that a common council, empowered to issue licenses, has no discretion if the applicant has complied with all the requirements of the statute and ordinance.<sup>35</sup> Yet, in Kentucky it is held that the city authorities have a judicial, though not an arbitrary discretion in refusing a license,<sup>36</sup> and so in Mississippi,<sup>37</sup> and New York.<sup>38</sup>

But a number of decisions are to the contrary, holding such a decision "arbitrary" and "without good or valid reasons." *People v. Claverack*, 4 N. Y. Misc. Rep. 330; 25 N. Y. Supp. 322; *People v. Symonds*, 4 N. Y. Misc. Rep. 6; 23 N. Y. Supp. 689; *McNaughton v. Argyle*, 5 N. Y. Misc. Rep. 547; 26 N. Y. Supp. 29; *People v. Brunswick*, 13 N. Y. Misc. Rep. 537; 35 N. Y. Supp. 659.

It is no abuse of discretion to refuse a license for an unsuitable place, though the applicant has complied fully with all the statutes and possesses the requisite moral and other qualifications. *Ex parte Abrams* (Tex.), 120 S. W. 883; *Ex parte Clark* (Tex.), 120 S. W. 892. But where the petitioner had occupied the premises with a saloon for ten years,

and they had been so occupied for fifty years, it was held an abuse of discretion to refuse him a license. *Louisville v. Gagen* (Ky.), 116 S. W. 745; 118 S. W. 947.

<sup>34</sup> *Sherlock v. Stuart*, 96 Mich. 193; *Dunne v. Kretzmann*, 130 Ill. App. 469; affirmed 228 Ill. 31; 81 N. E. 790; *Perry v. Salt Lake City*, 7 Utah, 143; 25 Pac. 739, 998; 11 L. R. A. 446; *McCormick v. Pfeiffer*, 10 N. W. 31.

<sup>35</sup> *Henry v. Barton*, 107 Cal. 535; 40 Pac. 798; *Rome v. Duke*, 19 Ga. 93; *Meyer v. Decatur*, 125 Ill. App. 556.

<sup>36</sup> *Louisville v. Kean*, 13 B. Mon. 9.

<sup>37</sup> *Perkins v. Ledbetter*, 68 Miss. 327; 8 So. 507.

<sup>38</sup> *In re Nundy*, 59 How. Pr. 359.

A city cannot by ordinance, reserve the power to arbitrarily refuse to issue a license.<sup>39</sup>

### Sec. 395. Review or control of discretion of licensing board.

Where the licensing board or court may exercise a discretion whether it will grant a license, unless arbitrarily exercised, it is not subject to control by a writ of mandamus.<sup>40</sup> And this is true, although its reasons for its decisions may be erroneous.<sup>41</sup> And even where an appeal lies from refusal to grant a license, the discretion of the board in refusing the license is not reviewable.<sup>42</sup> But if there has been a manifest and arbitrary abuse of the discretion, a court of review will intervene upon that fact appearing of record and set aside the order of refusal;<sup>43</sup> and may control their action when

<sup>39</sup> *Meyer v. Decatur*, 125 Ill. App. 556.

In Oklahoma a statute provided that a licensee of a county, on presentation of his license to a city of the first class, should be entitled to a city license; and it was held that a city of that class within the county could not refuse him a city license. *Territory v. Robertson* (Okla.), 92 Pac. 144.

<sup>40</sup> *Dunbar v. Frazer*, 78 Ala. 538; *Ex parte Whittington*, 34 Ark. 394; *Batters v. Dunning*, 49 Conn. 479; *State v. Board*, 45 Ind. 501; *Devin v. Belt*, 70 Md. 352; 17 Atl. 375; *State v. Carver Co.*, 60 Minn. 510; 62 N. W. 1135; *State v. Hudson*, 13 Mo. App. 61; *Hamilton Co. v. Bailey*, 12 Neb. 56; 10 N. W. 539; *People v. Norton*, 7 Barb. 477; *Attorney General v. Guilford Co.*, 27 N. C. 315; *Jones v. Moore Co.*, 106 N. C. 436; 11 S. E. 514; *Maxton v. Robeson*, 107 N. C. 335; 12 S. E. 92; *In re Knarr*, 127 Pa. 554; 18 Atl. 639; *In re Collarn*, 134 Pa. 551; 19 Atl. 755; 26 W. N. C. 73; *Ex parte*

*Yeager*, 11 Gratt. 655; *In re Cramer*, 23 Pa. Super. Ct. 596; *In re Chuya*, 20 Pa. Super. Ct. 410; *Mathias v. Dulpin Co.*, 122 N. C. 416; 30 S. E. 23; *I. A. West & Co. v. Board*, 14 Idaho, 353; 94 Pac. 445; *In re Henry*, 124 Iowa, 358; 100 N. W. 43.

<sup>41</sup> *Ramagnano v. Crook*, 85 Ala. 226; 3 So. 845; *Wilcox v. Bryant*, 156 Ind. 379; 59 N. E. 1049.

<sup>42</sup> *Appeal of Hopson*, 65 Conn. 140; 31 Atl. 531; *Nepp v. Commonwealth*, 2 Duv. 546; *Raleigh v. Kane*, 47 N. C. 288; *In re Conway* (Pa.), 1 Atl. 727; *Appeal of Reed*, 144 Pa. 459; 6 Atl. 910; *In re Randenbusch*, 120 Pa. 328; 14 Atl. 148; *French v. Noel*, 22 Gratt. 454; *Ex parte Clark*, 69 Ark. 435; 64 S. W. 223; *In re Friedman*, 7 Pa. Super. Ct. 639.

<sup>43</sup> *Nepp v. Commonwealth*, 2 Duv. 546; *Hoglan v. Commonwealth*, 3 Bush, 147; *Thompson v. Koch*, 98 Ky. 400; 33 S. W. 96; 17 Ky. L. Rep. 941; *In re Excise License* (N. Y.), 38 N. Y. Supp. 425.

there has been a refusal, by a writ of mandamus.<sup>44</sup> If the board or court has a discretion in the issuance of a license, it cannot be prevented from issuing it by an injunction.<sup>45</sup> And where a writ of *certiorari* lay to reverse a board's action where the license had been "arbitrarily or unreasonably refused," it was held that the hearing must be on the writ, the return, and the papers on which the writ was granted, and the commissioners having stated in their return that they had determined by a majority vote not to grant any license to the applicant, their action could not be reversed because the question of issuance rested in their discretion.<sup>46</sup> It is immaterial that the voters of the licensing district have expressed themselves favorably to the issuance of the license; if the board has a discretion in issuing it, their action will not be reviewed.<sup>47</sup> If a superior court undertakes to interfere with the discretion of the licensing board or court, a writ of prohibition will lie from the Supreme Court to restrain the interference by supersedeas and writ of error.<sup>48</sup>

### Sec. 396. Reasons for refusal.

The licensing board should refuse to grant an application where it is not signed by a sufficient number of voters, and if there be any serious questions whether some of those signing are not legal voters, and by deducting their names from other signers the application would not be signed by a sufficient number of legal voters, their action will not be controlled by a writ of mandamus.<sup>49</sup> An habitual drunkard who had kept a saloon as a disorderly house and is incapable of keeping a saloon, should be refused a license.<sup>50</sup> A single act

<sup>44</sup> *Zanone v. Mound City*, 103 Ill. 552; *Heblich v. Hancock Co. Ct. (Ky.)*, 10 S. W. 465.

<sup>45</sup> *Leigh v. Westervelt*, 2 Duer. 618; *Ailstock v. Page*, 77 Va. 386; *Nast v. Eden*, 89 Wis. 610; 62 N. W. 409.

<sup>46</sup> *People v. Montgomery (N. Y.)*, 25 N. Y. Supp. 873; see *In re Bloomingdale*, 72 N. Y. St. 250; 38 N. Y. Supp. 162; *In re*

*Schomaker*, 15 N. Y. Misc. Rep. 648; 38 N. Y. Supp. 167.

<sup>47</sup> *Maxton v. Robeson Co.*, 107 N. C. 335; 12 S. E. 92.

<sup>48</sup> *Ailstock v. Page*, 77 Va. 386.

<sup>49</sup> *State v. Sumter Co.*, 22 Fla. 364.

<sup>50</sup> *Bronson v. Dunn*, 124 Ind. 252; 24 N. E. 749; *Perkins v. Loux*, 14 Idaho, 607; 95 Pac. 694; *In re Klamm (Neb.)*, 117 N. W. 991.

of intoxication in a public place, though a misdemeanor, will not justify a refusal of a license, if there be no other objections to the applicant.<sup>51</sup> Where, on appeal, a trial of the application is had by a jury, the question of the applicant's fitness is one for the jury and not for the court.<sup>52</sup> If the application be for a druggist's license to sell liquors it should be denied if it appear that the applicant merely assumed the vocation of a druggist in order to secure a license to retail liquors.<sup>53</sup> In such an instance the application must be made in good faith or it will be denied. So the license may be denied if it be shown that the applicant had sold liquors to minors, knowing them to be such, or on Sundays, or kept a gambling and disorderly house within a year or less before the date of the application, or did all those unlawful acts, and an answer to that effect in an application for a writ of mandamus to compel the issuance of the license is sufficient.<sup>54</sup> It has been held that although by statute it was made the duty of the board to refuse an application for a license if such illegal acts were shown, yet that did not limit the board in making a refusal, for it might refuse it on other sufficient grounds.<sup>55</sup> In the same State from which these cases are cited it was made a misdemeanor to sell adulterated liquor. On an application a chemist testified that he had analyzed a glass of whisky applicant had sold within a year before (the statutory limitation), and found that it contained common sugar, charcoal (which might have come from the barrel), fusel oil, and tannate of iron; that the iron was an extraneous matter, the fusel oil resulted from the process of distilling;

<sup>51</sup> *Lynch v. Bates*, 139 Ind. 206; 38 N. E. 806.

<sup>52</sup> *Groscup v. Rainier*, 111 Ind. 361; 12 N. E. 694; *Hardesty v. Hine*, 135 Ind. 72; 34 N. E. 701; *Lynch v. Bates*, 139 Ind. 206; 38 N. E. 806; *Pelley v. Wills*, 141 Ind. 688; 41 N. E. 354.

<sup>53</sup> *Evans v. Commonwealth*, 95 Ky. 231; 24 S. W. 632.

<sup>54</sup> *State v. Cass Co.*, 12 Neb. 54; 10 N. W. 571; *State v. Koso*, 25

Neb. 607; 41 N. W. 558; *Livingston v. Corey*, 33 Neb. 366; 50 N. W. 263; *In re Quirk*, 17 Pa. Co. Ct. Rep. 327; *In re Bailey*, 5 Pa. Dist. Rep. 172; *In re Rutherford*, 2 Pa. Co. Ct. Rep. 78; *In re Meredith*, 2 Pa. Co. Ct. Rep. 82; *In re Adamek*, 82 Neb. 448; 118 N. W. 109.

<sup>55</sup> *State v. Hanlan*, 24 Neb. 608; 39 N. W. 780.



that the whisky had been thinned with water, and sugar was not a part of pure whisky. It was held that, although only a single sale was shown, the license must be denied.<sup>56</sup> It has been held, where the application and license had to specify the place where the saloon would be located, that a covenant in the deed of conveyance prohibiting the sale of liquors on the premises was good ground for refusing the license;<sup>57</sup> and it has also been held that it was not.<sup>58</sup> Where the application was for a license to sell liquors in an amusement building which was used for amusements only a part of the time, during which it was illegal to sell liquors therein, it was held improper to refuse a license merely because it was an amusement building.<sup>59</sup> And although a hotel may be needed at the place for which a license is applied (which included the right to sell liquors at retail), which must be shown before the license could be granted, yet if it be shown that the applicant has violated the law his application must be refused.<sup>60</sup> Where a license had been refused a year before, and the situation was not changed, that was held a sufficient reason for refusing it a second time.<sup>61</sup> The fact that the applicant is not a resident of the licensing district is no reason for refusing him a license unless the statute requires him to have his residence there.<sup>62</sup> A distiller's license to sell at wholesale in a certain city has been refused on the ground that his distillery was not there located, the distillery was not necessary, the applicant was not doing a legitimate business, and a former occupant had violated the liquor laws.<sup>63</sup> The fact

<sup>56</sup> *Livingston v. Corey*, 33 Neb. 366; 50 N. W. 263.

<sup>57</sup> *In re Snyder*, 2 Pa. Dist. 785; *In re Fanning*, 23 Pa. Super. Ct. 622; *In re Trotter*, 24 Pa. Super. Ct. 26.

<sup>58</sup> *Barnegat, etc., Ass'n v. Busby*, 44 N. J. L. 627.

<sup>59</sup> *People v. Woodman*, 5 N. Y. St. Rep. 318.

<sup>60</sup> *Appeal of Wright*, 1 Wilcox (Pa.), 85; *Appeal of Leister*, 20 W. N. C. 224.

<sup>61</sup> *In re Johnson*, 13 Pa. Co. Ct.

Rep. 584; *Appeal of D'Amato*, 80 Conn. 357; 68 Atl. 445.

<sup>62</sup> *Appeal of Dorbeneck*, 1 Pa. Super. Ct. 99; 38 W. N. C. 90.

<sup>63</sup> *In re Johnson*, 165 Pa. 315; 31 Atl. 203.

Subsequently it was held that the requirements that the place licensed must be necessary for the accommodation of the public had no application to a distiller's license. *Appeal of Gemas*, 169 Pa. 43; 32 Atl. 88; 36 W. N. C. 367.

that an applicant's bartender has violated the liquor laws without the applicant's consent or knowledge is not sufficient ground upon which to deny him a license.<sup>64</sup> If the evidence shows that the applicant is seeking a license for two places of business—as where he has two adjoining houses with a passageway between them, with separate front entrances—a license may be refused.<sup>65</sup> So if he already has a license.<sup>66</sup> If a statute forbids a second application within a year, when a refusal of a license has been made, if a second application be made there must be an absolute refusal.<sup>67</sup> But it is not a suffi-

<sup>64</sup> *Pelley v. Wills*, 141 Ind. 688; 41 N. E. 354.

In Pennsylvania, in the absence of the absolute necessity for a hotel being licensed, the prevailing sentiment against a license being granted must prevail. *In re Smith*, 2 Pa. Co. Ct. Rep. 74; *In re Justin*, 2 Pa. Co. Ct. Rep. 22; *In re Bailey*, 5 Pa. Co. Ct. Rep. 172. If the evidence be evenly divided, it must be granted; and it cannot be refused on evidence of general disorder in the neighborhood, unless the applicant be connected with the disorder. *In re Helling*, 2 Pa. Co. Ct. Rep. 76; *In re Meredith*, 2 Pa. Co. Ct. Rep. 82. In this State, if two apply for licenses, at the same place, and there be many remonstrants against one house and only a few against the other, that is evidence of the necessity for a house there and of the good character of the latter applicant. *In re Meredith*, 2 Pa. Cr. Ct. Rep. 82. If two apply for a license to sell liquor in the same hotel, and one is granted and the other continued, on failure of the one securing the license to take it out, the other may be granted it for the remainder of the licensing year on payment of

the necessary part of the fee. *In re Russell*, 11 Pa. Co. Ct. Rep. 505.

If there be a general request for licensing a house, a license will be granted; and that request may be shown by the signature to a petition for it. *In re Brandlinger*, 11 Montg. Co. L. Rep. 93. The word "necessary," refusing a license to be granted for a hotel when "necessary" is not construed in the strict sense of the word. *In re Erie Licenses*, 4 Pa. Dist. Rep. 167. See *In re Philadelphia Licenses*, 4 Pa. Dist. Rep. 201. But the judges may deny it on his individual opinion that it is not necessary.

*In re Thomas*, 169 Pa. 111; 3 Atl. 100.

*In re Gerstlauer*, 5 Pa. Dist. Rep. 97.

<sup>65</sup> *Papworth v. Goodnow*, 104 Ga. 653; 30 S. E. 872; *In re Mertz*, 12 Super. Ct. Rep. 521.

<sup>66</sup> *State v. Bonnell*, 119 Ind. 494; 21 N. E. 1101. See *Ottoman v. Young*, 12 Hawaii, 303.

<sup>67</sup> *White v. Atlantic City* (N. J. L.), 42 Atl. 710; *Hensley v. Metcalfe Co.*, 115 Ky. 810; 74 S. W. 1054; 25 Ky. L. Rep. 204; *Appeal of D'Amato*, 80 Conn. 357; 68 Atl. 445.

A license cannot be refused be-

cient ground for a refusal that the applicant "made a promise last year not to apply for a license this year."<sup>68</sup> In his discretion a mayor of a city may refuse to license a saloon situated near a church.<sup>69</sup> Where a statute provided that "due regard" must be had in granting a license as to the character of the persons petitioning for a license and their number, this was held to include the personal knowledge possessed by the members of the board, the testimony of witnesses, and the opportunities the remonstrators and petitioners had to know the things about which they made representations or statements.<sup>70</sup> If the applicant is the owner of a building for which he seeks a license, and he has permitted the law to be there violated by his tenants in the conduct of the liquor business, when he had the legal right and power to prevent it, he may be denied a license; for he is not a fit person to hold a license.<sup>71</sup>

### Sec. 397. Unsuitable buildings or places.

In almost every State and country statutes specify in what kind of houses liquors shall not be sold, and prescribe the kind of houses in which they may be sold. And these statutes extend so far, often, as to provide that before a license will be granted for a place a house must be in existence, of a certain kind and structure. In England, in addition to these requirements, houses, to be licensed, must be of a certain annual rental value, according to the population.<sup>72</sup> In addition to that no one can obtain a license unless he submit a plan of his premises to the licensing justice.<sup>73</sup> In addition to this

cause a requisite affidavit attached to a petition is not made before an officer of the county, unless there be an order of court previously adopted requiring it. *In re Brewing Co.*, 14 Pa. Super. Ct. 188.

<sup>68</sup> *In re Donoghue*, 5 Pa. Super. Ct. 1; 40 W. N. C. 440.

<sup>69</sup> *Dunne v. Kretzman*, 130 Ill. App. 469; affirmed, 228 Ill. 31; 81 N. E. 790.

<sup>70</sup> *In re Reznor Hotel Co.*, 34 Super. Ct. 525.

<sup>71</sup> Appeal of Michael, 63 Conn. 583.

<sup>72</sup> Licensing Act 1872, 35 and 36 Vict. 94, §§ 45 to 47; Patterson's Licensing Acts (19 ed.), pp. 428 to 433.

<sup>73</sup> Licensing Acts [1902] 2 Edw. 7 c. 28, § 11; Patterson's Licensing Acts, p. 601.

certain alterations in the premises cannot be made without their consent, and all applications for renewals must also be accompanied by a plan of the licensed premises. Before this act of 1902 "the power of justices to require structural alteration in licensed premises was not in a satisfactory state. Where the discretion to grant or refuse either new licenses or renewals was unlimited, some benches took advantage of this power to enforce structural alterations. An applicant was informed that unless he made certain alterations his application for renewal would probably be refused on the next occasion. But the legality of this course was open to question; for the power to grant or refuse an order does not imply a power to make a conditional order."<sup>74</sup> Under the English law now justices have full control over the structure of licensed premises.<sup>75</sup> The statute specifically provides that on renewal of a license the justice "may by order direct that within a time fixed by the order such alterations as they may think reasonably necessary to secure the proper conduct of the business shall be made in that part of the premises where intoxicating liquor is sold or consumed." A failure to make the alterations subjects the licensee to a fine each day he neglected to comply with the order. In one instance on application for a renewal, the licensing justice ordered that a back entrance to one of the passages in the licensed premises be closed by a substantial gate, with a lock, the key to be kept by the licensee or the owners of the premises, the gate not to be opened except for the purpose of delivering beer, casks, or other goods when necessary, or for private use by the tenant or his household only; and that all lamps, notices, or boards describing this entrance as a backway or entrance to the licensed house should be removed. No liquor was in fact sold at or near the back entrance or in the passageway to it, nor was it shown, in a prosecution for failure to comply with the order, that any liquor was consumed at the back entrance or in the passageway; but there was nothing to prevent the consumption, the back entrance being used by customers for

<sup>74</sup> Patterson's Licensing Acts 2 K. B. 563; 68 J. P. 370; 73 L. (19 ed.), p. 602. J. K. B. 1005; 91 L. T. 1; 52 W.

<sup>75</sup> Bushell v. Hammond [1904], R. 453; 20 T. L. R. 413.



entering or leaving the premises. It was held that the power of the justice under the statute quoted was not confined to that part of the premises where liquor was actually sold or consumed, but included the means of access thereto.<sup>76</sup> So where the licensed premises had doors giving access respectively from different streets to a part of the premises where liquor was sold, the justice made an order that one of the doors be kept locked and not used except on the previous order stated above; but here it was held that they had exceeded their authority, because the statute referred only to structural alterations.<sup>77</sup> In the first of these cases undoubtedly the justice could have refused to renew the license, or even grant a new one, if the premises had not been altered to comply with his wishes; while in the other they could not do so. In Rhode Island a statute provided that no license should be granted for the sale of liquors in any place except licensed taverns, to which an entrance should not be allowed other than directly from a public traveled way, and it was held that this meant a straight and immediate entrance, and one to a barroom requiring a circuitous or crooked route of travel from the street thereto was such an entrance as the statute forbade.<sup>78</sup> But when a statute provided that a barroom should be so arranged that all parts of it could be seen from the street or highway; and it also provided that an applicant should in his application "specifically describe the room" and its "exact location," it was held no objection to the granting of the license that it was not shown to be such a room as all parts of it could be seen from the street or highway, for the applicant was not required to state that fact in his application, and there was therefore no way to try the question; but if the licensee did not so arrange his room before he sold liquor therein, he would be liable to fine and punishment.<sup>79</sup> Where a stat-

<sup>76</sup> *Bushell v. Hammond*, *supra*.

P. 438; 73 L. J. K. B. 848; 91

<sup>77</sup> *Smith v. Portsmouth*, J. J. (1906), 2 K. B. 229; 75 L. J. K. B. 851; 95 L. T. 5; 54 W. R. 598; 22 T. L. R. 650, reversing 70 J. P. 157. As to appeal, see *Rex v. Bath* [1904], 2 K. B. 570; 68 J.

L. T. 383; 20 T. L. R. 526

<sup>78</sup> *State v. Conley*, 22 R. I. 397; 48 Atl. 200.

<sup>79</sup> *Gates v. Haw*, 150 Ind. 370; 50 N. E. 299.

In Australia if a licensee make

ute required a saloon to be so arranged either with a window or glass door or otherwise that the whole barroom could be seen from the street, it was held that a paved alley sixteen feet wide passing through the middle of the block was not a street, and therefore a saloon could not be located upon it.<sup>80</sup> A grant to an applicant to conduct a saloon in a "lower room" of a designated building does not give him the right to conduct a saloon upon the lower floor of that building.<sup>81</sup> A statute of Connecticut, forbidding sales of liquor in any building controlled by the State or any "county or town" has no application to a building controlled by a "city."<sup>82</sup>

### Sec. 398. Limiting number of saloons.

Not infrequently statutes limit the number of saloons that may be located in the licensing districts or within the neighborhood. And even that is not the case, if a licensing board has a discretion to grant the licenses, it may refuse one if the neighborhood is already sufficiently supplied. An instance of this is reported in a New York case, where a licensing board refused, in its discretion, to license a saloon on the fourth corner of a street crossing, the other three corners being saloons, on the ground that the neighborhood was sufficiently supplied.<sup>83</sup> And we have seen that under the Pennsylvania statute it must be shown that the hotel for which a license is sought is necessary to the vicinity. These cases need not be

a substantial addition to his building so as to alter its original design, he must take out a new license. *Lagagianmis v. Cruikshank*, 1 Vict. L. R. 97.

<sup>80</sup> *State v. Harrison*, 162 Ind. 542; 70 N. E. 877.

<sup>81</sup> *Price v. Lincoln*, 130 Ill. App. 254.

<sup>82</sup> *Appeal of Camp*, 80 Conn. 272; 68 Atl. 444.

This construction put upon the word "town" is because of the character of towns in Connecticut. It is doubtful if the stat-

ute would be so construed in any Western State where the word "town" is construed as a generic term. See *State v. Craig*, 132 Ind. 54; 31 N. E. 352; *Indianapolis v. Higgins*, 141 Ind. 1; 40 N. E. 671.

<sup>83</sup> *People v. Board* (N. Y.), 16 N. Y. Supp. 798. See *People v. Dalton*, 7 N. Y. Misc. Rep. 558; 28 N. Y. Supp. 491; *People v. Murray*, 38 N. Y. Supp. 177; *In re McCrary*, 31 Pa. Super. Ct. 192.

cited again. Occasionally a licensing board is empowered to arbitrarily reduce the number of saloons in a neighborhood, by refusing to renew licenses.<sup>84</sup> Statutes limiting the number of licenses that may be granted in a neighborhood are held to apply to retail and not to wholesale licenses;<sup>85</sup> and they also refer to the number applied for and not the number when the act went into force.<sup>86</sup> If the limit has been reached and a license lapses a new license may be issued in its place.<sup>87</sup> Where a statute limited the number in a city, and declared they were to be *apportioned among* the wards, it was held that no particular number need be granted in a particular ward.<sup>88</sup> Of course, a licensing board, cannot arbitrarily refuse to grant licenses and thereby give those already licensed a monopoly of the retail business,<sup>88\*</sup> but that question comes under the arbitrary use of a discretion. Under a discretion in the granting of a license the city may adopt an ordinance limiting the number of licenses it will grant within its limits; and this power is given it when it is charged with policing and maintaining good order within its boundaries with a specified number of police officers which it may appoint; for in such an instance it has unusual ground for exercising its discretion.<sup>89</sup> So a city may limit the number under a power expressly given by statute.<sup>90</sup> In this same State no license must be granted if there be enough for the neighborhood, and no second application can be made for that place during the licensing year, nor by any person who has been denied a license during the year on the ground that he is an unsuitable person. It was held that a denial of a license on the ground that no license was needed in the neighborhood was a denial on the ground that the place was an unsuitable one.<sup>91</sup>

<sup>84</sup> *Hewitt v. Invercargill*, 12 N. Z. L. R. 631.

<sup>85</sup> *McKenzie v. Hogg*, 13 N. Z. L. R. 158.

<sup>86</sup> *Bull v. Licensing Justices*, 12 Austr. L. T. 82. See *Ottman v. Young*, 12 Hawaii 303.

<sup>87</sup> *In re Winchester*, 8 Austr. L. R. (C. N.), 19.

<sup>88</sup> *Jamieson v. Blaine*, 38 N. B. 508.

<sup>88\*</sup> Nor can a city. *In re Brodie*, 38 Up. Can. 580; *In re Barclay*, 12 Up. Can. 86.

<sup>89</sup> *In re Jugenheimer*, 81 Neb. 836; 116 N. W. 966.

<sup>90</sup> *In re Bayless*, 15 Ont. 13.

<sup>91</sup> *De Amato*, 80 Conn. 357; 68 Atl. 445.

### Sec. 399. Order granting or refusing the license.

Perhaps no general rule can be laid down concerning what the order granting or refusing the license should contain. That is a matter almost wholly statutory, if not entirely so, depending upon the particular statutory provisions of the locality in each case. So caution must be used in the examination of the cases to see whether the licensing body is a board, incorporated or not, or a court, for there seems to be a line of distinction drawn between the order of a mere board and that of a court granting the license, although it is often difficult to discern it. Where a court grants a license its act is a judicial one and the sufficiency of the order must be considered from that point of view.<sup>92</sup> The board or court, or whatever body or person grants or refuses the license cannot delegate its powers to do so to another; it must itself act in the matter.<sup>93</sup> In the case of a common council granting the license it does not act as a court.<sup>94</sup> The licensing body is without power to grant the license to any other person than the applicant, as where the applicant has no interest in the license, and it is for the exclusive use of another who is the proprietor of the business.<sup>95</sup> It cannot grant it for a district where prohibition has been adopted.<sup>96</sup> If there be several members of the licensing body, then the license cannot issue unless a majority vote in favor of its issuance;<sup>97</sup> but it is not illegal because one of their number was not present at a prior hearing.<sup>98</sup> The grant of the license is an

<sup>92</sup> *Hollenback v. Drake*, 37 Neb. 680; 56 N. W. 296; *Webber v. Lane*, 99 Mo. App. 69; 71 S. W. 1099; *Cooper v. Hunt*, 103 Mo. App. 9; 77 S. W. 483; *Schade v. Russell* (Mo. App.), 110 S. W. 667; *Territory v. Miguel*, 18 Hawaii 402; *State v. Fort*, 107 Mo. App. 328; 81 S. W. 476; *Appeal of Hewitt*, 76 Conn. 685; 58 Atl. 231.

<sup>93</sup> *Hennepin Co. v. Robinson*, 16 Minn. 381; *In re Krug*, 72 Neb.

576; 101 N. W. 242; *In re Tierney*, 70 Neb. 704; 99 S. W. 518.

<sup>94</sup> *State v. Columbia*, 17 S. C. 80.

<sup>95</sup> *In re King* (Neb.), 10 N. W. 242.

<sup>96</sup> *Strickland v. Knight*, 45 Fla. 712; 36 So. 363.

<sup>97</sup> *Appeal of Hewitt*, 76 Conn. 685; 58 Atl. 231.

<sup>98</sup> *Appeal of Hewitt*, *supra*.

Where a special meeting was called for another purpose, it was



adjudication of all the questions essential to be considered.<sup>99</sup> But it is not *res judicata* nor conclusive when a renewal or second license is applied for, because it is the duty of the board or court to ascertain if the applicant is a fit man as of the date of the renewal or of the second application.<sup>1</sup> If the order contains a finding that the requisite number of persons have signed the application or petition, its decision cannot be reviewed in a proceeding for an injunction to enjoin the granting of the license on the ground of fraud.<sup>2</sup> In some States the order granting the license must be drawn up with strictness or the license will be void. Thus, in Missouri it was held that an order to be sufficient must show affirmatively that the petition purported to be signed by the requisite number of citizens, or embraced a statement that the court found as a fact a majority of such citizens had signed the petition and that the applicant had the statutory qualifications;<sup>3</sup> that is, that all the jurisdictional facts necessary to authorize the granting of a license must affirmatively appear on the face of the proceedings.<sup>4</sup> On refusing a license, however, the matter is different, and the court is not even required to state its reasons.<sup>5</sup> Where the licensing board acts judicially, as the common council of a city,<sup>6</sup> the officer whose duty it is

held that the board rightly refused to grant a license, in the absence of some of its members. *Riley v. Rowe*, 112 Ky. 817; 66 S. W. 999; 23 Ky. L. Rep. 2168.

<sup>99</sup> *In re Justices*, 2 Pa. Co. Ct. Rep. 22; *Connecticut Breweries Co. v. Murphy*, 81 Conn. 145; 70 Atl. 450.

<sup>1</sup> *State v. Higgins*, 84 Mo. App. 531; *In re Pittsburg Brewing Co.*, 16 Pa. Super. Ct. 215.

<sup>2</sup> *Cooper v. Hunt*, 103 Mo. App. 9; 77 S. W. 483.

Where a statute required the applicant to file a certificate of character with the inspectors before a license was granted, this was held to be an imperative ne-

cessity. *In re Hunter*, 24 Ont. 522; reversing 24 Ont. 153.

<sup>3</sup> *State v. Page* (Mo. App.), 80 S. W. 912.

<sup>4</sup> *State v. Seibert*, 97 Mo. App. 212; 71 S. W. 95. In this case the petition had not been on file ten days as the statute required before the hearing of the application; and it was held that the board of commissioners were without jurisdiction to hear the application.

<sup>5</sup> *In re Hilleman*, 11 Pa. Super. Ct. 567; see *Nortwick v. Bennett*, 62 N. J. L. 151.

<sup>6</sup> *Hollenbeck v. Drake*, 37 Neb. 680; 56 N. W. 296; *Webber v. Lane*, 99 Mo. App. 69; 71 S. W.

to issue the license—as the mayor who has the power of veto—cannot refuse to do so on the ground that the board or council ordered the license granted on an insufficient petition.<sup>7</sup> The order granting the license is one thing and the license another, and to complete the transaction the license must be duly issued. A license issued without the granting of it is invalid, even if issued and signed by all the members of the licensing board who are required to sign the order granting it.<sup>8</sup> Where the statute does not require the averment in the petition that the applicant is a man of good character, there need be no finding as to that effect inserted in the order.<sup>9</sup> If the license has once been granted it cannot be recalled or the grant set aside.<sup>10</sup> In granting or refusing a license the licensing board is not the agent of the State.<sup>11</sup>

#### Sec. 400. Mandamus to secure a license.

It scarcely needs authorities to sustain the statement that where the licensing board, court or officer has a discretion

1099; *Schade v. Russell* (Mo. App.), 110 S. W. 667.

<sup>7</sup> *Schade v. Russell* (Mo. App), 110 S. W. 667. *Contra*, *In re Quinn*, 32 N. S. 542.

<sup>8</sup> *Connecticut Breweries Co. v. Murphy*, 81 Conn. 145; 70 Atl. 450.

<sup>9</sup> *In re Sauer*, 23 Pa. Super. Ct. Rep. 463.

<sup>10</sup> *Ex parte Fearn*, 69 J. P. 177. *Contra*, *Ex parte Hatjen's License*, 5 Q. B. 160 (Quebec).

Any citizen has the right to inspect reports and papers in the custody of an officer used in hearing an application for a license; and to be furnished copies thereof on payment of the fees prescribed by statute. *Commonwealth v. Blair*, 5 Pa. Dist. Rep. 488.

Amending liquor tax certificate, when cannot be done. *In re Littleton*, 113 N. Y. App. Div. 471; 99 N. Y. Supp. 417

A recital in an order requiring a

license that evidence submitted on the application was considered and due regard had to the number and character of the witnesses is conclusive upon the petitioner that he had a hearing. *In re Doylestown Distilling Co.*, 9 Pa. Super. Ct. 96.

A refusal to grant a license for a hotel on the ground that a hotel at that place is not necessary for the public is not *res judicata* as to the same place and the same person on a subsequent year. Usually the refusal of the license, or even its granting, ought not to have any or but little weight on a subsequent year. *In re Reznor Hotel Co.*, 34 Pa. Super. Ct. 525.

<sup>11</sup> *State v. Gorman*, 171 Ind. 58; 85 N. E. 763.

*Nunc pro tunc* entries cannot be contradicted by parol evidence to show that they are void. *State v. Leonard* (Mo.), 116 S. W. 14.

whether it will grant or refuse a license, mandamus does not lie to control its discretion nor compel it to issue the license.<sup>12</sup> But where the issuance of a license is merely a ministerial act, and a proper application in form has been refused, a writ of mandamus will be granted to compel the issuance of a license.<sup>13</sup> The court will not upon mere moral grounds deny the writ.<sup>14</sup> The writ will not be granted before the day of hearing the application and where the publication of notice has not yet been completed.<sup>15</sup> If a city has not

<sup>12</sup> United States v. Douglas, 19 D. C. 99; Maxton Co. v. Robeson Co., 107 N. C. 335; 12 S. E. 92; Eve Simson, 78 Ga. 120; Dunbar v. Frazer, 78 Ala. 538; *In re* Johnson, 165 Pa. 315; 31 Atl. 203; State v. Cass Co., 12 Neb. 54; 10 N. W. 571; Commonwealth v. Fell, 144 Pa. 426; 22 Atl. 915; 28 W. N. C. 429; State v. Stiff, 104 Mo. App. 685; 78 S. W. 675; *In re* Sparrow, 138 Pa. 116; 20 Atl. 711; 27 W. N. C. 47; *In re* King (Pa.), 16 Atl. 487; 23 W. N. C. 152; Schlandecker v. Marshall, 72 Pa. St. 200; *In re* Collarn, 134 Pa. St. 551; 19 Atl. 775; Batters v. Dunning, 49 Conn. 479; Jones v. Moore Co. 106 N. C. 436; 11 S. E. 514; Devin v. Belt, 70 Md. 352; 17 Atl. 375; *In re* Knarr, 127 Pa. St. 554; 18 Atl. 639; Stanley v. Monnett, 34 Kan. 708; 9 Pac. 755; Heblich v. Hancock Co. (Ky.), 10 S. W. 465; State v. Hudson, 13 Mo. App. 61; *In re* Baxter, 12 Up. Can. 139; Leeson v. Board, 19 Ont. 67; Barnes v. Wilson Co., 135 N. E. 27; 47 S. E. 737; State v. Northfield, 94 Minn. 81; 101 N. W. 1063; St. Amour v. St. Francis de Sales, 7 Q. B. (Que.) 479; Privet v. Sexton, 16 C. L. J. 192; Smart v. Hochelaga, 4 Leg. News

(Can.), 255; State v. Langan, 149 Ala. 647; 43 So. 187; I. A. West & Co. v. Board, 14 Idaho 353; 94 Pac. 445; State v. Williams, 143 Ala. 501; 39 So. 276; Commonwealth v. Kerns, 2 Pa. Super. Ct. 59; State v. Higgins, 84 Mo. App. 531.

<sup>13</sup> Braconier v. Packard, 136 Mass. 50; Territory v. McPherson, 6 Dak. 27; 50 N. W. 351; Schade v. Russell (Mo. App.), 110 S. W. 667; State v. Wooten (Mo. App.), 122 S. W. 1101; *Ex parte* Gibson, 2 N. S. W. L. R. 203; Harlan v. State, 136 Ala. 150; 33 So. 858; Baker v. Griffith (N. C.), 66 S. E. 565; State v. McCammon (Mo. App.), 86 S. W. 510; Commonwealth v. Blackburn (Ky.), 122 S. W. 818; Rex v. Kingston, J. J. 86; L. T. 589; 66 J. P. 547; Cox v. Common Council, 152 Mich. 630; 116 N. W. 456; State v. Turner, 210 Mo. 77; 107 S. W. 1064; St. Louis v. Weitzel, 130 Mo. 600; 31 S. W. 1045; State v. Packett (Mo.), 119 S. W. 25; Holland v. State (Fla.), 47 So. 963; State v. Cass County Ct. (Mo.), 119 S. W. 1010, 1014.

<sup>14</sup> State v. Jefferson County, 20 Fla. 425.

<sup>15</sup> Ramagnano v. Crook, 88 Ala. 450; 7 So. 247.

conferred upon its tax collector power to issue a license he cannot be compelled to issue one as a tender of fees though it might have given him the power.<sup>16</sup> If the applicant has a license unexpired, and he is entitled to only one, he must fail in his application.<sup>17</sup> If the license be refused in a capricious manner without any cause, but arbitrarily, a writ of mandamus will be issued to require its grant, though the licensing board is endowed with discretion to grant or refuse a license;<sup>18</sup> and that is true if it places its refusal on untenable grounds, or on grounds that the statute does not specify as reasons for a refusal.<sup>19</sup> But in Massachusetts the courts have gone so far as to hold that a mayor may refuse to sign a license granted by the city council if he in good faith believes the applicant has not complied with all the provisions of the law; and he cannot be compelled to sign it.<sup>20</sup> Mandamus lies to compel a licensing board to grant a hearing;<sup>21</sup> but not to meet and hear an application if its term

<sup>16</sup> Puckett v. State, 33 Fla. 385;  
14 So. 834.

A retail liquor dealer desiring a license is a person "beneficially interested" under a statute awarding the writ of mandamus to anyone beneficially interested in a controversy. Territory v. McPherson, 6 Dak. 27; 50 N. W. 351.

<sup>17</sup> State v. Bonnell, 119 Ind. 494; 21 N. E. 1101; State v. Miller, 129 Mo. App. 390; 108 S. W. 603.

<sup>18</sup> Zanone v. Mound City, 103 Ind. 552; New Orleans v. Smythe, 116 La. 685; 41 So. 33; *In re Sparrow*, 138 Pa. St. 116; 20 Atl. 692; C. B. George & Bro. v. Winchester, 118 Ky. 429; 80 S. W. 1158; 26 Ky. L. Rep. 170; State v. New Orleans (La.), 36 So. 999; Tremblay v. Pointe-au-Pic, 13 L. N. (Can.), 386; Edson v. Hatley, 27 L. C. J. 312; Godfrey v. St. Fe-

lix, 14 L. N. (Can.), 297; Montpelier v. Mills, 171 Ind. 175; 85 N. E. 6; Chicago v. O'Hara, 124 Ill. App. 290.

<sup>19</sup> *In re Prospect Brewing Co.*, 127 Pa. St. 537; 17 Atl. 1090.

<sup>20</sup> Deehan v. Johnson, 141 Mass. 23; 6 N. E. 240. But see Schade v. Russell (Mo. App.), 110 S. W. 667.

In such an instance the applicant is not justified in selling without a license because his application has been unjustly refused. Brock v. State, 65 Ga. 437.

<sup>21</sup> Regina v. Sylvester, 50 J. P. 246; Regina v. Thomas, 61 L. J. M. C. 141 [1892], 1 Q. B. 426; 66 L. T. 289; 40 W. R. 478; 56 J. P. 151; *Ex parte Foley*, 29 N. B. 113; Falconer v. Williams, 14 N. Z. L. R. 502; Hawkins v. Common Council (Mich.), 79 N. W. 570; *Ex parte Donaher*, 27 N. B. 554; 17 N. B. 44.



has expired.<sup>22</sup> In determining whether or not an applicant is entitled to a license under an ordinance the court will not follow the construction put upon it by the common council when it refused a license, but will put its own construction upon it.<sup>23</sup> Whether or not a licensing board has the authority to grant a license may be raised in an application for a writ of mandamus;<sup>24</sup> and so may the validity of a local option election.<sup>25</sup> The writ may be issued against a common council of a city in a proper case, but not where the council have a discretion in the matter.<sup>26</sup> Unless there be an ordinance for the granting of a license a city cannot be compelled to issue one, and the fixing of the amount to be paid for a license to keep a saloon is not such an ordinance.<sup>27</sup> If it appear that the petitioner for the writ is under indictment for a violation of the liquor laws his application will be delayed until he is brought to trial and acquitted upon the charges, or they be dismissed.<sup>28</sup> A city cannot repeal its license order after an application for a writ of mandamus, and thus escape being compelled to issue a license, where it has in force another ordinance providing that the repeal of an ordinance shall not affect pending suits.<sup>29</sup> If an officer only has discretion as to the sufficiency of the bond tendered he may be compelled to issue a license if a sufficient bond has been first tendered.<sup>30</sup> The writ of mandamus cannot be resorted to to test the reasonableness or

<sup>22</sup> *People v. Saratoga Co.*, 7 Abb. Prac. 34.

If there be a cause of doubt it is resolved against the petitioner for the writ. *State v. Miller*, 129 Mo. App. 390; 108 S. W. 603.

<sup>23</sup> *Harrison v. People*, 195 Ill. 466; 63 N. E. 191, reversing 97 Ill. App. 421.

<sup>24</sup> *Evans v. Police Jury*, 114 La. 771; 38 So. 555.

<sup>25</sup> *People v. Hamilton*, 27 N. Y. Misc. Rep. 308; 58 N. Y. Supp. 584.

<sup>26</sup> *State v. Northfield* (S. D.), 101 N. W. 1063; *Hippen v. Ford*, 129 Cal. 315; 61 Pac. 929; *Cox*

*v. Common Council*, 152 Mich. 630; 116 N. W. 456; *Hawkins v. Common Council* (Mich.), 79 N. W. 570; *Keefer v. Hillsdale*, 70 Mich. 413; 38 N. W. 277.

<sup>27</sup> *Crotty v. People*, 3 Bradw. 465; *Ex parte Persons*, 1 Hill 655.

<sup>28</sup> *State v. Weeks*, 93 Mo. 499; 6 S. W. 266.

<sup>29</sup> *State v. Baker*, 32 Mo. App. 98.

<sup>30</sup> *State v. Ruark*, 34 Mo. App. 325; *Bean v. County Court*, 33 Mo. App. 635; *Burke v. Collins*, 18 S. D. 190; 99 N. W. 1112. But see *Devine v. Board*, 121 Mich. 433; 80 N. W. 109.

unreasonableness of a license fee fixed by a city.<sup>31</sup> Where a return alleged that the application was denied on the sole "ground that there is a decided preponderance against the granting of the license in favor of the remonstrances that have been filed against it," and denied none of the averments of the petition for the writ, mandamus was awarded.<sup>32</sup> In New York, however, by reason of the express provisions of a statute, a court will review the action of commissioners of excise in refusing a license. The statute requires them to send up all the evidence upon which they acted;<sup>33</sup> but it will not award the applicant a jury trial.<sup>34</sup> But if there be evidence from which the commissioners were justified in refusing the license, their decision will not be disturbed.<sup>35</sup> Where the answer to the petition for the writ was that the relators claimed to be hotel proprietors (to which only a license could be granted), but they had no established hotel, only having a cheap lodging house which they used for immoral purposes, it was held that this answer must be taken as true, and the application for the writ denied.<sup>36</sup> Where an application was refused on the ground that a former license held by the applicant had been revoked according to an agreement with him to the effect that it should be if he was convicted during the year of having violated both an ordinance and a statute, it was held that a conviction of a violation of the statute and not of the ordinance was not sufficient cause for the refusal.<sup>37</sup> In Nebraska the writ does not lie to compel the license board to reduce the testimony to writing and place it on file, on behalf of a remonstrant, where it does not appear that the license was granted over his protest.<sup>38</sup>

<sup>31</sup> *State v. Hardy*, 7 Neb. 377.

*Contra*, *State v. Police Jury*, 120 La. 163; 45 So. 47.

<sup>32</sup> *In re Sparrow*, 20 Atl. 692. See also *In re Prospect Brewing Co.*, 127 Pa. 523; 17 Atl. 1090; 24 W. N. C. 177, where a long return to the petition was held insufficient, because it set out conclusions and not facts.

<sup>33</sup> *People v. Woodman*, 15 Daly 20; 1 N. Y. Supp. 335.

<sup>34</sup> *People v. Excise Commrs.*, 64 Hun 632; 18 N. Y. Sup. 621. See, however, *People v. Woodman*, *supra*.

<sup>35</sup> *People v. Andrews*, 22 Jones & S. 183.

<sup>36</sup> *United States v. Johnson*, 12 App. D. C. 545.

<sup>37</sup> *Cox v. Common Council*, 152 Mich. 630; 116 N. W. 456.

<sup>38</sup> *Moore v. State*, 58 Neb. 608; 79 N. W. 163.

The validity of a city annexation may be tested on application for a writ of mandamus.<sup>39</sup> Where the result of a local option election has been properly certified to, the regularity of such election cannot be tested in a mandamus proceedings.<sup>40</sup> Nor will the court compel a board or mayor of a city to issue a license for a place where the saloon would be a nuisance;<sup>41</sup> nor compel the issuance of a license in violation of a statute, or where a license was granted but not issued, then revoked in order to give the license to another, and mandamus was sought to compel the issuance to the latter.<sup>42</sup> Mandamus may issue if the fee fixed by a city council is so high as to absolutely prohibit the sale of liquor, as where it had been fixed at \$5,000, which the testimony all showed absolutely barred the maintenance of a saloon in the district. The court granted the writ on condition the applicant pay one-half that amount.<sup>43</sup> If a remedy be given by appeal that must be resorted to for relief, and not a resort to a writ of mandamus be made.<sup>44</sup> The burden is always upon the applicant for a writ of mandamus to show he had complied with the statutes or the ordinance, as the case may be, concerning the issuance of a license before he applied for the writ;<sup>45</sup> and the fact that he alleges in his petition for the writ that the board will not grant any license whatsoever will not be an excuse on his part for not

<sup>39</sup> *People v. Harrison*, 191 Ill. 257; 61 N. E. 99, affirming 92 Ill. App. 643.

<sup>40</sup> *State v. Martin*, 55 Fla. 538; 46 So. 424; *Kermon v. Blackburn*, 127 Ky. 39; 104 S. W. 968; 31 Ky. L. Rep. 1256; *State v. Davis*, 119 La. 247; 44 So. 4.

<sup>41</sup> *Swift v. People*, 63 Ill. App. 453.

<sup>42</sup> *Haslem v. Schnarr*, 30 Ont. 89. See *Leeson v. Board*, 19 Ont. 67.

<sup>43</sup> *State v. Police Jury*, 120 La. 163; 45 So. 47.

This certainly smacks of judicial legislation.

In the case of a mandamus pro-

ceeding to procure the issuance of a city license, the applicant must show the city council's consent to its issuance. *Devanney v. Hanson*, 60 W. Va. 3; 53 S. E. 603.

If remonstrators be present when a city council grants the license and do not object, they cannot secure a writ of mandamus to revoke it. *Middlekauff v. Adams*, 76 Neb. 265; 107 N. W. 232.

<sup>44</sup> *Malmo v. Fairfield Co.*, 72 Conn. 1; 43 Atl. 485.

<sup>45</sup> *Hippen v. Ford*, 129 Cal. 315; 61 Pac. 929; *Harlan v. State*, 136 Ala. 150; 33 So. 858; *Meyer v. Decatur*, 125 Ill. App. 556.

complying with the statute.<sup>46</sup> If the case be submitted upon the pleadings, and the answer denies the allegations contained in the petition, the writ must be denied.<sup>47</sup> The petitioner has the burden not only to show that he has complied with the law, but also that he is a fit person, such as the statute requires, to be entrusted with a license.<sup>48</sup> A licensing board, not having the duty or power to determine the validity of an election in a town on the question of license or no license, cannot be required by mandamus to issue a license in a town where its records show that a majority had voted against a license.<sup>49</sup>

### Sec. 401. Mandamus under the English Licensing Acts.

We take the following extract from Paterson's Licensing Acts,<sup>50</sup> which sets forth succinctly the English Practice: "As justices derive all their authority to grant licenses from the Alehouse Act, 1828, as amended by later statutes, they are bound to hear and determine all applications on the merits, and if they fail to do so, and thereby some applicant has not been duly heard, the only remedy usually is for the high court to grant a mandamus directing the justices to hear the application over again. The fact that the justices made a mistake in law sometimes is a ground for a mandamus, but usually is treated as a misfortune which cannot be remedied. 'It is obvious that the distinction between an erroneous decision and a failure to hear and determine according to law may be very fine, and the cases on the subject show that it is so. I take the governing principle to be that if the justices have applied themselves to the consideration of a section of an act of Parliament, and have, no matter how erroneously, determined the question which arises upon it, before them, their

<sup>46</sup> *Riley v. Rowe* (Ky.), 66 S. W. 999; 23 Ky. L. Rep. 2168; *Commonwealth v. McClure*, 204 Pa. 196; 53 Atl. 759.

<sup>47</sup> *Conlee v. Clay City* (Ky.), 102 S. W. 862; 31 Ky. L. Rep. 533.

<sup>48</sup> *Conlee v. Clay City*, *supra*. *Harrison v. Dickinson* (Tex. Civ. App.), 113 S. W. 776.

<sup>49</sup> *Underwood v. Fairfield County*, 67 Conn. 411; 35 Atl. 274.

Mandamus lies to compel the financial officer of a city to issue a receipt to an applicant where such a receipt is a necessary step to secure a license. *Holland v. State* (Fla.), 47 So. 963.

<sup>50</sup> 19 ed. p. 101.



decision cannot be reviewed by process of mandamus. That is so, whether there is an appeal from their decision or not. If there is an appeal mandamus will not lie; if there is not, their decision is final. But when it appears that they have taken into consideration matters which are absolutely outside the ambit of their jurisdiction, and absolutely apart from the matters which by law ought to be taken into consideration, then they have not heard and determined according to law.”<sup>51</sup> Instances of mandamus issuing where justices have not heard and determined according to law are to be found in *R. v. De Rutzen*,<sup>52</sup> where justices took into consideration matters outside the statutes under which they are purported to act; *R. v. Bowman*,<sup>53</sup> where they granted a license on the payment of a sum of money for a public purpose, and *R. v. Catham*, *supra*, where they purported to grant the transfer of a license from a person who had not theretofore kept the premises as an inn. The question is also discussed by a divisional court (Darling and Channell, JJ.), in *R. v. Nicholson*,<sup>54</sup> from whose decision there was an appeal which turned upon another point. A mandamus will lie to command the justices to hear an application for a new license, if they refuse to entertain it; but when once the justices hear and adjudicate, there is often no remedy, if they refuse to grant a license of any kind, though in some cases there may be a remedy by mandamus, owing to the neglect of some preliminary condition.<sup>55</sup> When justices refuse the renewal of a license and are required by statute to state the grounds of refusal, as under the Wine and Beer-house Act, 1869, sec. 8, and the Licensing Act, 1904, secs. 1 (1), 9 (3), and they do not state them, a mandamus will be granted commanding them to hear and determine the appli-

<sup>51</sup> Wills, J., in *R. v. Cotham* [1898], 1 Q. B. 802; 62 J. P. 435; 67 L. J. Q. 632; 78 L. T. 468; 46 W. R. 512; 14 T. L. R. 367.

<sup>52</sup> [1875] 1 Q. B. D. 55; 40 J. P. 150; 33 L. T. 726; 24 W. R. 343; 45 L. J. M. C. 57.

<sup>53</sup> [1898] 1 Q. B. 663; 62 J. P. 374; 67 L. J. Q. B. 463; 78 L.

T. 230; 46 W. R. 512; 14 T. L. R. 303.

<sup>54</sup> [1899] 2 Q. B. 455; 63 J. P. 564; 68 L. J. Q. B. 715; 15 T. L. R. 358.

<sup>55</sup> *R. v. Monmouth*, L. R. 5 Q. B. 251; 34 J. P. 566; 39 L. J. Q. B. 77; 21 L. T. 748; *R. v. Anglesey*, J. J. [1892], 1 Q. B. 852.

cation.<sup>56</sup> If the quarter sessions refuse to hear an appeal owing to some mistake in law, a mandamus may be applied for, but care must be taken to do so within two calendar months after the refusal by the sessions.<sup>57</sup> Should a mandamus be granted, and the justices seek to evade it, the prosecutor may traverse the return which they make in answer to the writ of mandamus.<sup>58</sup> Thus, in one case a mandamus issued to the justices and they heard the case over again and came to the same conclusion, and the applicant, by pleading, raised an issue for trial as to whether the justices really heard the case or merely pretended to hear it over again.<sup>59</sup> And this course of traversing the return is always open to the applicant.<sup>60</sup> When a mandamus is issued to justices it is not generally framed so as to compel them to grant the license, but merely to hear and determine<sup>61</sup> and the justices on hearing the case again have in most cases the same jurisdiction to entertain all objections to

<sup>56</sup> R. v. Thomas [1892], 1 Q. B. 426; 56 J. P. 151; 66 L. T. 289; 61 L. J. M. C. 141; 40 W. R. 478; *Ex parte* Smith, R. v. Surrey or Chertsey, J. J., 3 Q. B. D. 374; 42 J. P. 598; 47 L. J. M. C. 104; 26 W. R. 682; R. v. Sykes, 1 Q. B. D. 52; 40 J. P. 39; 45 L. J. M. C. 39; 78 L. T. 566; 24 W. R. 141; Tranter v. Lancashire, J. J., 51 J. P. 454; R. v. Lancashire, J. J., 54 J. P. 580; 64 L. T. 562.

<sup>57</sup> Crown Office Rules [1906], r. 68; R. v. Gloucestershire, J. J., 54 J. P. 519.

<sup>58</sup> R. v. Staffordshire, J. J.; R. v. Pirehill, 14 Q. B. D. 13; 49 J. P. 36; 54 L. J. M. C. 17; 51 L. T. (n. s.) 534; 33 W. R. 205

<sup>59</sup> R. v. Pirehill, J. J., 49 J. P. 453.

<sup>60</sup> R. v. King, or Manchester, J. J., 20 Q. B. D. 430; 52 J. P. 164; 57 L. J. M. C. 20; 58 L. T. 607; 36 W. R. 600.

<sup>61</sup> In R. v. Denbigh, J. J., *Ex parte* Fisher, 59 J. P., 708 n., the divisional court on making the rule absolute for a mandamus to hear and determine, expressed an opinion that the applicant ought to have his license without the necessity for further notices. In R. v. Rodds and Others, Birkenhead licensing J. J. [1905], 2 K. B. 40; 69 J. P. 210; 74 L. J. K. B. 599; 53 W. R. 559; 93 L. T. 319; 21 T. L. R. 391, where the licensing justices had attached certain conditions to the renewal which they had no power to attach, and had intimated that the renewal license would remain in the hands of their clerk, to be delivered over to the licensee on his giving an undertaking to carry out the conditions, the Court of Appeals directed a mandamus to go to compel them to deliver a renewal license without such conditions.

the license, and to hear parties on the merits, as if they had acted regularly on the first occasion.<sup>62</sup> The general rule is that the court will not by mandamus order a judicial tribunal to act in a particular way unless it is quite plain that what it has to do is purely ministerial and not judicial. Accordingly, in *R. v. Kingston, J.J., ex parte Davey*,<sup>63</sup> the court refused a mandamus to justices to hold a further adjournment of the general annual licensing meeting, and at such further adjournment grant a renewal of a license, but merely ordered the justices to hear and determine according to law. Where a person applies for the renewal of a license that is refused, and he appeal to quarter sessions, but gives an invalid notice of appeal, he is not entitled to a mandamus to the licensing justices to rehear the application.<sup>64</sup> At the general annual licensing meeting the hearing of an application for a renewal was appointed for 10 A. M. Notice of opposition had been duly served, but on the case being called neither the opponent nor his solicitor was present. Justices, after sending for both, and they not attending, waited five minutes, and then decided by a majority of five to four to renew the license. The opponent and his solicitor then arrived and asked to be heard, but the justices refused to reopen the matter. The court held that it was entirely a matter of discretion for the justices to treat the case as determined or to reopen it. The court held, also, that as no application for a mandamus had been made until three months after the refusal the order *nisi* should be dis-

<sup>62</sup> *R. v. Howard, Congleton, J. J.*, 23 Q. B. D. 502; 53 J. P. 454; 60 L. T. 960; 37 W. R. 617; *R. v. Farquhar*, L. R. 9 Q. B. 258; 39 J. P. 166.

<sup>63</sup> [1902] 66 J. P. 547; 86 L. T. 589; *R. v. Farquhar, supra*; *R. v. Howard, supra*; *R. v. Merthyr Tydvil, J. J.*, 14 Q. B. D. 584; 49 J. P. 213; 54 L. J. M. C. 78, as explained in *R. v. Kingston, J. J., Ex parte Davey, supra*. A rule in similar terms was granted by the court of appeal in *R. v. Wood-*

*house and others, Leeds, J. J., Ex parte Ryder* [1906], 2 K. B. 501; 70 J. P. 485; 75 L. J. K. B. 745; 95 L. T. 367; 22 T. L. R. 603; reversed on appeal, the House of Lords holding, on the facts, that no mandamus should issue. (*Leeds Corporation v. Ryder* [1907], A. C. 420; 71 J. P. 484; 76 L. J. K. B. 1032; 87 L. T. 261).

<sup>64</sup> *R. v. Gloucestershire, J. J.*; *R. v. Bristol, J. J.*, 5 R. 276; 57 J. P. 486; 68 L. T. 335; 41 W. R. 379.

charged.<sup>65</sup> The justices, like other judges, are not personally liable for making a mistake in exercising their jurisdiction.<sup>66</sup> If they act corruptly, or abuse their power, or misbehave themselves in the execution of their office, they are answerable criminally by way of information.<sup>67</sup> Thus, refusing a license because the applicant would not vote for a particular candidate for Parliament was a ground of criminal information.<sup>68</sup> And it would be the same whether they granted or refused the license on such ground.<sup>69</sup> If one set of justices were to grant a license (not at an adjourned session) which another set of justices had refused, this would be indictable.<sup>70</sup> The writ of mandamus will be issued to justices who decide or assume that they have an absolute discretion when they have only a limited discretion.<sup>71</sup> It is sometimes refused if there was a better remedy by appeal to quarter sessions.<sup>72</sup> Where a motion for an order *nisi* for mandamus has been once heard and refused, the court will not allow a second motion for the same thing to be made on amended affidavits.<sup>73</sup> When the justices make their return to the writ, this is treated like the statement of defense to an action, and the prosecutor may traverse the fact in the return that they have heard the case, and allege in effect that they merely pretended to hear it, and all the time intended to repeat their judgment.<sup>74</sup> Or the prosecutor may plead to the return that it is bad in point of law.<sup>75</sup> Should the

<sup>65</sup> R. v. Robson, 57 J. P. 133.

<sup>66</sup> R. v. Barton, 14 J. P. 738; Bassett v. Goodchild, 3 Wils. 121; R. v. Holland, 1 T. R. 692.

<sup>67</sup> R. v. Holland, 1 T. R. 692; R. v. Young, 1 Burr. 556; R. v. Harries, 13 East. 270; R. v. Williams; R. v. Davis, 3 Burr. 1317; Bassett v. Goodchild, 3 Wils. 121.

<sup>68</sup> R. v. Williams, 3 Burr. 1317.

<sup>69</sup> R. v. Holland, 1 T. R. 692.

<sup>70</sup> R. v. Sainsbury, 4 T. R. 451.

<sup>71</sup> R. v. King, 22 Q. B. D. 43; 52 J. P. 164; 57 L. J. M. C. 20; 58 L. T. 607; 36 W. R. 600; R. v. Scott [1889], 22 Q. B. D. 481; 53 J. P. 119; 58 L. J. M. C. 78; 37 W. R. 301; 60 L. T. 231.

<sup>72</sup> R. v. Smith; R. v. Southport, J. J., L. R. 8 Q. B. 146; 37 J. P. 214; 28 L. T. 129; 21 W. R. 382; 42 L. J. M. C. 46; R. v. Thomas [1892] 1 Q. B. 426; 56 J. P. 151; 66 L. T. 289; 61 L. J. M. C. 141; 40 W. R. 478.

<sup>73</sup> R. v. Bodmin [1892], 2 Q. B. 21; 56 J. P. 504; 61 L. J. M. C. 151; 66 L. T. 562; 40 W. R. 606; 8 T. L. R. 553.

<sup>74</sup> R. v. Staffordshire, J. J.; R. v. Pirehill, J. J., 49 J. P. 453, *ante*, p. 103.

<sup>75</sup> R. v. Howard; Congleton, J. J., 23 Q. B. D. 502; 53 J. P. 454; 60 L. T. 960; 37 W. R. 617.



divisional court refuse to grant a rule for a mandamus, or a judge give judgment in favor of the prosecutor on a mandamus, there is an appeal to the Court of Appeal and the House of Lords.<sup>76</sup> Where a person, who has successfully opposed the granting of a license subsequently successfully shows cause against the making absolute of a rule *nisi* for a mandamus to the licensing justices or to quarter sessions, the court has a discretion to grant him the costs of showing cause against the rule, although licensing justices are not a court of summary jurisdiction."<sup>77</sup>

### Sec. 402. Injunction to restrain issuance of license.

Since relief is afforded those opposing the issuance of a license, by appeal or writ of *certiorari*, a court of equity cannot be invoked to restrain the issuance of a license, those applying for it having another remedy.<sup>78</sup> This is true even though the license be void; for if it be void it will not protect those selling under it, nor authorize sales under its protection.<sup>79</sup> And the fact that the applicant falsely stated to a signer of his petition that some other person intended to sign it, or that the applicant promised the signer to withdraw the petition, is no ground for restraining the issuance of the license.<sup>80</sup> Under an application for an injunction, proceedings for the issuance of a license cannot be reviewed.<sup>81</sup> Nor will an

<sup>76</sup> R. v. King, 20 Q. B. D. 43; 52 J. P. 164, *supra*; R. v. Crewkerne, J. J. [1888], 21 Q. B. D. 85; 52 J. P. 372; 57 L. J. M. C. 127; 58 L. T. 450; 36 W. R. 629; R. v. Newcastle, J. J., 51 J. P. 244; R. v. Powell [1891], 2 Q. B. 693; 56 J. P. 52; 60 L. J. Q. B. 594; 65 L. T. 210; 39 W. R. 630.

<sup>77</sup> R. v. West Riding, J. J.; *Ex parte* Shaw [1898], 1 Q. B. 503; 62 J. P. 197; 67 L. J. Q. B. 279; 78 L. T. 47; 46 W. R. 334; 14 T. L. R. 89; M. and W. Dig. 74.

<sup>78</sup> Leigh v. Westervelt, 2 Duer 618; Northern Pac. R. Co. v. Whalen, 3 Wash. T. 452; 17 Pac.

890; Cooper v. Hunt, 103 Mo. App. 9; 77 S. W. 483; Regina v. Local Government Board, 10 Q. B. Div. 231; *In re* Godson, 16 Ont. App. 452; *In re* Thomas, 26 Ont. Rep. 448; Hawk's Nest v. Fayette Co., 55 W. Va. 689; 48 S. E. 205; Strickland v. Knight, 47 Fla. 327; 36 So. 363.

<sup>79</sup> Beckham v. Howard, 83 Ga. 89; 9 So. 784; Cooper v. Hunt, 103 Mo. App. 9; 77 S. W. 483.

<sup>80</sup> Cooper v. Hunt, 103 Mo. App. 9; 77 S. W. 483.

<sup>81</sup> Cooper v. Hunt, *supra*; Fooks v. Purnell, 101 Md. 321; 61 Atl. 582.

injunction be granted to restrain the enforcement of an act where the effect would be to prevent the complainants obtaining a license; for that is not an interference with either his personal or property rights.<sup>82</sup> Nor has the court the power to grant a stay of proceedings to revoke a license where an appeal has been taken from an order refusing a temporary injunction.<sup>83</sup> But an injunction will be issued against the retention of illegal voters' names on a census roll where an applicant must obtain the consent of a certain percentage of such voters thus enrolled, and that percentage must be determined by the census roll before he can obtain a license.<sup>84</sup> A license to sell liquor being neither property nor a contract and subject to revocation, an officer having authority to do so cannot be restrained from revoking it.<sup>85</sup> If the aggrieved party has a remedy by a review of void proceedings granting a license, he cannot secure an injunction to prevent its issuance.<sup>86</sup> The fact that the license if issued will be void, because for a prohibition locality under the local option law, is not a sufficient reason for granting an injunction; nor the fact that the sales under it would become a nuisance, if it be not shown that the applicant for the injunction would suffer special injury.<sup>87</sup>

### Sec. 403. Liability for refusing license.

Where the granting or refusal of a license is a judicial proceeding, the commissioners or judges refusing it are not liable in damages because of such refusal;<sup>88</sup> but where a license is wrongfully and arbitrarily refused the applicant may recover compensation for any damages he may have sustained.<sup>89</sup> In

<sup>82</sup> *Plumb v. Christie*, 103 Ga. 686; 30 S. E. 759; 42 L. R. A. 181; *Deal v. Singletory*, 105 Ga. 466; 30 S. E. 765.

<sup>83</sup> *McLellan v. Janesville*, 99 Wis. 544; 75 N. W. 308.

<sup>84</sup> *Semones v. Needles*, 137 Iowa 177; 114 N. W. 904.

<sup>85</sup> *Higgins v. Talty*, 157 Mo. 280; 57 S. W. 724.

<sup>86</sup> *Hayes v. Board*, 6 Cal. App. 520; 92 Pac. 492.

<sup>87</sup> *Strickland v. Knight*, 47 Fla. 327; 36 So. 363.

<sup>88</sup> *Halloran v. McCullough*, 68 Ind. 479; *Irion v. Lewis*, 56 Ala. 190; *Kress v. State*, 65 Ind. 106. See *Leeds v. Ryder* [1907], App. Cas. 420; 71 J. P. 484; 76 L. J. K. B. 1032; 97 L. T. 261, reversing [1906] 2 K. B. 501.

<sup>89</sup> *Montpelier v. Mills*, 171 Ind. 175; 85 N. E. 6.

this respect the granting or refusing of a license does not differ from any other official act. Thus in an Indiana case, speaking of a refusal of a school officer to issue a teacher's license, the court said: "It is well settled, and hence conceded, that a judicial officer is not civilly liable for an erroneous decision, however gross the error may have been, or however bad the motive was which inspired it. Such liability would be inconsistent with the proper exercise of judicial functions."<sup>90</sup> After deciding that a county school superintendent is not and cannot be endowed with judicial powers, the court continues: "But we regard the discretion conferred upon the county superintendent on the subject of licensing teachers as being so far analogous to a judicial discretion that he is protected from any claim for damages on account of any mere mistake in his discretion, or error in judgment, whether in granting or withholding a license to persons desirous of becoming qualified teachers in the common schools. In that respect, we think, a county superintendent of schools occupies a similar, and generally analogous, position to that of an inspector of an election, who cannot be made responsible for a mere error of judgment in rejecting a ballot offered by a qualified voter, but who may be required to answer in damages for *maliciously* rejecting such ballot."<sup>91</sup> The court then makes the following extract from *Cooley on Torts*:<sup>92</sup> "But it is an interesting and very important question whether, in the case of that class of officers who do not hold courts, but exercise what may be and often is called power *quasi* judicial like assessors of land for taxation, the immunity is not, after all, only partial and limited by good faith and honest purpose. There are certainly

<sup>90</sup> *Elmore v. Overton*, 104 Ind. 548; 54 Am. Rep. 343; citing *Larr v. State*, 45 Ind. 364; *Kress v. State*, 65 Ind. 106; *State v. Jackson*, 68 Ind. 58; *Halloran v. McCullough*, 68 Ind. 179; *Stewart v. Cooley*, 23 Minn. 347; 23 Am. Rep. 690; *Bristust v. Parsons*, 54 Ala. 393; 25 Am. Rep. 688; *Rains v. Sampson*, 50 Tex. 495; 32 Am. Rep. 609; *Jones v. Brown*, 54 Iowa

74; 37 Am. Rep. 185; *Cooley on Torts*, pp. 379, 403.

<sup>91</sup> Citing *Gates v. Neal*, 23 Pick. 308; *Jenkins v. Waldron*, 11 John. 114; *Goetheus v. Matthewson*, 61 N. Y. 420; *Weckerly v. Geyer*, 11 S. & R. 35; *Rail v. Potts*, 8 Humph. 225; *State v. McDonald*, 4 Harr. 555.

<sup>92</sup> Page 411.

many cases which hold, and more which assume, that the law will hold such officers liable if they act maliciously to the prejudice of individuals. Thus, it is said that the members of a school board may be held responsible for the dismissal of a school-teacher, if they act maliciously and without cause; and a county clerk, for willfully and maliciously approving an insufficient appeal bond; and a wharfmaster, for the removal of a ship from a certain dock, where it can be shown that the order was given maliciously and with the purpose to cause injury." And then the court adds: "In this connection it may be stated that where a public officer acts either from a wilful and wicked, or from corrupt motives, he is held to act maliciously. While, therefore, the non-liability of a county superintendent for a mere error in judgment in refusing to grant a license to an applicant who desires to become a teacher is fully conceded, we are of the opinion that he ought to be held liable for *maliciously* withholding a license from an applicant lawfully entitled to receive such a testimonial to his qualifications as a teacher in the common schools." <sup>93</sup>

#### Sec. 404. Appeal from order granting or refusing license.

Perhaps there is nothing distinctive concerning an appeal from an order granting or refusing a license. When the licensing board is a court the right of appeal is generally held to

<sup>93</sup> Elmore v. Overton, *supra*. "In coming to this conclusion," says the court, "we feel that we are supported by the very decisive weight of authority in analogous cases, and are in harmony with the general scope and spirit of Article III of the Constitution, which divides our State government into three separate and distinct departments, Gregory v. State, 94 Ind. 384; 48 Am. Rep. 162. Consequently, the objections urged against the sufficiency of the sev-

eral paragraphs of the complaint, now before us, cannot be sustained."

Where the clerk wrongfully refused to issue a license, as the council had directed, the applicant having tendered his fee, it was held that there was no cause of action, because the tender of the fee, without actual payment, was not enough to entitle him to the license. Claus v. Hardy, 31 Neb. 35; 47 N. W. 418.



be given by a statute authorizing appeals on matters coming before the court.<sup>94</sup> A provision of the Constitution forbidding the Legislature to create any courts other than those named in that instrument does not prohibit the enactment of a statute authorizing an appeal from a licensing board to a trial court or court of review.<sup>95</sup> In nearly all instances the case on appeal is tried *de novo*,<sup>96</sup> and from the decision of that court an appeal

<sup>94</sup> *State v. Vierling*, 33 Ind. 99; *Ex parte Levy*, 43 Ark. 42; *Blair v. Kilpatrick*, 40 Ind. 312; Appeal of Board, 64 Conn. 526; 30 Atl. 775; *Blair v. Rutenfranz*, 40 Ind. 318; *Board v. Lease*, 22 Ind. 261; *Ex parte Dunn*, 14 Ind. 122; *Blair v. Vierling*, 33 Ind. 269; *State v. Board*, 45 Ind. 501; *Brown v. Porter*, 37 Ind. 206; *Groscap v. Rainier*, 111 Ind. 361; 12 N. E. 694; *Muller v. Mayo*, 38 Ind. 227; *Ex parte Lester*, 77 Va. 663; *Wilson v. Mathis*, 145 Ind. 493; 44 N. E. 486; *Lester v. Price*, 83 Va. 648; 3 S. E. 529; *Lydick v. Korner*, 13 Neb. 10; 12 N. W. 838; *Chandler v. Ruebelt*, 83 Ind. 139; *Miller v. DeArmond*, 93 Ind. 74; *State v. Alliance*, 65 Neb. 524; 91 N. W. 387; *State v. Board (Neb.)*, 108 N. W. 122.

That no appeal lies, see *Bean v. Barton*, 33 Mo. App. 635; *Twinning v. St. Louis Co.*, 47 Mo. App. 647. That no appeal lies to the Supreme Court, see *Board v. Lease*, 22 Ind. 261; *Blair v. Vierling*, 33 Ind. 269; *Brown v. Porter*, 37 Ind. 206; *Mueller v. Mayo*, 38 Ind. 227; *Turner v. Rehm*, 43 Ind. 208; *State v. Gorman*, 171 Ind. 58; 85 N. E. 763; *Appeal of Borman*, 81 Conn. 458; 71 Atl. 502; *Ex parte Lester*, 77 Va. 663.

Appeal and mandamus is the proper course for relief. *State v.*

*Durein*, 70 Kan. 13; 78 Pac. 152, affirming 80 Pac. 987; *State v. Sheasley*, 71 Kan. 857; 78 Pac. 997.

*Contra*, *Bean v. Barton Co.*, 33 Mo. App. 635; *Myers v. Circuit Court (W. Va.)*, 63 S. E. 201; *Creekmore v. Commonwealth*, 11 Ky. L. Rep. 813; *Board v. Churchill*, 21 Fla. 578.

<sup>95</sup> *Thompson v. Koch*, 98 Ky. 400; 33 S. W. 96.

<sup>96</sup> *State v. Vierling*, 33 Ind. 99; *In re Moore (Iowa)*, 118 N. W. 879 (tried in equity); *Blair v. Kilpatrick*, 40 Ind. 312; *Blair v. Rutenfranz*, 40 Ind. 318; *Sansack v. Ader*, 168 Ind. 559; 80 N. E. 151; 78 N. E. 675; 79 N. E. 457; *Keiser v. Lewis*, 57 Ind. 431; *Haddox v. Clarke County*, 79 Va. 677; *Hardesty v. Hine*, 135 Ind. 72; 34 N. E. 701; *Leighton v. Maury*, 76 Va. 865; *State v. Bonsfield*, 24 Neb. 517; 39 N. W. 427; *Lester v. Price*, 83 Va. 648; 3 S. E. 529; *Head v. Doehlman*, 148 Ind. 145; 46 N. E. 585; *Ferguson v. Brown*, 75 Miss. 214; 21 So. 603. No appeal lies from a board exercising legislative functions in granting a license. *State v. Franklin Co.*, 49 Wash. 268; 94 Pac. 1086; or where it is said the license may be issued "in the discretion" of the court or judge, *Martin v. Rooks Co.*, 32 Kan. 146;

may lie to the Supreme Court.<sup>96\*</sup> Unless a statute especially specifies how the appeal must be taken, then the general law must be complied with, especially with respect to the giving of a bond.<sup>97</sup> Change of venue may be taken as in ordinary civil cases.<sup>98</sup> The trial, when *de novo*, must be upon the original papers, and new papers or remonstrances cannot be filed,<sup>99</sup> though they may be amended.<sup>1</sup> If a petition for a license be dismissed the applicant may appeal;<sup>2</sup> so he may do so even if a remonstrance shows that the number of remonstrants absolutely prevents the granting of a license, for in that instance the trial is upon the question whether a sufficient number of legal remonstrants who are entitled to remonstrate have signed the remonstrance as an issue of fact.<sup>3</sup> Local statutes fix the time when an appeal must be taken, and these be followed.<sup>4</sup> In a number of the States the court to which the appeal is taken is merely a court of review, though a *nisi prius* court, and from its decision an appeal may lie to the highest court of appeals for the State. Where such is the case the court will examine the record to see if there be error in it; and if it be not shown there was error or an abuse of discretion the finding of the licensing court or board will be either affirmed or the appeal

4 Pac. 158; *Hein v. Smith*, 13 W. Va. 358. Sometimes the trial is heard upon the evidence given below. *Hensley v. Metcalfe Co.*, 115 Ky. 810; 74 S. W. 1054; 25 Ky. L. Rep. 204. See *In re Henry*, 124 Iowa 358; 100 N. W. 43; *In re Foylton* (Neb.), 118 N. W. 119.

<sup>96\*</sup> *In re Adamek*, 82 Neb. 448; 118 N. W. 109.

<sup>97</sup> *Blair v. Kilpatrick*, 40 Ind. 312; *Blair v. Rutenfranz*, 40 Ind. 318; *Ex parte Lester*, 77 Va. 663.

<sup>98</sup> *State v. Vierling*, 33 Ind. 99; *Blair v. Kilpatrick*, 40 Ind. 312; *Blair v. Rutenfranz*, 40 Ind. 318.

<sup>99</sup> *Miller v. Wade*, 58 Ind. 91; *Sansack v. Ader*, 168 Ind. 559; 80 N. E. 151; 79 N. E. 457; 78 N. E. 675; *Head v. Doehlman*, 148

Ind. 145; 46 N. E. 585; *Groscap v. Rainier*, 111 Ind. 361; 12 N. E. 694; *In re Arszman*, 40 Ind. App. 218; 81 N. E. 680; *In re Persinger* (Neb.), 90 N. W. 242.

<sup>1</sup> *Stockwell v. Brent*, 97 Ind. 474; *Hardesty v. Hine*, 135 Ind. 72; 34 N. E. 701.

<sup>2</sup> *Lanham v. Woods*, 167 Ind. 398; 79 N. E. 376; *Wilson v. Mathis*, 145 Ind. 493; 44 N. E. 486.

<sup>3</sup> *Lanham v. Woods*, 167 Ind. 398; 79 N. E. 376.

But a city cannot appeal from an order of its own excise board. *In re Klamm* (Neb.), 117 N. W. 991.

<sup>4</sup> *Lydieck v. Korner*, 13 Neb. 10; 12 N. W. 838.

dismissed.<sup>5</sup> Such is the case in Pennsylvania where the appeal is regarded as a substitute for a *certiorari*;<sup>6</sup> and as the reasons assigned, in case of a refusal, form no part of the record, they will not be considered.<sup>7</sup> Of course, if the applicant does not possess the requisite qualifications the refusal of the licensing board because he did not possess the necessary qualifications will not be disturbed.<sup>8</sup> In Pennsylvania the Supreme Court will not review the facts of the case;<sup>9</sup> and if the order recites that the application was refused "after hearing," it will not hold that the refusal was arbitrarily done.<sup>10</sup> The fact that more petitioners favor the granting of the license than those remonstrating is no reason why the refusal of the application should be reversed;<sup>11</sup> nor the fact that there are no remonstrants nor any evidence given against the applicant,

<sup>5</sup> *French v. Noel*, 22 Gratt. 454; *Toole's Appeal*, 90 Pa. St. 376.

<sup>6</sup> *Appeal of Brown*, 2 Pa. Super. Ct. 63.

*In re Donovan*, 9 Pa. Super. Ct. 647; 44 W. N. C. 34.

<sup>7</sup> *In re Berg*, 139 Pa. St. 354; 21 Atl. 77; *Leister's Appeal* (Pa.), 11 Atl. 387; *In re Frae*, 33 Pa. Super. Ct. 348; *In re Netter*, 11 Pa. Super. Ct. 566; *In re Kilgore*, 13 Pa. Super. Ct. 543; *In re Brown*, 18 Pa. Super. Ct. 409; *In re Weaver*, 20 Pa. Super. Ct. 95; *In re Donaghue*, 5 Pa. Super. Ct. 1; 40 W. N. C. 440.

<sup>8</sup> *In re Goldman*, 138 Pa. St. 321; 22 Atl. 23; *Hoglan v. Commonwealth*, 3 Bush 147; *In re Chambers*, 18 Pa. Super. Ct. 412; *State v. Alliance*, 65 Neb. 524; 91 N. W. 387; *Ferguson v. Brown*, 75 Miss. 214; 21 So. 603; *Malmo v. Fairfield Co.*, 72 Conn. 1; 43 Atl. 485.

<sup>9</sup> *Leister's Appeal*, 11 Atl. 387; 20 W. N. C. 224; *In re Branch*, 164 Pa. 427; 30 Atl. 296; 35 W. N. C. 310; *In re Frae*, 33 Pa.

Super. Ct. 348; *In re Chambers*, 18 Pa. Super. Ct. 412; *Commonwealth v. Kerns*, 2 Pa. Super. Ct. 59; *In re Snyder*, 4 Pa. Super. Ct. 648; *In re Cohen*, 5 Pa. Super. Ct. 224.

<sup>10</sup> *In re Gross*, 161 Pa. 344; 29 Atl. 25; 34 W. N. C. 404; *In re Quinton*, 169 Pa. 115; 32 Atl. 101; *Appeal of Doberneck*, 1 Pa. Super. Ct. 637; *In re Black Diamond Distilling Co.*, 33 Pa. Super. Co. 649; *In re Reynoldsville Distilling Co.*, 34 Pa. Super. Ct. 269; *Appeal of Hollender*, 11 Pa. Super. Ct. 23; *In re Quinn*, 11 Pa. Super. Ct. 554; *In re Sweeney*, 11 Pa. Super. Ct. 569; *In re Chuya*, 20 Pa. Super. Ct. 410; *In re Di Nubile*, 11 Pa. Super. Ct. 571; *In re Meenan*, 11 Pa. Super. Ct. 575; *In re Foreman*, 20 Pa. Super. Ct. 98; *In re Kilgore*, 13 Pa. Super. Ct. 543; *In re McCrory*, 31 Pa. Super. Ct. 192; *In re De Haven*, 31 Pa. Super. Ct. 335.

<sup>11</sup> *In re Bowman*, 167 Pa. 644; 31 Atl. 932.

for the board may have acted upon its own knowledge of his fitness.<sup>12</sup> If the license be refused because unnecessary to the neighborhood, the presumption will be indulged in that the court acted from its own knowledge and had due regard to the number and character of the petitioners.<sup>13</sup> Where the license could be issued by a city board of trustees only upon certain facts which must be shown before it was issued, acting upon the rule that where the jurisdiction of an inferior court depends on the existence of certain facts, its adjudication of their existence will be conclusive, unless there be a provision for its review, the Appellate Court of California refused to review the proceedings of such board.<sup>14</sup> If the record recites that a hearing on the application was heard, that is conclusive upon the parties and they cannot show there was no hearing in fact.<sup>15</sup> Where in Connecticut the licensing board have no discretion in granting a license if certain facts be proven, its action in refusing a license will be reversed if such facts be shown; but if the board had to choose an applicant out of several, the number of licenses in the district being limited, the Appellate Court will not make the choice.<sup>16</sup> A statute which gives a licensee a right of appeal when his license shall

<sup>12</sup> *In re Senderoft*, 168 Pa. 45; 31 Atl. 948; *Appeal of Doberneck*, 1 Pa. Super. Ct. 637; *Appeal of Gross*, 1 Pa. Super. Ct. 640; *In re Curtus*, 173 Pa. 27; 34 Atl. 214; *Leigton v. Maury*, 76 Va. 865.

<sup>13</sup> *In re Dunlap*, 171 Pa. 454; 32 Atl. 1128; 37 W. N. C. 245.

<sup>14</sup> *Hayes v. Board*, 6 Cal. App. 520; 92 Pac. 492.

In Kentucky the statute, at one time, made the decision of the Circuit Court final, and no appeal lay from its decision. *Hainer v. Burton*, 75 Kan. 281; 89 Pac. 697. So in West Virginia, *Myers v. Circuit Ct. (W. Va.)*, 63 S. E. 201.

<sup>15</sup> *In re Welsh*, 11 Pa. Super.

Ct. 558; *In re Quinn*, 11 Pa. Super. Ct. 554.

In Pennsylvania an appeal does not bring up the evidence nor the rulings of the court on the questions of evidence. The investigation of the appellate court is confined to the record. *In re Weaver*, 20 Pa. Super. Ct. 95.

In Nebraska if all the proceedings have not been sent up to the appellate court, either in a bill of exceptions or the transcript, the court may order that to be done. *Persinger v. Miller (Neb.)*, 90 N. W. 242; *State v. Board (Neb.)*, 108 N. W. 122.

<sup>16</sup> *Appeal of Malmo*, 73 Conn. 232; 47 Atl. 163.



be revoked does not apply to an instance where it is part of the penalty inflicted for a violation of the liquor law that the violator of the law shall be fined and have his license revoked.<sup>17</sup> When the evidence goes up to the appellate tribunal, the court must act upon its own view of it, and, as a rule, not be influenced by the action of the lower court.<sup>18</sup> A refusal to grant a license because there were enough saloons in the neighborhood is not error of which the applicant can complain.<sup>19</sup> If

<sup>17</sup> Appeal of Londry, 79 Conn. 1; 63 Atl. 293; Hedges v. Metcalfe Co., 116 Ky. 524; 76 S. W. 381; 25 Ky. L. Rep. 772.

That the applicant has the burden to show a right to a license, see *In re* Foreman, 20 Pa. Super. Ct. 98.

The presumption is that there were sufficient reasons for refusing a license when one is refused. *In re* Miller, 8 Pa. Super. Ct. 223; *In re* Cohen, 5 Pa. Super. Ct. 224; Ferguson v. Brown, 75 Miss. 214; 21 So. 603; *In re* Donovan, 44 W. N. C. 34; 9 Pa. Super. Ct. 647.

If there be evidence tending to sustain the finding of the licensing board, its action in granting a license will not be reviewed by the Supreme Court. *In re* MacRae, 75 Neb. 757; 106 N. W. 1020; *In re* Moore (Iowa), 118 N. W. 879.

Where the requisite number of remonstrants have filed a remonstrance the qualifications of the applicant is no longer an issue, and evidence concerning them cannot be received. Shaffer v. Stern, 160 Ind. 375; 66 N. E. 1004.

<sup>18</sup> Bennett v. Otto, 68 Neb. 652; 94 N. W. 807.

<sup>19</sup> *In re* Jorgensen, 75 Neb. 401; 106 N. W. 462.

In Kentucky the trial is upon

the evidence contained in the bill of exceptions; and if the evidence therein shows the court had no discretion, the Circuit Court should remand the case with directions to grant the license. Meredith v. Commonwealth, 116 Ky. 524; 76 S. W. 8; 25 Ky. L. Rep. 455; Hodges v. Metcalfe Co. (Ky.), 76 S. W. 381; 25 Ky. L. Rep. 772, 1706; 78 S. W. 460; Holmes v. Robertson Co. (Ky.), 89 S. W. 106; 28 Ky. L. Rep. 283.

In Nebraska it is sufficient to file a certified transcript of the proceedings of the license board. State v. McGuire, 74 Neb. 769; 105 N. W. 471. The judgment of the district court in that State is not reviewable by the Supreme Court. Halverstadt v. Berger, 72 Neb. 462; 100 N. W. 934.

In Pennsylvania the judgment of the appellate court will not be reversed because the names of the remonstrants are duplicated, the presumption being that the court had due regard for the number and character of the petitioners for the license. *In re* Shearer, 26 Pa. Super. Ct. 34.

If the record shows the court refused the license for a reason the law does not recognize as valid, its action will be reversed. *In re* Knoblauch, 28 Pa. Super. Ct. 323.

the discretion of the licensing board has been unreasonably or arbitrarily used in refusing a license, the action will be reviewed.<sup>20</sup> If a statute requires the appellant to give a bond when he takes an appeal, then a copy of his bond must appear in the record, under the Kentucky practice.<sup>21</sup>

### Sec. 405. Writ of prohibition.

A writ of prohibition may be issued where a licensing board undertakes to grant a license for a territory over which it has no jurisdiction. Such was held to be the case in England where the justices of Warwickshire purported to act as licensing justices for an outlying district of the county of Worcester which had been transferred to the county of Warwick for police purposes only, and to hear and determine applications for licensing such district, over which they had no jurisdiction.<sup>22</sup> And in Missouri it was held that the holder of a license was entitled to a writ of prohibition on refusal of the court to give him a change of venue in *certiorari* to review the proceedings in the county court granting him a license; because he had no adequate remedy by appeal from a judgment refusing him a license.<sup>23</sup> But where the act of issuing a license is non-judicial and of an administrative regulation, the writ will not be issued.<sup>24</sup> If the license will be void if issued, a writ of prohibition will not be granted.<sup>25</sup>

<sup>20</sup> Louisville v. Gagen (Ky.), 116 S. W. 745; 118 S. W. 947; Berger v. DeLoach, 121 S. W. 591.

In this last case the determination of the city council which of two applicants should receive the license, when only one could be issued, was held not reviewable.

<sup>21</sup> Hamilton v. McKinney (Ky.), 65 S. W. 2; 23 Ky. L. Rep. 1341.

In Connecticut the questions on appeal are whether the county commissioners acted legally, and whether they exceeded or abused their powers. Appeal of Bormann, 81 Conn. 458; 71 Atl. 502;

Appeal of Stavolo, 81 Conn. 454; 71 Atl. 549.

<sup>22</sup> Regina v. Worcester, J. J. [1899], 1 Q. B. 59; 62 J. P. 836; 68 L. J. Q. B. 109; 47 W. R. 134; 79 L. T. 393; 15 T. L. R. 45; 19 Cox C. C. 198. See also Myers v. Circuit Court (W. Va.), 63 S. E. 201.

<sup>23</sup> State v. Denton, 128 Mo. App. 304; 107 S. W. 446.

<sup>24</sup> Virginia Pocahontas Coal Co. v. McDowell Co. Ct., 58 W. Va. 86; 51 S. E. 1.

<sup>25</sup> Beckham v. Howard, 83 Ga. 89; 9 S. E. 784.

**Sec. 406. From what orders an appeal may be taken.**

Appeals lie only from judgments granting or refusing licenses, or from a "final judgment." Thus where a remonstrance was filed and to it a paper was filed called a "demurrer," and this demurrer was sustained, and the record then recited that "thereupon the remonstrators failed and refused to plead further and the court rendered judgment on the demurrer; and it is therefore considered and adjudged by the court that the remonstrants take nothing by this action and that defendant recover from the remonstrants his costs and charges in this case laid out and expended," followed by the usual prayer for an appeal to the Supreme Court, it was held that there was no final judgment from which to appeal.<sup>26</sup> So a remonstrant cannot appeal from an order merely overruling his protest;<sup>27</sup> and in Alabama it has been held that an order merely refusing the license was not a "final decree of the probate court" nor a "final judgment order or decree of the judge of probate."<sup>28</sup> But where there were two judges of the court and they disagreed, the order reciting, "The court disagrees to granting this license, and therefore there is no license granted," it was held that this was a final judgment from which an appeal lay.<sup>29</sup>

**Sec. 407. Persons entitled to appeal—Parties.**

Of course, an applicant denied a license has a right to appeal where appeals lie generally;<sup>30</sup> and if the license be grant-

<sup>26</sup> Barnes v. Wagener, 169 Ind. 511; 82 N. E. 1037. It should be noted that although this case had been appealed from the board of county commissioners to the Circuit Court, the latter court tried the case *de novo*, and granted or refused the license as the facts proven showed should be done. Anderson v. Weber, 39 Ind. App. 443; 79 N. E. 1055; State v. Schneider, 47 Mo. App. 669.

<sup>27</sup> Moores v. State, 58 Neb. 608; 79 N. W. 163.

<sup>28</sup> Ramagnano v. Crook, 88 Ala. 450; 7 So. 247.

<sup>29</sup> *In re* Foreman, 20 Super. Ct. Rep. 98.

<sup>30</sup> *Ex parte* Dunn, 14 Ind. 122; Lester v. Price, 83 Va. 648; 3 S. E. 529 (by statute); Wilson v. Mathis, 145 Ind. 493; 44 N. E. 486; Lanham v. Woods, 167 Ind. 398; 79 N. E. 376; Ludwig v. State, 18 Ind. App. 518; 48 N. E. 390; Regina v. Deane, 2 Q. B. 96.

ed, the remonstrants may appeal.<sup>31</sup> And where a nearby land-owner may object to the granting of a license, he may appeal.<sup>32</sup> But a person who has no interest in the granting or refusal of the license, who is not a party to the record, cannot appeal.<sup>33</sup> Thus the attorney of the remonstrants cannot appeal in his own name nor without their consent.<sup>34</sup> But where a statute gave an appeal to "any taxpayer \* \* \* who shall be aggrieved," it was held not necessary for an appellant taxpayer to show an aggrievance special to himself.<sup>35</sup> In New York the county treasurer to whom the license tax must be paid is a "party aggrieved" within the meaning of a statute giving "aggrieved" persons a right of appeal.<sup>36</sup> A person who intervenes in the quarter sessions of Pennsylvania after the license is granted, for the purpose of appealing, cannot maintain an appeal.<sup>37</sup> And where an appellant to the Appellate Court appeared in the Circuit Court from which an appeal had been taken and filed an answer setting up a remonstrance by a majority of the legal voters, to which a demurrer was sustained, he not having the right to file a new remonstrance at that stage of the case, it was held that he had no standing to appeal from the judgment of the Circuit Court.<sup>38</sup> In England a trade

<sup>31</sup> Collins v. Barrier, 64 Miss. 21; 8 So. 164; Ludwig v. State, 18 Ind. App. 518; 48 N. E. 390; Lester v. Price, 83 Va. 648; 3 S. E. 29 (by statute); State v. Atlantic City, 48 N. J. L. 118; 3 Atl. 65; Lanham v. Woods, 167 Ind. 398; 79 N. E. 376; Whissen v. Furth, 73 Ark. 366; 84 S. W. 500; 68 L. R. A. 161; *In re* Smith, 126 Iowa 128; 101 N. W. 875. *Contra*, Drapert v. State, 14 Ind. 123; Boulter v. Kent [1897], App. Cas. 569; 61 J. P. 532; 66 L. J. Q. B. 787; 77 L. T. 288; 46 W. R. 114; 13 T. L. R. 538.

<sup>32</sup> Dexter v. Cumberland, 17 R. I. 222; 21 Atl. 347; Appeal of Gibboney, 6 Pa. Super. Ct. 26.

<sup>33</sup> State v. Lamberton, 37 Minn. 362; 34 N. W. 336.

<sup>34</sup> Clark v. Pratt (Miss.), 11 So. 631; Regina v. Keepers of the Peace, 25 Q. B. Div. 257; 39 L. J. M. C. 146; 63 L. T. 243; 39 W. R. 11; Regina v. London, J. J., 55 J. P. 56; Miller v. Givens, 35 Ind. App. 40; 78 N. E. 1067.

<sup>35</sup> Appeal of Board, 64 Conn. 526; 30 Atl. 775; State v. Alliance, 65 Neb. 524; 91 N. W. 387.

<sup>36</sup> People v. Sackett, 15 N. Y. App. Div. 290; 44 N. Y. Supp. 593, reversing 17 N. Y. Misc. Rep. 405; 40 N. Y. Supp. 413.

<sup>37</sup> Appeal of Gibboney, 6 Pa. Super. Ct. 26.

<sup>38</sup> Miller v. Givens, 39 Ind. App. 40; 79 N. E. 1067.



rival has sufficient interest to entitle him to appeal under a statute giving a "person aggrieved" an appeal,<sup>39</sup> but the owner of the premises licensed, who is not the licensee, is the "person aggrieved," and cannot appeal from a decree forfeiting the license, although it may mean much to him.<sup>40</sup> In New South Wales any person residing within the prohibited district is a person "aggrieved," and may appeal from a grant of a license.<sup>41</sup> But where, in Arkansas, the record recited "Coner K *et al*," when K filed an answer, and the unknown parties styled "*et al*," are not expressly made parties to the proceedings, only K being treated as a party, another than K cannot appeal.<sup>42</sup> In Iowa "any citizen of the county" may file with the clerk of the court a general denial to the application for a license; and on an adverse decision may appeal, and although it is made the duty of the county attorney to appear to such application, yet the person so filing a general denial has also the right to appear and prosecute an appeal.<sup>43</sup> The licensing board is not a proper party to the appeal.<sup>44</sup> An appeal will not be dismissed on the ground that persons not entitled to appeal have agreed to pay a part of the expenses of an appeal taken by others entitled to take appeal.<sup>45</sup> In England where the question is one of renewal of a license the landlord may join with his licensee tenant who has applied for a renewal of his license and been refused;<sup>46</sup> and the licensee

<sup>39</sup> *Rex v. Groom*, 70 L. J. K. B. 636; [1901] 2 K. B. 157; 84 L. T. 534; 49 W. R. 484; 65 J. P. 452.

So in New South Wales. *Ex parte Cann*, 1 S. R. N. S. W. 262; 18 W. N. N. S. W. 186. *Contra*, *Regina v. Middlesex*, 3 B. & Ad. 938; *Regina v. Surry*, 52 J. P. 423.

<sup>40</sup> *Regina v. Andover*, 55 L. J. M. C. 143; 16 Q. B. Div. 711; 55 L. T. 23; 34 W. R. 456; 50 J. P. 549.

<sup>41</sup> *In re Gleason*, 7 W. N. C. (N. S. W.) 140. *Contra*, *Ex parte Rose*, 2 S. R. (N. S. W.) 268; 19

W. N. (N. S. W.) 202; *Ex parte Aitkin* [1901], 1 N. S. W. 214.

See *Rhode Island, etc. Co. v. Evaston*, 21 R. I. 577; 44 Atl. 223.

<sup>42</sup> *Halford v. Kirkland* (Ark.), 71 S. W. 264.

<sup>43</sup> *In re Intoxicating Liquors*, 129 Iowa, 434; 105 N. W. 702; *In re Smith*, 126 Iowa, 128; 101 N. W. 875.

<sup>44</sup> *Murphy v. Board*, 73 Ind. 483. *Contra*, *Guinn v. Cumberland Co.*, (Ky.), 90 S. W. 274; 28 Ky. L. Rep. 759.

<sup>45</sup> *Ferguson v. Brown*, 75 Miss. 214; 21 So. 603.

<sup>46</sup> *Feist v. Tower, J. J.*, 68 J. P. 264.

may authorize a mortgagee of the premises to appeal, though he himself declines to do so.<sup>47</sup> And where the owner of the premises is expressly authorized by statute to apply for a transfer from one tenant to another of the licensed premises, he may appeal on refusal of the court to make the transfer.<sup>48</sup> Remonstrants cannot appeal after the license against which they remonstrated has expired.<sup>49</sup> A statute which gives an applicant a right of appeal does not thereby give the remonstrators the right of appeal.<sup>50</sup>

### Sec. 408. Rights of licensee pending appeal.

Where a case is tried *de novo* on appeal in the Appellate Court, the effect of the appeal is to vacate or suspend the order or judgment granting a license, and any license issued thereon before the appeal is taken is vacated, and if issued thereafter it is void.<sup>51</sup> In Nebraska it is held that the licensing body must recall the license when an appeal is taken; and if it do not mandamus lies to compel it to do so;<sup>52</sup> and the right

<sup>47</sup> Garrett v. Middlesex, J. J., 12 Q. B. Div. 620; 48 J. P. 358; 53 L. J. M. C. 81; 32 W. R. 646.

<sup>48</sup> Regina v. West Riding, J. J., 11 Q. B. Div. 917; 48 J. P. 149; 92 L. J. M. C. 99; Stevens v. Shernbrook, J. J., 23 Q. B. Div. 142; 53 J. P. 423; 58 L. J. M. C. 167.

In England the licensing justices are the only proper respondents, and no other person can oppose the license without leave of court. Tynemouth v. Attorney General [1899] App. Cas. 293; 68 L. J. Q. B. 752; 63 J. P. 404; 15 T. L. R. 340; Nix v. Nottingham, J. J. [1899], 2 Q. B. 300, *n*.

If the remonstrants be successful, they cannot be taxed with costs. Miller v. DeArmond, 93 Ind. 74.

A city cannot appeal from the action of its own excise board.

*In re Klamm* (Neb.), 117 N. W. 991.

<sup>49</sup> Ververka v. Fullmers (Neb.), 118 N. W. 1097.

<sup>50</sup> Ailstock v. Page, 77 Va. 386.

<sup>51</sup> Molihan v. State, 30 Ind. 266; Young v. State, 34 Ind. 46; Blair v. Kilpatrick, 40 Ind. 312; Mulikin v. Davis, 53 Ind. 206; State v. Sopher, 157 Ind. 360; 61 N. S. 785; Head v. Doehleman, 148 Ind. 145; 46 N. E. 585; People v. Judson, 59 N. Y. Misc. Rep. 538; 112 N. Y. Supp. 408.

<sup>52</sup> State v. Bonsfield, 24 Neb. 517; 39 N. W. 427; Byrum v. Peterson, 34 Neb. 237; 51 N. W. 829; Swan v. Wilderson, 10 Okla. 547; 62 Pac. 422; Watkins v. Grieser, 11 Okla. 302; 66 Pac. 332; Paden v. Carson, 15 Okla. 399; 82 Pac. 830.

*In re Foltyn* (Neb.), 118 N. W.

to the writ is not necessarily lost by delay,<sup>53</sup> though it may be.<sup>54</sup> Where the trial is *de novo* the appellate court in which such trial is had awards the license, and the applicant's right depends upon the license issued by that court, and not upon the license issued by the court or board from which the appeal was taken.<sup>55</sup> Occasionally a statute provides that the license issued by the licensing court or board may continue in force until the question is determined in the appellate court which tries the case *de novo*; but usually there is a limit to the time it may continue, as for instance, until the close of the first term of the court to which the appeal is taken.<sup>56</sup> Mere notice of an intention to appeal does not prevent the issuance of the license,<sup>57</sup> though it should be withheld during the time an appeal can be taken, if notice of appeal has been given.<sup>58</sup> If a license has been granted and it remains in force pending the appeal, a reversal of the order granting the license has the effect to revoke the license.<sup>59</sup>

#### Sec. 409. Sale pending appeal to Supreme Court.

In Indiana it has been held in a well-considered case, that an appeal to the Supreme Court from a judgment of the Circuit Court granting a license to sell intoxicating liquors does not suspend the right of the applicant to sell pending the appeal if he has tendered to the proper officers the license fee and

119; *State v. Rath sack*, 82 Neb. 386; 117 N. W. 949.

<sup>53</sup> *State v. Bays*, 31 Neb. 514; 48 N. W. 270; 31 Neb. 516; 48 N. W. 271.

<sup>54</sup> *State v. Elwood*, 37 Neb. 473; 55 N. W. 1074.

<sup>55</sup> *State v. Sopher*, 157 Ind. 360; 61 N. E. 785; *Keiser v. State*, 78 Ind. 430; *Board v. Kreuger*, 88 Ind. 231.

<sup>56</sup> *State v. Sopher*, 157 Ind. 360; 61 N. E. 785. In this case it was held until the close of the next term of the court at which the court on appeal acquired juris-

diction over the case, it being necessary to reconcile several statutes relating to appeals.

<sup>57</sup> *Lydiek v. Korner*, 13 Neb. 10; 12 N. W. 838.

If a licensee pay the license fee, take out his license, and then an appeal be taken and his license be denied, he cannot recover back the fee. *Board v. Kreuger*, 88 Ind. 231.

<sup>58</sup> *Swan v. Wilderson* 10 Okla. 547; 62 Pac. 422.

<sup>59</sup> *Bordwell v. State*, 77 Ark. 161; 91 S. W. 555.

bond required by law. In such case the judgment granting the license is self-executing, and the applicant is entitled to the license without any other proceedings on the judgment. In so deciding Justice Elliott, who wrote the opinion, said: "An applicant for a license, who has obtained a judgment declaring his right to a license, and has properly tendered the requisite fee and bond, cannot be successfully prosecuted for violating the law, for he has done all that it was in his power to do, and all that the law required of him. The violation of the law is on the part of the ministerial officer who withholds the license. The case is utterly unlike that of one who sells without having tendered either fee or bond, and after sale makes tender of both bond and fee. In the one case there is a wrong on the part of the applicant; in the other there is none; in the one case there is the possibility of an evasion of the law; in the other there is an earnest effort to obey the law before undertaking to sell. The applicant cannot be in the wrong where he has done all that it was in his power to do. A man cannot be denied a statutory right because a public officer has made it impossible to fully comply with the statute; to hold otherwise would be equivalent to declaring that a man may be denied the benefit of a statute for not doing what was legally impossible. \* \* \* If it should be held that the applicant could not obtain a license until after the judgment of the trial court had been affirmed, then the question of his fitness and of the sufficiency of his bond would be postponed far beyond the time contemplated by law, and not improbably to a time when such changes had taken place as would make it improper to permit him to take out a license at all. Or, if this would not be the result, then the result would be a complete denial of a right conferred by an express statute." <sup>60</sup>

### Sec. 410. *Certiorari*.

A writ of *certiorari* is granted more frequently to review licensing boards of a non-judicial character than the acts of

<sup>60</sup> Padgett v. State, 93 Ind. 396. See also State v. Berton, 27 Neb. 476; 43 N. W. 249.



licensing courts, though no hard and fast rule can be here laid down. As a rule, the facts will not be reviewed by means of a writ of *certiorari*, but only for errors of law appearing upon the face of the record.<sup>61</sup> In California an order denying a license cannot be reviewed by a *certiorari*.<sup>62</sup> In Minnesota the action of a village granting a license, not being of a judicial character, cannot be so reviewed;<sup>63</sup> while in Mississippi a statute expressly authorizes such action.<sup>64</sup> In Missouri the licensing body acts in a judicial character, and the writ lies;<sup>65</sup> but not until the case below is finally disposed of.<sup>66</sup> If a license be granted without authority, the writ lies to review the proceedings.<sup>67</sup> A statute authorizing the use of the writ to review an instance of a refusal to grant a license applies to a refusal made before the statute was enacted.<sup>68</sup> In New York by statute the return to the writ must "include copies of all papers on which its [the board's] action was based, and a statement of its reasons for refusing" the license. Under this statute a return that the board had refused the petitioner's claim and "all applications" "after consideration and deliberation on the merits" was held not sufficient and not authorized.<sup>69</sup> Under this act affidavits of the individual members of the licensing board cannot be filed with their return nor can they be considered;<sup>70</sup> but supple-

<sup>61</sup> *Jane v. Alley*, 64 Miss. 446; 1 So. 497; *Corbet v. Duncan*, 63 Miss. 84; *Loeb v. Duncan*, 63 Miss. 89; *People v. Waters*, 4 N. Y. Misc. Rep. 1; 23 N. Y. Supp. 691; *People v. Bennett*, 4 N. Y. Misc. 10; 23 N. Y. Supp. 695; *People v. Turner*, 4 N. Y. Misc. Rep. 247; 23 N. Y. Supp. 913.

<sup>62</sup> *Knox v. Rainbow*, 111 Cal. 539; 44 Pac. 175.

<sup>63</sup> *State v. Lamberton*, 37 Minn. 362; 34 N. W. 336; *Dexter v. Cumberland*, 17 R. I. 222; 21 Atl. 347.

<sup>64</sup> *Deverry v. Holly Springs*, 35 Miss. 385.

<sup>65</sup> *State v. Heege*, 37 Mo. App. 338.

<sup>66</sup> *State v. Schneider*, 47 Mo.

App. 669. In North Carolina the writ seems to lie because no appeal is provided for. *Hillsboro v. Smith*, 110 N. C. 417; 14 S. E. 972.

<sup>67</sup> *Dufford v. Staats*, 54 N. J. L. 286; 23 Atl. 667; *Croot v. Board*, 20 Colo. App. 254; 78 Pac. 313; *State v. Tullock*, 108 Mo. App. 32; 82 S. W. 645; *State v. McDavid*, 84 Mo. App. 47.

<sup>68</sup> *People v. Symonds*, 4 N. Y. Misc. Rep. 6; 23 N. Y. Supp. 689.

<sup>69</sup> *People v. Claverick*, 4 N. Y. Misc. Rep. 330; 25 N. Y. Supp. 322.

<sup>70</sup> *People v. Board*, 91 Hun, 94; 36 N. Y. Supp. 678.

mental opinions may be as of the date of the original opinion.<sup>71</sup> Under the New York statutes the facts or evidence may be reviewed by means of this writ.<sup>72</sup> Defects in the application for a license cannot be supplied by the petition for the writ of *certiorari*.<sup>73</sup> Even if there be no remonstrance or objection, under a local Pennsylvania statute, the proceedings are reviewable by the Supreme Court.<sup>74</sup> Whether persons objecting have the right to object to the location of a saloon in their neighborhood are persons who have a statutory right to remonstrate is a judicial question and is reviewable by this writ.<sup>75</sup> Injunction cannot be substituted for the writ of *certiorari*.<sup>76</sup> The sufficiency of the petition to confer jurisdiction to grant a license may be tested by this writ, although the licensing board has held it sufficient.<sup>77</sup> The refusal of a county treasurer in New York to issue a license may be reviewed, but his return that a certified copy of the statement of the local option election filed with the county clerk showed the adoption of local option preventing the issuance of a license is a complete defense without giving a copy of the statement.<sup>78</sup> In Iowa, in case of a revocation of a license, an appeal lies, and therefore the writ will be denied.<sup>79</sup> If the licensing officer be

<sup>71</sup> Appeal of Leister, 20 W. N. C. 224.

<sup>72</sup> People v. Murray, 14 N. Y. Misc. Rep. 177; 35 N. Y. Supp. 463. So in Rhode Island, where the board did not find the facts on which the jurisdiction rested. Lonsdale Co. v. Cumberland, 18 R. I. 5; 25 Atl. 655; and in New Jersey on the facts generally. Houman v. Schulster, 60 N. J. L. 35; 36 Atl. 776.

<sup>73</sup> People v. Board, 91 Hun, 94; 36 N. Y. Supp. 678.

<sup>74</sup> *In re* Pollard, 127 Pa. 507; 17 Atl. 1087; *In re* Einstein, 17 Atl. 1100; 24 W. N. C. 184. *Contra*, Lexington v. Sargent, 64 Miss. 621; 1 So. 903.

<sup>75</sup> Rhode Island Society v. Budlong, 21 R. I. 577; 25 Atl. 657.

<sup>76</sup> Northern Pac. R. Co. v. Whalen, 3 Wash. T. 452; 17 Pac. 890.

<sup>77</sup> State v. Tullock, 108 Mo. App. 32; 82 S. W. 645; Cooper v. Hunt, 103 Mo. App. 9; 77 S. W. 483.

<sup>78</sup> *In re* Tinkcom, 50 N. Y. Misc. Rep. 250; 100 N. Y. Supp. 467. The legality of the election cannot be inquired into. People v. Hamilton, 29 N. Y. Misc. Rep. 465; 61 N. Y. Supp. 979; People Hasbrouck, 21 N. Y. Misc. Rep. 188; 47 N. Y. Supp. 109. The validity of a local option election cannot be reviewed. State v. Mitchell, (Mo.); 119 S. W. 498.

<sup>79</sup> State v. Schmitz, 65 Iowa, 556; 22 N. W. 673.

In Missouri the application for the writ need not be verified. State

interested in the matter he has decided, a writ of *certiorari* lies to review his decision.<sup>80</sup> If a license be granted without jurisdiction over the application, a writ of *certiorari* will lie to bring it up to be quashed.<sup>81</sup> In Iowa any citizen may appear to the application without having any property or interests in the granting of the license, and may receive a writ to review the grant of a license,<sup>82</sup> and in Mississippi any person "aggrieved" thereby;<sup>83</sup> in Missouri any taxpayer;<sup>84</sup> in New Jersey any remonstrant<sup>85</sup> or resident and taxpayer of the place of the license;<sup>86</sup> in Rhode Island any person ap-

v. Bennett, 101 Mo. App. 224; 73 S. W. 737.

Error in granting a continuance of the application for a license will not be presumed. Cox v. Burnham, 120 Iowa, 43; 94 N. W. 265.

The Missouri Appellate Court will not grant the writ when it does not appear the applicant cannot secure it from the circuit court. State v. Wilson, 90 Mo. App. 154.

As for costs to remonstrant, see Backman v. Phillipsburg, 68 N. J. L. 552; 53 Atl. 620.

Where a court purposely so made up its record as to defeat an application for a writ of *certiorari*, relief was given in equity. Burkarth v. Stephens, 117 Mo. App. 425; 94 S. W. 720.

<sup>80</sup> Regina v. Sherman [1898], 1 Q. B. 578; 62 J. P. 296; 67 L. J. Q. B. 460; 46 W. R. 367; 78 L. T. 320; 14 L. T. R. 269; Rex v. Woodhouse [1906], 2 K. B. 501; 75 L. J. K. B. 745; reversed [1907] App. Cas. 420; 71 J. P. 484; 76 L. J. K. B. 1032; 97 L. T. 261, on the ground that no bias was shown by the facts. See Regina v. Thornton, 62 J. P. 196.

An election to proceed by *certiorari* does not preclude a party dismissing his application to take an appeal. Moon v. Hartsuck, 137 Iowa, 236; 114 N. W. 1043.

<sup>81</sup> Regina v. Manchester J. J. [1899], 1 Q. B. 571; 68 L. J. Q. B. 358; 63 J. P. 360; 47 W. R. 410; 80 L. T. 531; affirmed Rex v. Sunderland [1901], 2 K. B. 357; 70 L. J. K. B. 946; 65 J. P. 598; 85 L. T. 183; 17 T. L. R. 551.

<sup>82</sup> Darling v. Boesch, 67 Iowa, 702; 25 N. W. 887.

<sup>83</sup> Deberry v. Holly Springs, 35 Miss. 385. In New York the county treasurer to whom the fee is paid is a party aggrieved. People v. Seekitt, 15 N. Y. App. Div. 290; 44 N. Y. Supp. 593; reversing 40 N. Y. Supp. 414.

<sup>84</sup> State v. Heege, 37 Mo. App. 338.

<sup>85</sup> Austin v. Atlantic City, 48 N. J. L. 118; 3 Atl. 65.

<sup>86</sup> Dufford v. Staats, 54 N. J. L. 286; 23 Atl. 667; White v. Atlantic City, 62 N. J. L. 644; 42 Atl. 170; Houma v. Schulster, 60 N. J. L. 132. But not when guilty of laches. State v. Patterson (N. J. L.), 25 Atl. 1098. See also

pearing before the common council and objecting to the license being granted,<sup>87</sup> or any property holder within the prohibited neighborhood, as to whether a proper notice had been given.<sup>88</sup> In New Jersey any remonstrant may have the writ on sufficient cause shown.<sup>89</sup> In Georgia, no law providing for a remonstrance, a citizen and taxpayer of the neighborhood cannot sue out the writ;<sup>90</sup> but in Missouri, though he cannot remonstrate, he is regarded as a protestant, and is permitted to sue out the writ.<sup>91</sup> Merely because a resident in the neighborhood is inconvenienced by the location of the saloon there, which is common to all, he is not a "person aggrieved" entitling him to the writ.<sup>92</sup> But a brewer in the neighborhood who opposed the grant of a license, has been held to be such a person.<sup>93</sup> The applicant for a license is a proper party to a proceeding to review the order granting a license.<sup>94</sup>

### Sec. 411. Renewal of license.

In this country the question of renewal of license has seldom been before the courts, for the reason that renewals here are merely new licenses; but in England provisions are made for renewals which are of great important to licensees, and many of her colonies have adopted these provisions, though usually in a modified form. An applicant for a renewal in England need not attend in person upon the licensing jus-

*Regina v. Nicholson* [1899], 2 Q. B. 455; 68 L. J. Q. B. 1034; 64 J. P. 388; 48 W. R. 52; 81 L. T. 257; 15 L. T. R. 509.

<sup>87</sup> *Rhode Island Society v. Budlong* (R. I.), 25 Atl. 657; *Dexter v. Cumberland*, 17 R. I. 222; 21 Atl. 347.

<sup>88</sup> *Dexter v. Cumberland*, 17 R. I. 222; 21 Atl. 347; *Rhode Island Society v. Cranston*, 21 R. I. 577; 44 Atl. 223.

<sup>89</sup> *State v. Atlantic City*, 48 N. J. L. 118; 3 Atl. 65.

<sup>90</sup> *Stokes v. Wall*, 112 Ga. 349; 37 S. E. 383.

<sup>91</sup> *State v. Moore*, 84 Mo. App. 11.

<sup>92</sup> *Regina v. Nicholson* [1899], 2 Q. B. 455; 68 L. J. Q. B. 1034; 64 J. P. 388; 48 W. R. 52; 81 L. T. 257; 15 T. L. R. 509.

<sup>93</sup> *Rex v. Groom* [1901], 2 K. B. 157; 70 L. J. K. B. 636; 65 J. P. 452; 49 W. R. 484; 84 L. T. 834; 17 T. L. R. 433. See also *Rex v. Woodhouse J. J.* [1906], 2 K. B. 501; 75 L. J. K. B. 745.

<sup>94</sup> *State v. Denton*, 128 Mo. App. 304; 107 S. W. 446.



tices unless he is required to do so by them for some special cause personal to himself; and no new evidence as to his character or fitness or the fitness of his place is necessary, unless objection be made to the renewal, of which he must be given notice.<sup>95</sup> A renewal of a license is defined as a "license granted at a general annual licensing meeting by way of renewal."<sup>96</sup> Under these statutes an application for a renewal implies that the applicant is the same person who previously held the license and that he is in occupation of the premises formerly licensed; that the premises are the same or substantially the same; and that the license applied for shall be similar to the one then or previously in force for the premises in question.<sup>97</sup> The applicant must either attend himself or send an authorized messenger, or apply by letter, if he expects a renewal, otherwise the justices are not bound to renew his license.<sup>98</sup> A second application can be made, if made in time.<sup>99</sup> The person entitled to apply for a renewal is the person in occupation of the premises at the time of the general licensing meeting of the justices;<sup>1</sup> which may be the person in lawful and actual possession, even though he be not the licensee.<sup>2</sup> Of course, it cannot be renewed in the name of a dead person, and if so attempted the renewal will be void. Under this statute only the licensee seeking a renewal is entitled to a notice of an objection to its renewal,<sup>4</sup> and a service of notice of opposition to the renewal is a condition

<sup>95</sup> Licensing Act 1872, 35 and 36 Vict. c. 94, § 42; Patterson's Licensing Acts (19th Ed.), p. 416.

<sup>96</sup> Licensing Act 1872, 35 and 36 Vict. c. 94, § 74; Patterson's Licensing Acts (19th Ed.), 480.

<sup>97</sup> Sometimes the phrase is used with reference to a license for the same house which some other person has previously leased to use as an ale house or beer house.

<sup>98</sup> Regina v. Newcastle J. J., 51 J. P. 244; Sharpe v. Wakefield, 22 Q. B. Div. 242; Corman v. St. Margaret's J. J., 64 J. P. 648.

<sup>99</sup> Rex v. Bristol J. J., 67 J. P.

375; 89 L. T. 474; 19 T. L. R. 596.

<sup>1</sup> Regina v. Liverpool, 11 Q. B. Div. 644.

<sup>2</sup> Lyman v. Wedmore [1894], 1 Q. B. 401; 58 J. P. 197; 63 L. J. M. C. 44; 69 L. T. 801; 42 W. R. 301; Leeds v. Ryder [1907], App. Cas. 420; 71 J. P. 485; 76 L. J. K. B. 1032; 97 L. T. 261.

<sup>3</sup> Cowles v. Gale, L. R. 7 Ch. 12.

<sup>4</sup> Price v. Jones [1892], 2 Q. B. 428; 56 J. P. 471; 57 J. P. 148; 61 L. J. M. C. 203; 67 L. T. 543; 41 W. R. 57.

precedent to the jurisdiction of the justices to entertain objections to the renewal; and proof of that notice must first be given.<sup>5</sup> Mandamus lies to compel the justices to hear and determine the application for and objection to the renewal.<sup>6</sup> The justices themselves may make the objection in open court, and then adjourn until the licensee is served with notice of the objection, and be given an opportunity to meet it.<sup>7</sup> The burden of proof is upon the persons making the objection to a renewal, which may be made by any member of the local community,<sup>8</sup> and the evidence must be under oath, unless the facts are admitted.<sup>9</sup> If there be no objection a renewal cannot be refused.<sup>10</sup> The objection must be made to the justices<sup>11</sup> in open court<sup>12</sup> or by the justices,<sup>13</sup> "through the police or other officials," and they may by those officials "institute preliminary inquiries to obtain information of a general character respecting the character of their licensing district, the amount of public-house accommodation in the locality, and all matters of that sort."<sup>14</sup> If the justices raise an objection they must give the applicant an opportunity to answer

<sup>5</sup> *Gascoyne v. Riley*, 36 W. R. 605; *Blencome & Co. v. Hatherton*, 71 J. P. 210; 96 L. T. 817; *Ex parte Portingell*, [1892], 1 Q. B. 15; 65 L. T. 603; 40 W. R. 102; 56 J. P. 276; 61 L. J. M. C. 1; *Regina v. Deputies*, 15 Q. B. 671; *Regina v. Anglesey J. J.*, 59 J. P. 743; 65 L. J. M. C. 12; 15 R. 614; *Webber v. Birkenhead*, 61 J. P. 664; *Regina v. Denbigh J. J.*, 59 J. P. 708*n*; *Baxter v. Leche*, 62 J. P. 630; 79 L. T. 138; 14 T. L. R. 352.

<sup>6</sup> *Rex v. Kingston J. J.*, 86 L. T. 589; 66 J. P. 547.

<sup>7</sup> *Regina v. Farquhar*, L. R. 9 Q. B. 258; 39 J. P. 166; *Regina v. Redditch*, 50 J. P. 246; *Regina v. Essex J. J.*, 46 J. P. 761; *Baxter v. Leche*, 62 J. P. 630; 79 L. T. 138; 14 T. L. R. 352.

<sup>8</sup> *Boulter v. Kent J. J.* [1897],

*App. Cas.* 569; 61 J. P. 532; 66 L. J. Q. B. 787; 77 L. T. 288; 46 W. R. 114; 13 T. L. R. 538.

<sup>9</sup> *Regina v. Kent J. J.*, 41 J. P. 263.

<sup>10</sup> *Evans v. Conway J. J.* [1900], 2 Q. B. 224, 229; 69 L. J. Q. B. 636; 64 J. P. 467; 48 W. R. 577; 82 L. T. 704; 16 T. L. R. 425.

<sup>11</sup> *Regina v. Anglesey*, 59 J. P. 744; 65 L. J. M. C. 12.

<sup>12</sup> *Regina v. Marthyr Tydvil J. J.*, 14 Q. B. Div. 584; 49 J. P. 213; 54 L. J. M. C. 78.

<sup>13</sup> *Rex v. Howard J. J.* [1902], 2 K. B. 363; 66 J. P. 579; 71 L. J. K. B. 754; 51 W. R. 21; 86 L. T. 839; 18 T. L. R. 690; *Regina v. Kingston J. J.*, 66 J. P. 547; 86 L. T. 589; 18 T. L. R. 477.

<sup>14</sup> *Rex v. Howard*, *supra*; *Ruddick v. Liverpool*, 42 J. P. 406.

it, and must have the evidence on oath.<sup>15</sup> The justices must require the holder of the license to attend on objection to a renewal being made.<sup>16</sup> The objection need not be stated in writing in open court, but it must be inserted in the notice given the applicant.<sup>17</sup> Thus a statement in court, "I object to the renewal of the license to the King's Head," has been held sufficient, although the specific reasons must be stated in the notice.<sup>18</sup> The official report of the chief constable on the condition of his district containing an objection to a renewal of a named license has been held a sufficient objection.<sup>19</sup> Upon objection made, the application is continued to a day certain, and if by that time the applicant "does not know the grounds of the objection, he may apply for a further adjournment, quite apart from the fact that in the meantime he could have applied to the clerk to the magistrates or the chief constable to ascertain the grounds of the objection."<sup>20</sup> The notice of the objection must come through the justices and not through a third party.<sup>21</sup> An objection may be made at an adjourned meeting.<sup>22</sup> If notice be not served in time the objection will be disregarded or a second adjournment be granted.<sup>23</sup> If no notice be given and a renewal refused, and then the applicant appeal, no notice can be given in the upper court, and the license must be granted.<sup>24</sup> Should the justices refuse a renewal, though no notice of objection had been served or though none stated by the justices, and a mandamus issues to rehear the application, objections may then be made and heard on

<sup>15</sup> *Regina v. Eales*, 44 J. P. 553; 42 L. T. 735.

<sup>16</sup> *Regina v. Marthyr Tydvil J.*, 49 J. P. 213.

<sup>17</sup> *Regina v. Redditch J. J.*, 50 J. P. 246.

<sup>18</sup> *Daykin v. Parker* [1894], 2 Q. B. 273, 556; 58 J. P. 835; 67 L. J. M. C. 246; 71 L. T. 379; 42 W. R. 625.

<sup>19</sup> *Hawkins v. Bridgewater* [1900], 2 Q. B. 382; 69 L. J. Q. B. 663; 64 J. P. 631; 48 W. R. 587; 82 L. T. 847; 16 T. L. R. 404.

<sup>20</sup> *Daykin v. Parker*, *supra*; *Baxter v. Leche*, *supra*.

<sup>21</sup> *Whiffin v. Malling* [1892], 1 Q. B. 362; 56 J. P. 325; 66 L. T. 333; 40 W. R. 292; 61 L. J. M. C. 82.

<sup>22</sup> *Rex v. Howard*, *supra*; *Regina v. Anglesey J. J.*, *supra*.

<sup>23</sup> *Regina v. Altrincham*, 11 T. L. R. 3; *Regina v. Farquhar*, L. R. 9 Q. B. 261.

<sup>24</sup> *Hockings v. Powell*, 59 J. P. 358.

the merits at the rehearing.<sup>25</sup> Appeals lie from refusal to renew a license,<sup>26</sup> but the only respondents to the appeal are the licensing justices, and no other person can be heard except by permission of the appellate court.<sup>27</sup> On appeal only questions stated in the objection can be considered and passed upon.<sup>28</sup> The owner of the licensed premises where his tenant holds the license and applies for a renewal may appeal along with his tenant,<sup>29</sup> and it has been held that a mortgagee of the premises may appeal against a refusal of a renewal if the license expressly authorizes him to take all steps to preserve the license, even though the licensee declines to appeal himself.<sup>30</sup> Where a statute authorized the renewal of a bottle license, and before renewal another statute was enacted prohibiting the granting of such a license, this was held not to

<sup>25</sup> *Regina v. Howard*, 23 Q. B. Div. 302; 60 L. T. 960; 53 J. P. 454; 37 W. R. 617.

As to transfers of licenses for which no application for a renewal has been made, see *Mackrell v. Brentford J. J.* [1900], 2 Q. B. 387; 64 J. P. 663; 69 L. J. Q. B. 748; 48 W. R. 648; 83 L. T. 31; 16 T. L. R. 439; and *Murray v. Freer* [1894], App. Cas. 576; 58 J. P. 508; 63 L. J. M. C. 242; 71 L. T. 44; affirming [1893] 1 Q. B. 635; 57 J. P. 101, 583; 67 L. T. 507; 62 L. J. M. C. 33.

<sup>26</sup> *Regina v. Market Bosworth J. J.*, 51 J. P. 438; 57 L. T. 56; 35 W. R. 734; 56 L. J. M. C. 96; *Regina v. Newcastle J. J.*, 51 J. P. 244; *Regina v. Lawrence J. J.*, 11 Q. B. Div. 638; 47 J. P. 596; 52 L. J. M. C. 114; 49 L. T. 244; 32 W. R. 20; *Regina v. Thomas* [1892], 1 Q. B. 426; 56 J. P. 151; 61 L. J. M. C. 141; 66 L. T. 289; 40 W. R. 478; *Symons v. Wedmore* [1894], 1 Q. B. 401; 58 J. P.

197; 63 L. J. M. C. 44; 69 L. T. 801; 41 W. R. 301.

<sup>27</sup> *Tynemouth v. Attorney-General* [1899], App. Cas. 293; 63 J. P. 404; 68 L. J. Q. B. 752; 15 T. L. R. 370; *Nix v. Nottingham J. J.* [1899], 2 Q. B. 300*n*; *Boulter v. Kent J. J.* [1897], App. Cas. 569; 61 J. P. 532; 66 L. J. Q. B. 787; 77 L. T. 288; 46 W. R. 114; 13 T. L. R. 538.

<sup>28</sup> *Evans v. Conway J. J.* [1900], 2 Q. B. 224; 69 L. J. Q. B. 636; 64 J. P. 467; 48 W. R. 577; 82 L. T. 704; 16 T. L. R. 425; *Ex parte Gorman* [1894], App. Cas. 23; 58 J. P. 316; 63 L. J. M. C. 84; 70 L. T. 46; *Russell v. Blackheath J. J.*, 61 J. P. 696; *Feist v. Tower J. J.*, 68 J. P. 264; *Whiffin v. Malling* [1892], 1 Q. B. 362; 56 J. P. 325; 66 L. T. 333; 40 W. R. 292; 61 L. J. M. C. 82.

<sup>29</sup> *Feist v. Tower J. J.*, 68 J. P. 264.

<sup>30</sup> *Garrett v. Middlesex J. J.*, 12 Q. B. Div. 620; 48 J. P. 358; 53 L. J. M. C. 81; 32 W. R. 646.



prevent its renewal.<sup>31</sup> A renewal cannot be made against the expressed wish of the licensee.<sup>32</sup> One cannot be had where a local option prohibitive vote has been taken.<sup>33</sup> A new license does not mean a renewal license for an already licensed house, but a license for a house previously unlicensed.<sup>34</sup>

### Sec. 412. Collateral attack upon a license—*Quo warranto*.

If the proceedings for the granting of a license be absolutely void, then the license is no protection to the holder of it when he makes a sale.<sup>35</sup> But if it is only voidable, then its invalidity can only be attacked by appeal or *certiorari* or in some other direct and appropriate proceedings. In other

<sup>31</sup> *Allen v. Carew*, 14 N. Z. L. R. 569.

<sup>32</sup> *In re DeMery*, 20 Vict. L. N. 95; 15 Austr. L. T. 232.

<sup>33</sup> *Ex parte Pratt*, 13 W. N. (N. S. W.) 9.

<sup>34</sup> *Regina v. Alehurst*, 3 Vict. L. R. R. (Austr.) 111.

In New South Wales a magistrate cannot grant a renewal a second time. *Ex parte Lucas*, 2 S. R. 191; 19 W. N. (N. S. W.) 98; overruling 18 W. N. (N. S. W.) 287.

As to fees there, see *Keefe v. Clarke*, 10 N. S. W. L. R. 19.

In New Jersey only one renewal without a new application can be made. *Tross v. Board*, 59 N. J. L. 97; 35 Atl. 646.

In Connecticut a license granting the same privilege to the same person for the same place is a renewal license within the provisions of a statute providing that no license shall be granted in a purely residential part of a town, except a renewal of a license. *Appeal of Stavolo*, 81 Conn. 454; 71 Atl. 549.

As to renewal in Massachusetts, see *Tracy v. Ginzberg*, 189 Mass. 260; 75 N. E. 637.

A New York statute providing that a new liquor tax certificate should not be issued for one year following the conviction of a certificate holder of any crimes committed on the licensed premises, has no reference to a conviction of an employe of the certificate holder of a crime committed on the licensed premises. *People v. McKee*, 59 N. Y. Misc. Rep. 368; 112 N. Y. Supp. 338.

<sup>35</sup> *Flancher v. Camden*, 56 N. J. L. 244; 28 Atl. 82; *Regina v. Vine*, L. R. 10 Q. B. 195; 39 J. P. 213; 44 L. J. M. C. 60; 31 L. T. 842; 23 W. R. 649; *Pearson v. Broadbent*, 36 J. P. 485; *Rex v. Downs*, 3 T. R. 560; *Russell v. State*, 77 Ala. 89; *Gurley v. State*, 65 Ga. 157; *Thorn v. Atlanta*, 77 Ga. 661; *Mayson v. Atlanta*, 77 Ga. 662; *People v. Davis*, 45 Barb. 499; affirmed 36 N. Y. 77; *Cronin v. Stoddard*, 99 N. Y. 271; *Burch v. Ocilla*, 5 Ga. App. 65; 62 S. E. 666.

words, a collateral attack upon it cannot be successfully made.<sup>36</sup> But *quo warranto* brought to have a license declared void is not a collateral, but a direct attack, and is the proper proceeding for that purpose.<sup>37</sup> If regular on its face, and issued by a city with power to issue a license, it cannot be shown in a criminal proceeding, it has been held, that local prohibition option had been adopted in such city.<sup>38</sup> This is especially true of a liquor bond when sued upon, and it is claimed it is void because the application was insufficient.<sup>39</sup> As a rule if the State or city issue a license for sale of liquors at a particular place it cannot be heard to say it affords no authority in the licensee to make the sale.<sup>40</sup> The question of notice in making the application for a license cannot be inquired into in criminal proceedings<sup>41</sup> nor the insufficiency in the number of taxpayers who had signed the consent petition.<sup>42</sup> If it appears that no license could be issued for the building described in it, then it is void and may be collaterally attacked.<sup>43</sup> A license granted to a non-resident where the statute requires a licensee to be a resident of the district

<sup>36</sup> *Goff v. Fowler*, 3 Pick. 300; *State v. Leonard* (Mo.), 116 S. W. 14; *Hornaday v. State*, 43 Ind. 306; *Commonwealth v. Packard*, 136 Mass. 50; *Stevens v. Emson*, 1 Exch. Div. 100; 40 J. P. 484; 45 L. J. M. C. 63; 33 L. T. 821; *Thompson v. Harvey*, 23 J. P. 150; 4 H. & N. 254; 28 L. J. M. C. 163; *Regina v. Minshall*, 1 N. & M. 277; *Williams v. Louis*, 14 Kan. 605; *Commonwealth v. Graves*, 18 B. Mon. 33

<sup>37</sup> *Heidelberg Garden Co. v. People*, 124 Ill. App. 331; affirmed 233 Ill. 290; 84 N. E. 230; *Theurer v. People*, 211 Ill. 296; 71 N. E. 997; affirming 113 Ill. App. 628; *Handy v. People*, 29 Ill. App. 99; *In re O'Conner, Temp. Wood* (Maritoba), 293.

<sup>38</sup> *State v. Lewis*, 116 La. 762;

41 So. 63. *Contra*, *State v. Pressman*, 103 Iowa 449; 72 N. W. 660.

<sup>39</sup> *Castellano v. Marks*, 37 Tex. Civ. App. 273; 83 S. W. 729; *Thomas v. Marks*, 19 Neb. 324; 27 N. W. 321.

<sup>40</sup> *Genoa v. Van Alstine*, 108 Ill. 555; *Oskosh v. State*, 59 Wis. 425; 18 N. W. 324. But this statement must be received with caution; for, as we have seen, a license issued in a prohibition district is absolutely void.

*Contra*, *Raleigh v. Cane*, 47 N. C. 293.

<sup>41</sup> *Hornaday v. State*, 43 Ind. 306.

<sup>42</sup> *State v. Evans*, 83 Mo. 319.

<sup>43</sup> *Commonwealth v. Whelan*, 134 Mass. 206; *Commonwealth v. McCormick*, 150 Mass. 270; 22 N. E. 911.

where granted is void.<sup>44</sup> A license issued by the wrong officer is void and not voidable,<sup>45</sup> but the licensee may show that the officer issuing the license was in fact duly elected, even though such officer has received no certificate of election.<sup>46</sup> If a license could only be issued by a board when in actual session, one issued out of session, or when it had no power to sit, is void.<sup>47</sup> A license paper in proper form is *prima facie* valid, and he who asserts it is not has the burden to show his assertion is true.<sup>48</sup>

### Sec. 413. Void license.

A void license is no protection to the person holding it.<sup>49</sup> Thus, in case of a license granted to a person who had previously been convicted of a felony, a statute forbidding the licensing of such a person, though no one but himself was aware of the felony, and a formal transfer had been obtained regularly by a third person, it was held that the license was void even in the hands of such third person.<sup>50</sup> And of course a forfeited license is void from the moment of the judgment of forfeiture, or from the moment of conviction where the statute provides that a conviction for a violation of the license law shall work a forfeiture of the license.<sup>51</sup> So a statute issued under a repealed statute is void, though everybody believed it was in force and acted in good faith.<sup>52</sup> So where justices were required to grant licenses at public sittings, the grant of one at a private sitting was held void.<sup>53</sup> So where a statute required a cer-

<sup>44</sup> *People v. Davis*, 45 Barb. 494; affirmed 36 N. Y. 77.

<sup>45</sup> *Cronin v. Stoddard*, 97 N. Y. 271.

<sup>46</sup> *Montgomery v. O'Dell*, 67 Hun 169; 22 N. Y. Supp. 412.

<sup>47</sup> *Raleigh v. Kane*, 47 N. C. 293.

As to presumption board was in session, see *Montgomery v. O'Dell*, 67 Hun 169; 22 N. Y. Supp. 412.

A license issued by the authorities of a Confederate State during the War of the Rebellion was held valid. *Ward v. State*, 2 Cold 605; 91 Am. Dec. 270.

<sup>48</sup> *State v. Kukuke*, 26 Kan. 405; *Williams v. Louis*, 14 Kan. 605.

<sup>49</sup> *State v. Moore*, 1 Jones (N. C.), 276; *State v. Moore*, 84 Mo. App. 11.

<sup>50</sup> *Regina v. Vine*, L. R. 10 Q. B. 195; 39 J. P. 213; 44 L. J. M. C. 60; 31 L. T. 842; 23 W. R. 649.

<sup>51</sup> *Regina v. West Riding, J. J.*, 21 Q. B. 258; 52 J. P. 455; 57 L. J. M. C. 103; 36 W. R. 855.

<sup>52</sup> *Pearson v. Broadbent*, 36 J. P. 485.

<sup>53</sup> *Rex v. Downes*, 3 T. R. 560.

tain written recommendation, and a license was issued without this recommendation, it was held the license was void.<sup>54</sup> But a license granted without the overseer's certificate, as a statute required, was held not void, although it would have been if the licensee had not possessed the requisite qualifications.<sup>55</sup> And where a license was produced, but one of the signatures of the justices was suggested to be forged, though not by the license holder, the justices refused to receive evidence of the forgery, and this was held a proper decision.<sup>56</sup> Where a license could only be issued for six months, the grant of a license for a year was held void.<sup>57</sup>

#### **Sec. 414. Members of licensing board prohibitionists—Interest.**

In New Zealand prohibitionist officers are not competent to pass upon the question whether a license shall be granted,<sup>58</sup> but they may be compelled by proper proceedings to do their duty.<sup>59</sup> A licensing officer who is so indiscreet as to sign a petition for a license does not thereby disqualify himself from acting although a constitutional provision disqualifies judges having an interest in a cause.<sup>60</sup>

#### **Sec. 415. Criminal liability of licensing officer.**

A licensing officer who knowingly and willfully issues a license in violation of law lays himself liable to indictment if he be not a judicial officer, though not liable for error of judgment.<sup>61</sup> So if an officer perversely, without cause, refuse

<sup>54</sup> State v. Moore, 1 Jones (N. C.) 276.

<sup>55</sup> Thompson v. Harvey, 23 J. P. 150; 4 H. & N. 254; 28 L. J. M. C. 163.

<sup>56</sup> Regina v. Munshall, 1 N. & M. 277.

<sup>57</sup> State v. Moore, 84 Mo. App. 11.

<sup>58</sup> Islett v. Quill, 11 N. Z. L. R. 224.

<sup>59</sup> Isitt v. Taylor, 10 N. Z. L. R. 646; *In re Wanganni*, 10 N. Z.

L. R. 583; Quill v. Isitt, 10 N. Z. L. R. 636; Taylor v. Isitt, 9 N. Z. L. R. 678.

<sup>60</sup> Ferguson v. Brown, 75 Miss. 214; 21 So. 603.

<sup>61</sup> People v. Norton, 7 Barb. 477; People v. Worsley, 1 N. Y. Supp. 748; 17 N. Y. St. Rep. 610; Commonwealth v. Wood, 116 Ky. 748; 76 S. W. 842; 25 Ky. L. Rep. 1019. *Ex parte Blaine*, 11 Can. Cr. Cas. 193.



a license he likewise lays himself liable to a criminal prosecution.<sup>62</sup> A statute provided that no certificate for a license should issue to any applicant until the inspector should have reported that there were proper accommodations prepared for a public house, and a fine was imposed for issuing a license contrary to its provisions. An application was made to a city council for a license, but the inspector reported that his premises were insufficient, the defect being the lack of a step in the stairs. A minute was entered that the license should issue as soon as the applicant produced the inspector's certificate, and the issuing officer signed a certificate and gave it to the clerk, telling him not to hand it over until he had received the inspector's certificate. This certificate was handed over two days after the application had been made to the council, when the license was given by the clerk to the applicant. It was held that the licensing officer had committed no offense under the statute prohibiting the illegal issuance of licenses.<sup>63</sup>

<sup>62</sup> Attorney General v. Justices, 5 Ired. 315; State v. Kite, 81 Mo. 97.  
ing. Commonwealth v. Wood, *supra*.  
<sup>63</sup> Regina v. Patton, 35 Upp. Can. 442.

## CHAPTER IX.

### THE FORM OF THE LICENSE.

#### SECTION.

416. The form.

417. Conditions inserted in license.

#### SECTION.

418. The place licensed.

#### Sec. 416. The form.

Statutes require licenses to be put in writing. A parol license from the officer whose duty it is to issue it is no protection from a prosecution for selling without a license.<sup>1</sup> And a certificate of the county commissioners' clerk that a certain person had been licensed was held not a license, nor even conclusive evidence that a license had been granted.<sup>2</sup> The license, to be a protection, must be signed by the proper officer, lawfully authorized to do so.<sup>3</sup> The order directing the issuance of a license is not the license itself, and hence an order of the licensing board correcting an error in a license already issued is not admissible to protect the licensee from a criminal prosecution for having violated the liquor laws.<sup>4</sup> Just what should be the contents of a license must depend upon

<sup>1</sup> Laurence v. Gray, 11 Johns. 179; State v. Moore, 14 N. H. 451; Connecticut Breweries Co. v. Murphy, 81 Conn. 145; 70 Atl. 450.

<sup>2</sup> Commonwealth v. Spring, 19 Pick. 396.

<sup>3</sup> Cronin v. Stoddard, 97 N. Y. 271.

An ordinance cannot take the place of a license, though so intended. *In re Coyne*, 9 Upp. Can. 448. But see *Terry v. Haldimand*, 15 Upp. Can. 380.

<sup>4</sup> Commonwealth v. Cauley, 150 Mass. 272; 22 N. E. 909.

the requirements of the statute, and what might not be sufficient in one State would be in another. Usually the license must designate the place where the liquors are to be sold, what liquors the licensee can sell, and the authority granting it, duly signed. When such a paper is produced it raises the presumption that its issuance was lawfully authorized.<sup>5</sup> A license, however, may show on its face it is void, as where it shows all the fee for it had not been paid, when that was a prerequisite.<sup>6</sup> If a statute authorizes a change of place, then the authorization must be as formally signed as the license itself.<sup>7</sup> If the license is granted for a particularly designated place, then such place must be set forth in the license. Thus where the statute required "the building in which the business is to be carried on" to be set forth, it was held not sufficient to merely name the street, and sales made under it were held to render the licensee liable to a fine.<sup>8</sup> But if no statute requires it, the house in which the liquors will be sold need not be specified.<sup>9</sup> The license need not specify that it will terminate with the term of the officers who authorized its issuance.<sup>10</sup> If the one issued exceed the conditions in the order granting it, to the extent of the excess, it will be void, as where it is on its face to run longer than the granting order allowed.<sup>11</sup> Usually, however, the licensee will be protected even if the license is informal.<sup>12</sup>

<sup>5</sup> State v. Brandon, 28 Ark. 410; Murphy v. Nolan, 126 Mass. 542; State v. Kuhuke, 26 Kan. 405.

<sup>6</sup> Townsend v. State, 2 Blackf. 151; Commonwealth v. McCormick, 150 Mass. 270; 22 N. E. 911; Spake v. People, 89 Ill. 617; Handy v. People, 29 Ill. App. 99; McWilliams v. Phillips, 51 Miss. 196; Zielke v. Stathe, 42 Neb. 750; 60 N. W. 1010.

<sup>7</sup> Commonwealth v. Merriam, 136 Mass. 433.

<sup>8</sup> Commonwealth v. Merriam, *supra*.

Commonwealth v. Cauley, 150 Mass. 272; 22 N. E. 909; Com-

monwealth v. Keep, 150 Mass. 272; 22 N. E. 910.

<sup>9</sup> Goforth v. State, 60 Miss. 756; State v. Gerhardt, 48 N. C. 178.

<sup>10</sup> Henderson v. Price, 96 N. C. 423; 2 S. E. 155.

In Tennessee, under the Act of 1846 the license was void unless the oath of the licensee was endorsed upon it. Pope v. Swan, 2 Swan 611.

<sup>11</sup> State v. Brown, (Iowa); 109 N. W. 1011.

<sup>12</sup> Dubois v. Boivin, 14 L. C. J. 203; Williams v. Louis, 14 Kan. 605.

**Sec. 417. Conditions inserted in license.**

The licensing board or court has no power to insert any conditions in the license beyond what the statute authorizes it to do.<sup>13</sup> Thus in England it is held that the licensing justices cannot annex a condition to a license that the licensee shall pay a sum of money into their hands, to be applied by them towards reduction of notes or similar public purposes;<sup>14</sup> or to pay the debt he owes another.<sup>15</sup> So, unless the statute expressly authorizes it, a condition cannot be inserted in a license that sales shall not be made on a day named, when the statute permits it.<sup>16</sup> But where a statute made a difference in the amount of the fee charged for a druggist's license and a saloon keeper's, it was held that the licensing board could insert a condition in the druggist's license, who paid a less fee than the saloon keeper, that neither he nor his agents should sell liquor to be consumed on the premises.<sup>17</sup> That a Legislature may authorize the licensing board to impose and insert conditions in a license will not be seriously controverted.<sup>18</sup> Thus, a city license conditioned that the licensee will pay an increased license fee if the fee thereafter be increased is valid.<sup>19</sup> So a condition as to the granting of a license that the board may revoke it if the license violate the liquor law is valid.<sup>20</sup>

**Sec. 418. The place licensed.**

Almost invariably, under recent statutes, the license must not only be issued for a certain political division of the State, but it must be issued for a designated point in that political divi-

<sup>13</sup> Penney v. Weirau, 26 N. Z. 234; Queen v. Van Zyle, 16 Juta 278.

<sup>14</sup> Regina v. Bowman, 67 L. J. Q. B. 463 [1898]; 1 Q. B. 663; 78 L. T. 230; 62 J. P. 374; 14 T. L. R. 303.

<sup>15</sup> Rex v. Athay, 2 Burr. 653.

The English statutes confer great powers upon the licensing justices to insert conditions in

the licenses they grant. Patter-son's Licensing Acts (19 ed.), p. 674; 4 Edw. 7 C. 23, § 4.

<sup>16</sup> *In re Breslin*, 45 Hun 210.

<sup>17</sup> *Spake v. People*, 89 Ill. 617.

<sup>18</sup> *Searle v. McArdle*, 15 N. Z. L. R. 613.

<sup>19</sup> *Seattle v. Clark*, 28 Wash. 717; 69 Pac. 407.

<sup>20</sup> *In re Sarlo*, 76 Ark. 336; 88 S. W. 953.



sion. When such is the case a sale can be made at no other place than at the one licensed. Thus a license issued for the sale of liquors in a room situated in the basement of a hotel—not being a hotel license—will not authorize a sale in any other room of the hotel than that room.<sup>21</sup> And a license to sell at a particular building will not permit the peddling of liquors with teams from house to house.<sup>22</sup> In some of the States it is sufficient if the petition for and the grant of the license specify the place where the liquors are to be sold;<sup>23</sup> while in others, to be valid, the place must be specifically and particularly set forth in the license.<sup>24</sup> Just what territory is covered by the license is sometimes a difficult question. Thus a license was to sell “in and upon the premises known as the Palmer House.” This house stood upon the front part of a deep lot owned by the licensee, the rear part of which had been for many years enclosed and used as a fair ground, immediately within which enclosure the licensee made a sale of liquor. It was held that as the fair ground, though part of the lot upon which the hotel stood, was not used in connection with or for the enjoyment of the hotel,

<sup>21</sup> *In re McCoy*, 104 N. Y. App. Div. 215; 93 N. Y. Supp. 401; *State v. Prettyman*, 3 Harr. (Del.) 570; *Commonwealth v. Cauley*, 150 Mass. 272; 22 N. E. 909; *Commonwealth v. Keefe*, 150 Mass. 272; 22 N. E. 910.

<sup>22</sup> *Teoli v. Nardoli*, 23 R. I. 87; 49 Atl. 489; *Pletts v. Campbell* [1895], 2 Q. B. 229; 59 J. P. 502; 64 L. J. M. C. 225; 73 L. T. 344; 43 W. R. 634; 15 R. 493; *Cocker v. McMullen*, 64 J. P. 245; 81 L. T. 784; *Pletts v. Beattie* [1893], 1 Q. B. 519; 60 J. P. 185; 65 L. J. M. C. 86; 74 L. T. 148; *Stephenson v. Rogers*, 63 J. P. 230; 80 L. T. 195; 15 T. L. R. 748; *Walker v. Walker*, 67 J. P. 452; 90 L. T. 88; 20 Cox C. C., 594;

*Hewitt v. Jervis*, 68 J. P. 54; *Strickland v. Whittaker*, 68 J. P. 235; 52 W. R. 538; 90 L. T. 445; 20 T. L. R. 224; *Pasquier v. Neale* [1902], 2 K. B. 287; 67 J. P. 49; 71 L. J. K. B. 835; 51 W. R. 92; 87 L. T. 230; 18 T. L. R. 704; *McLaughlin v. McCloy*, 26 Ir. L. T. 131.

See *Davis v. Burnett*, 71 L. J. K. B. 355 [1902], 1 K. B. 666; 86 L. T. 565; 50 W. R. 391; 66 J. P. 406.

<sup>23</sup> *Goforth v. State*, 60 Miss. 756.

<sup>24</sup> *Commonwealth v. Stratton*, 150 Mass. 188; 22 N. E. 893; *Commonwealth v. McCormick*, 150 Mass. 270; 22 N. E. 910; *Commonwealth v. Cauley*, 150 Mass. 272; 22 N. E. 909.

it was not covered by the license.<sup>25</sup> Where the license is for a particular place, by no process of reasoning can it be construed to authorize sales at two places.<sup>26</sup> Under a license to sell liquors in a dwelling house "and the apartments and dependencies thereof," a sale cannot be made at a small house forty-five rods away from the dwelling, on the same lot, and having a passageway between them.<sup>27</sup> But a license for a single place will not prevent the use of two or more bars thereon, although screened off but connected by doors or passageways.<sup>28</sup> And where a licensee had two rooms, connected by an archway, and a bar in each room, one for whites and the other for negroes, it was held that his license, though issued for a place, covered sales at both bars.<sup>29</sup> Yet where a licensee had a stand at a corner of a certain street, and also another stand adjoining, with an inside passageway between them, it was held that his license covered sales only at the first stand.<sup>30</sup> Where a license is granted to a house, without defining the metes and bounds, the house includes the curtilage and a piece of ground in front of it.<sup>31</sup> A bench placed outside the door of the licensed premises and used by customers

<sup>25</sup> *Regina v. Palmer*, 46 Up. Can. 262; *Watson v. Severance*, 2 N. H. 501; *State v. Moody*, 95 N. C. 656.

<sup>26</sup> *State v. Walker*, 16 Me. 241; *State v. Hughes*, 24 Mo. 147; *Zinner v. Commonwealth* (Pa.), 14 Atl. 431; *Chicago v. Malken*, 119 Ill. App. 542; affirmed 217 Ill. 471; 75 N. E. 548; *Wood v. State* (Tex.), 116 S. W. 1154.

<sup>27</sup> *Commonwealth v. Estabrook*, 10 Pick. 293; *Johnson v. State*, 152 Ala. 61; 44 So. 555.

<sup>28</sup> *St. Louis v. Gerardi*, 90 Mo. 640; 3 S. W. 408.

<sup>29</sup> *Hochstandler v. State*, 73 Ala. 24.

Usually the judgment of the licensing board, when it is a question of fact whether two rooms in

a house require only one license or requires two licenses, will be upheld; for it is a question of fact for it to decide. *Sanders v. Elberton*, 50 Ga. 178.

<sup>30</sup> *State v. Fredericks*, 16 Mo. 382; *Malken v. Chicago*, 119 Ill. App. 542; affirming 217 Ill. 471; 75 N. E. 548.

Under a general license to retail, the designation of a place being unnecessary, the license cannot sell in districts of the county which has adopted local prohibition. *Barnes v. State*, 49 Ala. 342.

<sup>31</sup> *Manson v. London, etc. Ry. Co.*, L. R. 6 Eq. 101; *Richards v. Swansea, etc. Co.*, 9 Ch. Div. 425; *Commonwealth v. Estabrook*, 10 Pick. 293.

to sit and drink beer on has been held to be a part of the licensed premises;<sup>32</sup> and so has an outhouse, in England, although used only as a cellar.<sup>33</sup>

<sup>32</sup> *Cross v. Watts*, 32 L. J. M. C. 73.

<sup>33</sup> *Regina v. Tott*, 30 L. J. M. C. 177; 4 L. T. 306; 25 W. R. 327; 9 W. R. 663.

In New Jersey, under the act of 1889, p. 83, § 112, a license cannot be granted for a place in which a grocery or other mercantile business is carried on. *Peer*

*v. Board*, 70 N. J. L. 496; 57 Atl. 153.

To make a place used for sale of liquors a "new place" within the meaning of a statute forbidding the granting of a license for a "new place," there must be a substantial abandonment of the business there. *Eckersly v. Abbott* (N. J. L.), 74 Atl. 314.

## CHAPTER X.

### TRANSFER OF LICENSE.

#### SECTION.

- 419. License to sell intoxicating liquors not transferable.
- 420. Statute permitting transfer.
- 421. Assignment not a transfer.
- 422. Death of licensee.
- 423. Bankruptcy or insolvency—Receiver.

#### SECTION.

- 424. Mortgage of license—Judicial sale.
- 425. Transfer of license to other premises—Pennsylvania.
- 426. Transfer under English statutes.
- 427. Transfer under English and Colonial statutes—Cases.

#### **Sec. 419. License to sell intoxicating liquors not transfer-**

Laws regulating the granting and issuing of licenses to vend intoxicating liquors to be drunk as a beverage, as a rule, clothe those who grant them with the authority to determine who are fit persons to be intrusted with such business, and this rule is based upon sound principle. The purpose of such laws is to regulate the traffic in intoxicating liquors, and to lessen the evils resulting from the unrestrained sale and use thereof. Observation and experience have demonstrated that there is a marked difference in the capacity of men to restrain and control others. A proper person to be entrusted with a permit would not knowingly sell to minors, or men intoxicated, or to those in the habit of being intoxicated, or permit gambling, fighting, or other disorderly conduct in or about his place. In requiring these qualifications, much reliance is placed in the personal fitness and capacity of the persons who are to be entrusted with licenses to sell intoxicating liquors to be drunk where sold, and the law contemplates that persons thus licensed will give their personal attention to such business, and if a licensee had the power



to transfer such a license he could transfer it to whom he pleased, regardless of the fitness of the transferee to engage in such perilous and hazardous business, and thus the very object of the law would be defeated. Accordingly it has been uniformly held that a license to sell or traffic in intoxicating liquors, is personal to the holder and cannot be delegated or assigned to another or committed by a court to the care of a receiver.<sup>1</sup> And in Nebraska it has been held that a license was no defense to an indictment for a violation of the statute against the vending of intoxicating liquors where it was shown by the evidence that a person who held a liquor license issued under the authority of a mayor and council of a city, sold out his saloon and assigned his license to the defendant, who petitioned the mayor and council to transfer the license to him, and the council thereupon ordered the license to be so transferred, and the clerk issued an original license, in form, to the defendant, who proceeded to sell intoxicating liquors under it.<sup>2</sup> In Indiana it has been held that

<sup>1</sup> State v. Sumter Co., 22 Fla. 8; Godfrey v. State, 5 Blackf. (Ind.) 151; Pickens v. State, 20 Ind. 116; Strahn v. Hamilton, 33 Ind. 57; Runyon v. State, 52 Ind. 320; Heath v. State, 105 Ind. 342; 4 N. E. 901; Pierce v. Pierce, 17 Ind. App. 107; 46 N. E. 480; Lewis v. United States, 1 Morris. (Ia.) 199; Commonwealth v. Bryan, 9 Dana (Ky.) 310; Alger v. Weston, 14 Johns. (N. Y.) 231; State v. McNeeley, 1 Winst. (N. C. L.) 234; *In re* Templeton (Pa.), 4 Lancast. Law Rev. 242; *In re* Blumenthal, 125 Pa. St. 412; 18 Atl. 395; 23 Wkly. N. C. 493; Gilday v. Warren, 69 Conn. 237; 37 Atl. 494; State v. Prettyman, 3 Harr. (Del.) 570; Commonwealth v. Brenaman, 8 B. Mon. 374; Commonwealth v. Hadley, 11 Met. 71; Tracy v. Ginberg, 189 Mass. 260; 73 N. E. 637; Semple v.

Flynn (N. J. L.), 10 Atl. 177; Sanderson v. Goodrich, 46 Barb. 616; Matter of Place, 27 N. Y. App. Div. 561; 50 N. Y. Supp. 640; *In re* Grim, 181 Pa. St. 233; Young v. Stevenson, 75 Ark. 181; 86 S. W. 1000; Sawyer v. Sanderson, 113 Mo. App. 233; 88 S. W. 151; State v. Bayne, 100 Wis. 35; 75 N. W. 403; Kennedy v. Welsh, 196 Mass. 592; 83 N. E. 11; Arnett v. Wright, 18 Okla. 337; 89 Pac. 1116 (note given for transfer is void); Jacobson v. Queen, 1 Juta 33; Mitchell v. Branham, 104 Mo. App. 480; 79 S. W. 739 (a contract to transfer a license is void).

If one of two licensed partners die, the other may continue the business. Lynch v. State, 147 Ala. 143; 39 So. 912.

<sup>2</sup> State v. Lydick, 11 Neb. 366; 9 N. W. 560.

a promissory note given for the transfer of a liquor license was without valid consideration.<sup>3</sup>

### Sec. 420. Statute permitting transfer.

In some States licenses may be transferred by the licensee, but always under restrictions. This is pursuant to some statute expressly permitting it. Usually the licensing board must approve of the transfer; and this is in order to prevent the liberty of the license being used by an improper person. When such is the case the licensee may sell the license and recover the price agreed to be paid.<sup>4</sup> When the board has acted upon the application for a transfer, and has granted it, nothing remaining to be done except the issuance of the certificate of transfer by its clerk, it has fully acted in the premises and cannot rescind its action.<sup>5</sup> If the application be arbitrarily denied, the action of the board may be revised by a writ of *certiorari*.<sup>6</sup> But if the transfer is a matter of discretion with the board, then mandamus does not lie to revise their action in refusing to approve the transfer.<sup>7</sup> A statute authorizing the transfer of a retail license will not authorize the transfer of a wholesale license.<sup>8</sup> In Pennsylvania it was held that if a licensee abandons licensed premises the court might transfer it to a new party, refunding to the original licensee the proper portion of the fee,<sup>9</sup> even without the consent of the licensee.<sup>10</sup> Under a statute allowing

<sup>3</sup> *Strahn v. Hamilton*, 38 Ind. 57.

But a licensee may authorize others to act with and under him in executing the powers granted to him by the license. *Commonwealth v. Hadley*, 11 Met. 66.

<sup>4</sup> *Rubenstein v. Kahn*, 5 N. Y. Misc. Rep. 408; 25 N. Y. Supp. 760; *In re Jack*, 11 Australia L. R. 372; 2 C. L. Rep. 684; *Rex v. Cohen*, 21 Juta 676; *Norden v. Bosman*, 21 Juta 634; *Ex parte Heide*, 18 Juta 479.

<sup>5</sup> *People v. Wells*, 11 N. Y. Misc. Rep. 239; 32 N. Y. Rep. 973.

<sup>6</sup> *People v. Excise Commission-*

*ers*, 12 N. Y. Misc. Rep. 296; 34 N. Y. Supp. 22.

<sup>7</sup> *In re Blumenthal*, 125 Pa. St. 412; 18 Atl. 395; 23 Wkly. N. C. 493.

<sup>8</sup> *In re Rahn*, 14 Pa. Co. Ct. Rep. 202; *In re Gerke Brewing Co.*, 23 Pittsb. L. Jr. 420.

<sup>9</sup> *In re Doyle*, 6 Kulp. 356.

<sup>10</sup> *In re Summa*, 12 Pa. Co. Ct. Rep. 667.

The right of transfer was discretionary under an early statute. *In re Breen*, 2 Pa. Dist. Rep. 652; but now it is not. *Laib v. Hare*, 163 Pa. St. 481; 30 Atl. 163.

a transfer the license cannot be transferred to another house.<sup>11</sup> In that State if the licensee become insolvent, on application of the owner of the premises the license may be transferred without his consent,<sup>12</sup> especially if he has violated the statute.<sup>13</sup> Any one aggrieved by a transfer may have himself made a party and contest its validity.<sup>14</sup> The owner of premises, when his licensed tenant has vacated the premises, is not entitled to have the license transferred as a matter of right, under the Pennsylvania statute. The right to a transfer is in the sound discretion of the court; and if the court to which the application is made decides there is no longer any necessity for the maintenance of a saloon at the place licensed, and for that reason refuse the transfer, its action is not reviewable.<sup>15</sup> The jurisdiction of the court to order a transfer rests upon the fact that a valid license is in existence at the time the application is made; and if there is not, its action is void.<sup>16</sup> A petition for a transfer must set forth the same facts as were necessary in the original application for a license, and in addition thereto give the licensee's name, its date, the place for which it was granted, the reasons for the transfer, and that the licensee is willing for the transfer or give the reason why he is not willing.<sup>17</sup> If the applicant for a transfer, pending the hearing, transfers all his rights, the transferee may file a petition for a transfer to him, but he must give notice of his application for the transfer in order to give the court jurisdiction.<sup>18</sup> The transfer is not a transfer of the license, nor is the application or the amend-

<sup>11</sup> *In re Burns*, 14 Pa. Co. Ct. Rep. 174; 3 Pa. Dist. Rep. 429.

<sup>12</sup> *In re Leibeknecht*, 14 Pa. Co. Ct. Rep. 571; 3 Pa. Dist. Rep. 474; *In re Leaky*, 14 Pa. Co. Ct. Rep. 430; 3 Pa. Dist. 472.

<sup>13</sup> *In re Quirk*, 17 Pa. Co. Ct. Rep. 327.

<sup>14</sup> *Lester v. Price*, 83 Va. 648; 3 S. E. 529; *In re McCabe*, 11 Pa. Super. Ct. 560.

<sup>15</sup> *In re Stern's License*, 27 Pa.

Super. Ct. 538; *In re McKibbins*, 11 Pa. Super. Ct. 421.

<sup>16</sup> *In re Umholtz's License*, 9 Pa. Super. Ct. 450; 43 W. N. C. 495; *In re Danrel*, 31 Pa. Super. Ct. 156.

<sup>17</sup> *In re Nacrelli*, 8 Del. Co. Rep. 20; *In re McKibbons*, 11 Pa. Super. Ct. 421.

<sup>18</sup> *In re Keifer License*, 21 Pa. Co. Ct. Rep. 512.

ment of the original petition for a transfer.<sup>19</sup> An application for a transfer of a license applies to an existing license and not to a subsequent one.<sup>20</sup> A license may be revoked after its assignment by reason of acts of forfeiture committed before the date of the assignment.<sup>21</sup> If an assignee of a license discover that the licensee is an unfit person for a license he may and should refuse to further proceed in the matter of securing a transfer to himself.<sup>22</sup> An agreement, however, to pay a licensee for the "use" of a license is void, being against public policy; and a license is not transferred until it has been sanctioned by the State.<sup>23</sup> Where a county treasurer was the officer deputed to allow the transfer, it was held that he could not refuse to do so on the ground that complaint had been made that the licensee had carried on the liquor traffic in a forbidden place, that not impairing the right to a transfer.<sup>24</sup> Howsoever an assignee may act in good faith, even to the extent of filing the bond required by statute when a transfer is to be made, yet if he sells before the transfer is officially made he is guilty of selling without a license.<sup>25</sup> Where a statute permitted a transfer of a license,

<sup>19</sup> *In re Keifer License*, *supra*.

The owner of the premises has sufficient interest to appeal from the transfer. *In re McCabe*, 11 Pa. Super. Ct. 560.

A remonstrance, to aid in the collection of a debt by delaying the transfer will be ignored. *In re Nacrelli*, 8 Del. Co. Rep. 20.

The court has no jurisdiction to order the payment of the proceeds of a sale of a hotel as a condition to the approval of the transfer. *Appeal of Class*, 6 Pa. Super. Co. 130.

<sup>20</sup> *Mydosh v. Bayonne*, 72 N. J. L. 439; 60 Atl. 1111.

<sup>21</sup> *In re Bradley* 22 N. Y. Misc. Rep. 301; 49 N. Y. Supp. 1100; *In re Lyman*, 59 N. Y. App. Div. 217; 69 N. Y. Supp. 309; affirm-

ing 32 N. Y. Misc. Rep. 210; 67 N. Y. Supp. 48.

<sup>22</sup> *Cronin v. Sharp*, 16 Pa. Super. Ct. 76.

<sup>23</sup> *David Mayer Brewing Co. v. Mack*, 59 N. Y. Misc. Rep. 202; 110 N. Y. Supp. 245; *Gilday v. Warren*, 69 Conn. 237; 37 Atl. 494.

<sup>24</sup> *People v. Manzer*, 18 N. Y. Misc. Rep. 292; 41 N. Y. Supp. 1075.

<sup>25</sup> *State v. Bayne*, 100 Wis. 35; 75 N. W. 403.

In New York the commissioner of excise may pay the original licensee a rebate of the portion of the fee covered by the unexpired term, unless the licensee has violated the liquor law before the transfer is actually made. *People*



a resolution of a board of excise transferring a license to one of its members, he being present and voting for the resolution, was held voidable on a writ of *certiorari*.<sup>26</sup> The recognition of the right of a transfer of a license converts it into property, and makes it the subject of barter and sale.<sup>27</sup>

v. Lyman, 156 N. Y. 407; 50 N. E. 1112; affirming 27 N. Y. App. Div. 527; 50 N. Y. Supp. 497.

One transfer does not exhaust the power of court to grant another. *Ex parte Heide*, 18 Juta 479.

In New York, although the tax certificate has been assigned and is in the possession of the assignee who has violated the law, the principal and surety in the bond of the assignor or licensee are liable thereon until the tax certificate is presented to the proper board for cancellation, or the assignment is approved. *Cullinan v. Kueh*, 177 N. Y. 303; 69 N. E. 597; affirming 84 N. Y. App. Div. 642; 82 N. Y. Supp. 1098; *People v. Lyman*, 156 N. Y. 407; 50 N. E. 1112; affirming 27 N. Y. App. Div. 527; 50 N. Y. Supp. 497.

Under a statute permitting a transfer where a party applies for a license, but removes from the State, with no intent to return, before it is granted and the fee for it paid, he is "a party licensed" under the statute permitting a transfer where "a party licensed" dies or removes from the State. *In re Umholtz*, 191 Pa. St. 177; 43 Atl. 75; 29 Pittsb. Leg. J. (N. S.) 387; 44 W. N. C. 98.

In New Jersey a license may be transferred not only from one person to another, but from one place

to another. *Henkel v. Hoy*, 74 N. J. L., 56; 64 Atl. 960.

No appeal lies from an order granting a transfer unless a statute permits it; and a statute authorizing an appeal on granting or revoking a license does not apply to a transfer. *Appeal of Wakeman*, 70 Conn. 733; 50 Atl. 733.

<sup>26</sup> *Trefft v. Board*, 73 N. J. L. 278; 62 Atl. 1004

<sup>27</sup> *Deggender v. Seattle, etc. Co.*, 41 Wash. 385; 83 Pac. 898.

Where a saloon was sold under an agreement that the business was to be run by the vendee in the vendor's name until paid for, and the vendee should not buy goods in the vendor's name for use in the saloon, this was held not to protect the vendor against one selling goods to be used in the saloon without notice of the agreement. *Nappee Valley Wine Co. v. Kassanave (Wis.)*, 122 N. W. 812.

In a proceeding to cancel a license for a violation of the law by the person to whom it was issued, his assignee is not entitled to be made a party thereto. *Clement v. Viscosi (N. Y.)*, 118 N. Y. Supp. 613.

An applicant for a transfer must comply with all the formalities required by the statute. *Thompson v. Bellemore*, 7 Low Can. Jr. 74.

**Sec. 421. Assignment not a transfer.**

An assignment of a liquor license is not a transfer of it where the statute requires the court or licensing board to make a transfer upon a proper application. The right to a liquor license, or a transfer of one already issued, is not assignable. It is nothing more than the expression of a consent that the license may be transferred to the person named therein; and all the rights it gives to such person is a privilege to apply to have it transferred to him. An assignment has no market value.<sup>28</sup> In New York, however, it has been held that the assignment of a license tax certificate is valid, even when made to secure the payment of money borrowed to enable the applicant to pay for the certificate, as against judgment creditors of the licensee.<sup>29</sup> The assignee takes the assigned license subject to its forfeiture for misconduct of the licensee committed after its assignment.<sup>30</sup> An agreement to assign and an assignment made pursuant thereto, including stock and fixtures, in case of a failure to make payments on his debt, has been held an agreement to consent to a transfer of the license, and therefore valid.<sup>31</sup>

**Sec. 422. Death of licensee.**

The rule is a general one that on the death of the licensee neither the license nor any rights thereunder pass to his personal representatives or to his heirs. This is upon the ground that the license is peculiarly personal to the person to whom

<sup>28</sup> Cronin v. Sharp, 16 Pa. Super. Ct. 76. See Gilday v. Warren, 69 Conn. 237; 37 Atl. 494.

<sup>29</sup> Niles v. Mathusa, 19 N. Y. Misc. Rep. 96; 44 N. Y. Supp. 88. A more recent case holds the assignment under such instances void. David Mayer Brewing Co. v. Mack, 59 N. Y. Misc. Rep. 202; 110 N. Y. Supp. 245.

<sup>30</sup> People v. Lyman, 156 N. Y. 407; 50 N. E. 1112; affirming 27 N. Y. App. Div. 527; 50 N. Y.

Supp. 497. See People v. Manzer, 18 N. Y. Misc. Rep. 292; 41 N. Y. Supp. 1075.

<sup>31</sup> Germantown Brewing Co. v. Booth, 162 Pa. St. 100; 29 Atl. 386; 34 W. N. C. 340; reversing 14 Pa. Co. Ct. Rep. 189; 3 Pa. Dist. 142. See Albany Brewing Co. v. Barckley, 42 N. Y. App. Div. 335; 59 N. Y. Supp. 65, and Degender v. Seattle, etc. Co., 41 Wash. 385; 85 Pac. 898.

it is granted—the privilege to sell liquors is a personal one—because of his ascertained fitness to engage in the liquor traffic after a hearing had and a determination of that fact by the licensing board. The license is not in the nature of property.<sup>32</sup> There are statutes, however, which permit the transfer with the consent of the licensing board.<sup>33</sup> Such is the case in England where a licensee dies while the license is still in force. There the justices may “grant to the heirs, executors, or administrators of the person so dying,” “a license to sell excisable liquors by retail, to be drunk or consumed in such [licensed] house or the premises thereto belonging.”<sup>34</sup> So the heirs, executors, or administrators may continue to carry on the business until the next special transfer session of the justices without incurring a penalty for sales without a license.<sup>35</sup> Under this statute where the licensee dies intestate during the licensing year, the person who has a *prima facie* right to apply for letters of administration does not commit the offense of selling without a license for continuing the sales of liquors until the next special transfer session.<sup>36</sup> The person acting under this statute is himself a “licensed person” for the purpose of the licensing acts, and is therefore liable in the same way as the ordinary licensed person for any offense committed by him.<sup>37</sup>

<sup>32</sup> United States v. Overton, 2 Cranch C. C. 42; Fed. Cas. No. 15979; People v. Sykes, 96 Mich. 452; 56 N. W. 12; *In re Keating*, 25 Pittsb. Leg. J. (N. S.) 454; *In re Blumenthal*, 125 Pa. St. 412; 18 Atl. 395. See Williams v. Troop, 17 Wis. 463 on sale of saloon stock and fixtures and the right of the purchaser.

<sup>33</sup> *In re McOmber*, 3 Pa. Dist. Rep. 431.

<sup>34</sup> Patterson's Licensing Acts (19 ed.), 197, 198. See also pp. 167, 196, 249, 267, 325.

<sup>35</sup> Patterson's Licensing Acts (19 ed.), 334.

<sup>36</sup> Rose v. Frogley, 57 J. P. 376;

62 L. J. M. C. 181; 5 Rep. 530; 69 L. T. 346; 9 T. L. R. 466; 17 Cox C. C. 685.

<sup>37</sup> McDonald v. Hughes [1902], 1 K. B. 94; 66 J. P. 86; 71 L. J. K. B. 43; 50 W. R. 318; 85 L. T. 727; 18 T. L. R. 79; 20 Cox C. C. 131.

The license cannot be renewed in the name of the deceased, for “a license to a dead man is a mere nullity.” Cowles v. Gale, L. R. 7 Ch. 12; 41 L. J. Ch. 14; 25 L. T. 524; 20 W. R. 70.

The granting of the transfer is discretionary with the justices, the same as in granting licenses. Regina v. Smith, 42 J. P. 295;

### Sec. 423. Bankruptcy or insolvency—Receiver.

Unless some statute authorizes it, a license cannot be transferred to a receiver of a court, and he cannot continue the business thereunder; <sup>38</sup> and it cannot be vacated in a creditor's action.<sup>39</sup> A creditor of the licensee has no interest in the license.<sup>40</sup> In New South Wales by statute the license of a bankrupt passes to his legal representative;<sup>41</sup> and the assignee may carry on the business, but cannot secure a renewal of it.<sup>42</sup> In other parts of Australia the license does not pass to the licensee's assignee in insolvency.<sup>43</sup> The English statute expressly makes provision for a transfer of a license of a licensee who "shall become a bankrupt" to his assignee in bankruptcy.<sup>44</sup> The assignee can continue the business until the next

*Boodle v. Birmingham*, J. J., 45 J. P. p. 636; *Traynor v. Jones* [1894], 1 Q. B. p. 86; *Simmons v. Blackheath*, 17 Q. B. Div. 765; 30 J. P. 742; 55 L. J. M. C. 166; 35 W. R. 167; *Miskin v. Hughes* [1893], 1 Q. B. Div. 275; 57 J. P. 263; 67 L. T. 680.

Under the Pennsylvania statute a "party licensed" is not one who dies after application for a license and before it is granted and payment of the license fee. *In re Umholtz*, 191 Pa. St. 177; 43 Atl. 75; 29 Pittsb. Leg. J. (N. S.) 387; 44 W. N. C. 98.

In Pennsylvania a license of a deceased licensee has been held to be an asset of his estate; the executor cannot use it for his own benefit. *Ashenbach v. Carey* (Pa.), 73 Atl. 435. And if he succeeds in securing a transfer he becomes liable as trustee to all persons interested. *In re Reilly's Estate*, 6 Pa. Dist. Rep. 252.

An administrator may hold and join in the application for a transfer, but not the agent of the administrator. *In re Ballhausen*, 19

Vict. L. R. 66; 14 Austr. L. R. 185.

<sup>38</sup> *Sample v. Flynn* (N. J. Eq.), 10 Atl. 177.

<sup>39</sup> *Koehler v. Olsen*, 68 Hun 63; 22 N. Y. Supp. 677.

<sup>40</sup> *In re Breen*, 13 Pa. Co. Ct. Rep. 141. See *In re Summa*, 3 Pa. Dist. Rep. 651.

<sup>41</sup> *Ex parte Empson*, 3 N. S. W. L. R. 206.

<sup>42</sup> *Dunlop v. Uhr*, 14 N. S. W. L. R. 430.

<sup>43</sup> *Anthones v. Anderson*, 14 Vict. L. R. 127; 9 Austr. L. T. 175; *In re Jack*, 11 Austr. L. T. 372; 2 C. L. R. 684. See *Whyte v. Williams*, 29 Vict. L. R. 69; 24 Austr. L. T. 222; 9 Austr. L. R. 98.

<sup>44</sup> *Patterson's Licensing Acts* (19 ed.), p. 197. Formerly the license could be assigned when the licensee took "the benefit of any act for the relief of insolvent debtors," but the part of the statute quoted was repealed by the statute law Revision (No. 2), Act 1888 (51 and 52 Vict., c. 57), schedule.



special session of the justices, when he must secure a transfer to himself as assignee.<sup>45</sup> But where a licensee became a bankrupt, and by the covenant of his lease he was bound on its determination to assign the license to the lessor, it was held that the license was not "property" of the lessee, and did not pass to the trustee, but ought to be assigned to the lessor.<sup>46</sup> In Kentucky where the license is granted to an applicant because of his fitness to conduct the liquor traffic, to sell at a definite place, the licensing board or court, in case of the death or transfer by the licensee of his business to his personal representative or to the purchaser, may transfer his license; and it was held that the attempt of an insolvent licensee to transfer his license to a creditor did not render him liable to pay the licensee's trustee in bankruptcy anything for the license.<sup>47</sup> Where the police commissioner of Boston had uniformly permitted sales of licenses by trustees in bankruptcy, for the benefit of the licensee's creditor, but also uniformly refused to recognize mortgages of licenses, by allowing the trustee to name the licensee's successor, it was held that a court of bankruptcy would not recognize the claim of a mortgagee of the licensee, because contrary to the policy of such commissioners, without whose consent and co-operation it would be impossible to realize anything from the sale of the license for the benefit of the bankrupt's creditors.<sup>48</sup> And in a case of a licensee in this same city it was held that the commissioners by issuing a license, on a vacancy created by bankruptcy, to the nominee of his trustee in bankruptcy, did not deprive a co-licensee of his property without due process of law, where he held the original license as security, for his rights were subject to the police commissioner's rules.<sup>49</sup>

<sup>45</sup> Patterson's Licensing Acts, p. 334, 348.

<sup>46</sup> *In re Britnor*, 46 L. J. Bk. 85; 25 W. R. 560. Such would not be the case where the law does not recognize contracts to assign a license.

<sup>47</sup> *E. S. Bonnie & Co. v. Perry*,

117 Ky. 459; 78 S. W. 208; 25 Ky. L. Rep. 1560.

<sup>48</sup> *In re McArdle*, 126 Fed. 442.

<sup>49</sup> *Tracy v. Ginzberg*, 205 U. S. 170; 51 L. Ed. 755; 27 Sup. Ct. 461; affirming 189 Mass. 260; 75 N. E. 637.

In New York the receiver of a

### Sec. 424. Mortgage of license—Judicial sale.

As a general rule a license to sell intoxicating liquors cannot be mortgaged or pledged to secure an indebtedness, and in that way be transferred to the purchaser under the mortgage or the pledge.<sup>50</sup> But where a party executed a chattel mortgage covering certain furniture and bar fixtures, and all his interest in a license to sell intoxicating liquors, or a renewal of it, although the court held the mortgagee acquired no title to the license, both because it could not be mortgaged and because it was not then in existence, yet it was good as a contract to assign the license whenever obtained.<sup>51</sup> And in another case where a saloon owner gave a bill of sale of all his stock and saloon fixtures, and also all "right, title, and interest in and to a license to sell liquor," it was held that he was not required under his contract of sale to pay for the license for which he had made an application at the time he executed the bill of sale, and which was granted afterwards.<sup>52</sup> And where a statute treated a license as assignable property, but subject to be sold on legal process, it was held that it could be mortgaged, and where the plaintiff advanced money to a party to enable him to secure a license, and took a chattel mortgage upon it, and the licensee sold it to a third person who secured its transfer upon the proper records of the city to his firm instead of to himself, it was held not to affect the mortgagee's right to sue him alone;

licensee may surrender the license and receive the rebate of the unearned fee. *Albany Brewing Co. v. Barekley*, 42 N. Y. App. Div. 335; 59 N. Y. Supp. 65.

If a purchaser of a license from a trustee in bankruptcy is not able to secure its transfer to himself, he is entitled to a return of his money. *In re Miller*, 171 Fed. 263; *In re Conner & Co.*, 171 Fed. 261.

If a license be granted to a person after he has been adjudged a bankrupt, it belongs to him personally and not to his trustee in

bankruptcy, and the latter cannot sell it for the benefit of the bankrupt's estate. *In re Whitlock's Estate*, 39 Pa. Super. Ct. 34.

<sup>50</sup> *McNeeley v. Welz*, 166 N. Y. 124; 59 N. E. 697, affirming 20 N. Y. App. Div. 566; 47 N. Y. Supp. 310; *Arnett v. Wright*, 18 Okla. 337; 89 Pac. 1116 (note given for transfer is void); *David Meyer Brewing Co. v. Mack*, 110 N. Y. Supp. 245.

<sup>51</sup> *McNeeley v. Welz*, *supra*.

<sup>52</sup> *Costello v. Keeler*, 20 R. I. 298; 38 Atl. 927.

and the debt secured by the mortgage being less than the market value of the license, the mortgagee was not entitled to recover its market value, but only the amount due him.<sup>53</sup> In England the rights of mortgagees are somewhat regulated by statute. There a mortgagee of licensed premises given by the owner, not the lessee, may, on payment of a fee of one shilling, be registered as an owner of the premises;<sup>54</sup> and as such owner he may, under certain conditions, apply for a renewal of the license granted his tenant, a renewal, for instance, of a license for the premises licensed, to be operated by himself or his tenant.<sup>55</sup> As a consequence of those statutes the mortgagee of licensed premises, or of the saloon fixtures and stock of goods, has an interest in them that enables him to maintain an appeal, where the mortgage deed makes him attorney for the license holder in that respect, on refusal of the licensing board to renew the license where the licensee has applied for it.<sup>56</sup> In New York the tax certificate may be assigned as collateral security,<sup>57</sup> and if surrendered the assignee is entitled to the amount of the fee rebated.<sup>58</sup> An instrument reciting "I hereby agree to assign to" A liquor license number 328, "taken in my name," for one hundred dollars "loaned to me for the purpose of purchasing said license," to be the property of A, and until the sum be paid in full "the license is the property of the said A" is not a chattel mortgage and need not be recorded as against attaching creditors.<sup>59</sup> The assignee or mortgagee takes the license subject to the right of the State to cancel it for misconduct

<sup>53</sup> *Nicolini v. Langermann* (Tex. Civ. App.), 104 S. W. 501.

<sup>54</sup> *Patterson's Licensing Acts* (19th ed.) 535, § 29.

<sup>55</sup> *Regina v. Liverpool*, J. J., 11 Q. B. Div. 644; *Symons v. Wedmore* [1894], 1 Q. B. Div. 401; 58 J. P. 197; 63 L. J. M. C. 44; 69 L. T. 801; 42 W. R. 301.

<sup>56</sup> *Garrett v. Middlesex*, J. J., 12 Q. B. Div. 620; 53 L. J. M. C. 81; 48 J. P. 357; 32 W. R. 646.

<sup>57</sup> *Niles v. Mathusa*, 19 N. Y.

Misc. Rep. 96; 44 N. Y. Supp. 88.

<sup>58</sup> *In re Jenney*, 19 N. Y. Misc. Rep. 244; 44 N. Y. Supp. 84. He may carry on the business under it, or may surrender it if a receiver or assignee for the holder be appointed. *In re Jenney, supra*.

<sup>59</sup> *Niles v. Mathusa*, 20 N. Y. App. Div. 483; 47 N. Y. Supp. 38.

of the licensee committed either before or after the assignment or pledge<sup>60</sup>.

### Sec. 425. Transfer of license to other premises— Pennsylvania.

Statutes also go so far occasionally as to allow a transfer of the license from one premise to another, although a statute requires the license to be issued for a particular site. Such is the case in Pennsylvania, where the landlord refuses to renew the licensee's lease,<sup>61</sup> or where the buildings or premises are destroyed or become a nuisance and unfit for occupancy.<sup>62</sup> If the license has been revoked or abandoned by failure to complete the application, there can be no transfer, for there is nothing to transfer.<sup>63</sup> There can be no transfer from one house to another where the license is sold at sheriff's sale or the licensed premises were sold at such sale, at the request of the vendee, the sale not being a destruction of the premises, within the meaning of the statute.<sup>64</sup> Where an applicant applied for a license for one place and afterwards filed his application for a different place, and marked it "change of location," it was held not a transfer from one place to another.<sup>65</sup> In Connecticut one who is not a licensee cannot apply for a removal permit.<sup>66</sup> In this same State a statute forbade a second application for a license for the same place during the license year where the first application had been refused on the ground that the place was an unsuitable one. It was held that when a license had been re-

<sup>60</sup> *People v. Lyman*, 156 N. Y. 407; 50 N. E. 1112; affirming 27 N. Y. App. Div. 527; 50 N. Y. Supp. 497.

<sup>61</sup> *In re McKibbin*, 11 Pa. Super. Ct. 421; *In re Kellar*, 17 Lanc. Law Rev. 96; 16 Montg. Co. Law Rep. 24; 7 North Co. Rep. 129; 23 Pa. Co. Ct. Rep. 251; 9 Pa. Dist. Rep. 340; 13 York Leg. Rec. 155.

<sup>62</sup> Cellar filled with water. *In re McCabe*, 11 Pa. Super. Ct. 560; *In re Keller*, *supra*.

<sup>63</sup> *In re Daniels*, 31 Pa. Super. Ct. 156; *In re Umholtz's License*, 9 Pa. Super. Ct. 450; 43 W. N. C. 495.

<sup>64</sup> *In re Hotel Cambridge License*, 20 Pa. Co. Ct. Rep. 229; Appeal of Class, 6 Pa. Super. Ct. 130.

<sup>65</sup> *In re Heuberger License*, 8 Pa. Super. Ct. 625.

<sup>66</sup> Appeal of D'Amato, 80 Conn. 357; 68 Atl. 445.



fused because in that locality there were enough saloons, an application for a transfer of a license, held by another person, to the same place could not be granted during the same license year.<sup>67</sup> If the lawfulness of a sale of liquor be challenged, the transferee has the burden to show a lawful transfer of the license to himself, in order to protect himself from the penalty inflicted for a violation of the law.<sup>68</sup> This cannot be done by oral evidence; it must be proven by the record of the transfer.<sup>69</sup> The transferee cannot deny the authority of the person making the transfer, even though he was only an agent of the licensee, when he executed the statutory bond and by authority of the license pursued the occupation of a liquor dealer.<sup>70</sup>

### Sec. 426. Transfer under English statute.

The English statutes provide for transfers of license under certain contingencies, and the cases under them are worthy of consideration. Under Section 14 of the English Ale House Act of 1828<sup>71</sup> it is provided that if a licensee, before the expiration of his license, "die, or shall be by sickness or other infirmity rendered incapable of keeping an inn, or shall become a bankrupt;<sup>72</sup> or if any person so licensed, or the heirs, executors, administrators, or assigns of any person

<sup>67</sup> Appeal of D'Amato, 80 Conn. 357; 68 Atl. 445.

<sup>68</sup> Hill v. Sheridan, 128 Mo. App. 415; 107 S. W. 426.

<sup>69</sup> Hill v. Sheridan, *supra*. Where there is no statute authorizing a record, see *In re Clement*, 55 N. Y. Misc. Rep. 615; 105 N. Y. Supp. 1085.

<sup>70</sup> Faulkner v. Cassidy, 39 Tex Civ. App. 415; 87 S. W. 904.

If the licensee refuse to consent to the transfer from one place to another, where the buildings on the licensed premises are destroyed, the transfer may be made anyway, in Pennsylvania. *In re*

McKibbins, 11 Pa. Super. Ct. 421.

An application to have a license changed from one place to another is in effect an original application for a license. *Lester v. Price*, 83 Va. 648; 3 S. E. 529.

<sup>71</sup> 9 Geo. IV, c. 61, § 14; *Patterson's Licensing Acts*, pp. 179 to 197.

<sup>72</sup> The act originally had these words: "Or shall take the benefit of any act for the relief of insolvent debtors;" but this provision was repealed by the Statute Law Revision (No. 2), Act 1881 (51 and 52 Vict. c. 57).

licensed, shall remove from or yield up the possession of the house specified in such license; or if the occupier of any such house, being about to quit the same, shall have wilfully committed or shall have neglected to apply at the general annual licensing meeting, or at any adjournment thereof, for a license to continue to sell excisable liquors by retail, to be drank or consumed in such house; or if any house, being kept as an inn by any person duly licensed as aforesaid, shall be or be about to be pulled down or occupied under the provision of any Act for the improvement of highways or for any other public purpose; or shall be, by fire, tempest, or other unforeseen and unavoidable calamity, rendered unfit for the reception of travelers, and for the other legal purpose of an inn," it shall be lawful for the justice at a special session in such case, "and in such case only, to grant to the heirs, executors, or assigns of the person so dying; or to the assigns of such person becoming incapable of keeping an inn; or to the assignee or assignees of such bankrupt; or to any new tenant or occupier of any house having so become unoccupied; or to any person to whom such heirs, executors, administrators, or assigns or otherwise have *bona fide* conveyed or otherwise made over his or their interest in the occupation and keeping of such house, a license to sell excisable liquors by retail to be drank or consumed in such house or the premises thereto belonging; or to grant to the person whose house shall, as aforesaid, have been or shall be about to be pulled down or occupied for the improvement of the highways or for any other public purpose, or have become unfit for the reception of travelers or for the other legal purpose of an inn, and who shall open and keep as an inn some other fit and convenient house, a license to sell excisable liquors by retail, to be drank or consumed therein." "This section," said Justice Mathew, "provides for the transfer of a license to a different person in respect of the same premises, and for the transfer to the same person in respect of different premises."<sup>73</sup> Un-

<sup>73</sup> Regina v. Yorkshire, J. J. 47; 46 W. R. 334; 62 J. P. 197; [1898], 1 Q. B. 503; 62 J. P. M. & W. Dig. 74. 197; 67 L. J. Q. B. 279; 78 L. T.

der this statute a number of cases have been decided. Thus where a new tenant has come into the premises and has failed to obtain a transfer, there is nothing to prevent a second new incoming tenant making a second application during the licensing year, for the justices may accept one person though they may have rejected another, and the license once granted continues in existence until the end<sup>74</sup> of the licensing year.<sup>75</sup> But if the license has been forfeited no application can be made.<sup>76</sup> While the application is usually made before the expiration of the license, the object being to provide for some contingency happening between the general annual licensing meetings, at which alone a license or a renewal can be obtained, and which license positively lapses on a definite day in the year;<sup>77</sup> yet if the events mentioned in this statute have all happened during the current year, as the death or removal of one tenant or the entry of another into the licensed premises, then the application may be made at any time after the expiration of the current license, the jurisdiction of the court depending on the happening of events, and not on the date at which the remedy is requested.<sup>78</sup> Under this statute if a tenant has been refused a renewal he may surrender the premises at any time before the end of the licensing year, and then a new tenant may enter and apply for a transfer, and the justices cannot refuse to hear his application on the ground that they had already refused a renewal to the outgoing tenant, as that is not a case of *res*

<sup>74</sup> April 5th.

<sup>75</sup> *Ex parte* Todd, 3 Q. B. Div. 407; 42 J. P. 662; 47 L. J. M. C. 89.

<sup>76</sup> *Regina v. West Riding*, J. J., 21 Q. B. Div. 258; 52 J. P. 455; 57 L. J. M. C. 103; 36 W. R. 258.

It is, however, doubtful, if a succession of new incoming tenants can apply one after the other. See *Stevens v. Shornbrook*, J. J., 23 Q. B. Div. 143; 58 L. J. M. C. 167; 61 L. T. 240; 37 W. R. 605; 53 J. P. 423.

<sup>77</sup> Namely, April 5th.

<sup>78</sup> *Regina v. Lawrence*, 11 Q. B. Div. 638; 47 J. P. 596; 52 L. J. M. C. 114; 49 L. T. 244; 32 W. R. 20 (overruling *Ex parte* Todd, 3 Q. B. Div. 407; 47 L. J. M. C. 89; 42 J. P. 662, and *White v. Coquetdale*, 7 Q. B. Div. 238; 50 L. J. M. C. 128; 44 L. T. 715; 45 J. P. 539, where it was held the application must be made before the license expired).

*judicata*.<sup>79</sup> The general rule is under this statute that the justices have the same discretion, but not more, concerning the grants of transfers from one person to another as they have concerning renewals.<sup>80</sup> A husband may obtain a transfer of his wife's license, where she held it before their marriage.<sup>81</sup> On an application for a transfer, evidence of the bad character of previous tenants may be shown.<sup>82</sup>

### Sec. 427. Transfer under English and Colonial statute—Cases.

The following are illustrative cases under the English statutes, followed by a few Colonial cases under statutes very similar to the English statutes. If a license has been forfeited, there can be no application successfully made thereafter for a transfer.<sup>83</sup> And the same is true if it has been

<sup>79</sup> Regina v. Upper Osgoldenross, 53 J. P. 823; 62 L. T. 112; Regina v. Thomas [1892], 1 Q. B. 426; 56 J. P. 151; 66 L. T. 289; 66 L. J. M. C. 141; 40 W. R. 472.

Where a tenant lost his right to a renewal by neglect, see Regina v. Powell [1891], 1 Q. B. 718; 2 Q. B. 693; 55 J. P. 422; 56 J. P. 52; 65 L. T. 210; 60 L. J. Q. B. 594; 39 W. R. 630. See also Regina v. West Riding, J. J., 59 J. P. 278.

<sup>80</sup> Regina v. Smith, 42 J. P. 295; Traynor v. Jones [1894], 1 Q. B. p. 86; Boodle v. Birmingham, J. J., 45 J. P. p. 636; Simmons v. Blackheath, 17 Q. B. Div. 765; 50 J. P. 742; 55 L. J. M. C. 166; 35 W. R. 167.

<sup>81</sup> Hazell v. Middleton, 45 J. P. 548.

<sup>82</sup> Miskin v. Higher [1893], 1 Q. B. 275; 57 J. P. 263; 67 L. T. 680. See Regina v. Hull, J. J., 47 J. P. 820.

Where the current license had come to an end before any applica-

tion had been made for a transfer or grant under the section quoted, to a special sessions transfer, the court held that the justices were no longer restricted to the four ground mentioned in the section for a transfer. This was upon the ground that it was really an application for a new license. Murray v. Freer [1893], 1 Q. B. 635; 57 J. P. 101, 583; 67 L. T. 507; 62 L. J. M. C. 100; affirmed [1894] App. Cass. 576; 63 L. J. M. C. 242; 71 L. T. 444; 58 J. P. 508.

Appeals lie from a refusal to transfer. Thornton v. Clegg, 24 Q. B. Div. 132; 53 J. P. 342; 58 L. J. M. C. 6; 61 L. T. 562; 38 W. R. 160; Regina v. Welby, 54 J. P. 183.

<sup>83</sup> Regina v. West Riding, J. J., 21 Q. B. Div. 258; 52 J. P. 455; 57 L. J. M. C. 103; 36 W. R. 258; Stevens v. Green, 23 Q. B. Div. 142; 53 J. P. 423; 58 L. J. M. C. 167; 61 L. T. 240; 37 W. R. 605.



discontinued. In that event the application must be for a new license.<sup>84</sup> Where K, a licensed holder, abandoned possession, and at the next general meeting of the justices his landlord asked for a renewal in K's name or his own, which was refused; it was held that P, a new tenant, who entered after the general meeting, could not apply for a transfer so long as the refusal formerly entered as to the landlord remained unappealed from and unreversed.<sup>85</sup> But where the first application was made by a new tenant, and was refused, it was held that a second new tenant could successfully apply and was not barred by the refusal of a renewal to the first.<sup>85\*</sup> An off beer license (a license to sell beer to be consumed off the premises) was granted in 1894 to the occupier of a grocer's shop upon condition that the license should be given up on his leaving or letting the shop to carry on the grocery business there. The occupier being about to give up the shop and to cease to carry on the grocery business, G applied to the licensing justices for the transfer of the license to him. It was held that the condition did not prevent the licensing justices from entertaining the application for the transfer. "Although," said Lord Alverstone, "the condition was a circumstance which could be taken into consideration by the justices, it did not prevent them from entertaining the matter of the transfer; it was not a bar preventing the licensing justices from granting the transfer, but only a matter to be taken into consideration."<sup>86</sup> Where a house is pulled down

<sup>84</sup> *Regina v. Curzon*, L. R. 8 Q. B. 400; 42 L. J. M. C. 155; 37 J. P. 774; 29 L. T. 32; 21 W. R. 886.

<sup>85</sup> *Regina v. Newcastle*, J. J., 51 J. P. 244.

<sup>85\*</sup> *Baldwin v. Dover*, J. J. [1892], 2 Q. B. 421; 56 J. P. 423; 61 L. J. M. C. 215; *Regina v. Upper Osgoldcross*, 53 J. P. 823; 62 L. T. 112.

The following cases involve questions of practice peculiar to the English practice in obtaining a renewal or transfer of licenses.

*Davis v. Evans*, 62 J. P. 120; 77 L. T. 688; 14 T. L. R. 163; *Thornton v. Clegg*, 24 Q. B. Div. 132; 53 J. P. 742; 59 L. J. M. C. 6; 61 L. T. 562; 38 W. R. 160; *Regina v. Powell* [1891], 2 Q. B. 693; 55 J. P. 422; 60 L. J. Q. B. 594; 65 L. T. 210; 39 W. R. 630; 56 J. P. 52; *Regina v. Thomas* [1892], 1 Q. B. 426; 56 J. P. 151; 66 L. T. 289; 61 L. J. M. C. 141; 40 W. R. 478.

<sup>86</sup> *Oldham, J. J. v. Gee*, 66 J. P. 341; 18 T. L. R. 348.

for the purpose of public improvement, and an application is made for a grant to the person whose house has been pulled down of a license in respect of other fit and convenient premises, the application must be made by a licensed person who was keeping the old premises as an inn at the time of their demolition;<sup>87</sup> and the house to which it is proposed to make the transfer must be in existence at the time.<sup>88</sup> If there are sufficient public houses in the vicinity to which the transfer is requested, the justices, in their discretion, may refuse to grant the transfer.<sup>89</sup> In granting a transfer of a license to another place the justices are not bound by the same conditions that they would be if the application was for an original license. In such an instance they have unlimited jurisdiction.<sup>90</sup> A grant to a proposed transferee of a license of a temporary authority to sell does not cancel the existing license, and while the license holder remains in possession of the premises he cannot be convicted of selling without a license.<sup>91</sup> No transfer can be made in instances not covered by the statute.<sup>92</sup> In Australia it is held that it is no ground for a refusal to make a transfer that the proposed transferee is bound by his lease to buy all his beer and spirituous liquor from his landlord.<sup>93</sup> A license cannot be split and transferred in part, as where a tenant of two adjoining persons was evicted and the two separate owners sought each one-half the license.<sup>94</sup> The magistrate in determining whether a trans-

<sup>87</sup> *Regina v. West Riding*, J. J. [1898], 1 Q. B. 503; 62 J. P. 197; 67 L. J. Q. B. 279; 78 L. T. 47; 46 W. R. 334; 14 T. L. R. 89; M. & W. Dig. 74.

<sup>88</sup> *James v. Nervington*, J. J., 64 J. P. 489.

<sup>89</sup> *Boodle v. Birmingham*, J. J., 45 J. P. 635. See *Regina v. Northumberland*, J. J., 43 J. P. 271.

<sup>90</sup> *Traynor v. Jones* [1894], 1 Q. B. 83; 58 J. P. 182; 63 L. J. M. C. 31; 39 L. T. 862; 42 W. R. 201. See also *Regina v. Cothan* [1898], 1 Q. B. 802; 62 J. P. 435; 14 T. L. R. 367; 67 L. J. Q. B.

632; 78 L. T. 468; 46 W. R. 512, and *Wilson v. Crewe*, J. J. [1905], 1 K. B. 491; 74 L. J. K. B. 394; 69 J. P. 111; 92 L. T. 164; 53 W. R. 382; 21 T. L. R. 233.

<sup>91</sup> *Andrews v. Denton* [1897], 2 Q. B. 37; 66 L. J. Q. B. 520; 76 L. T. 423; 45 W. R. 500; 61 J. P. 326.

<sup>92</sup> *Regina v. Booth*, 3 Ont. 144; 9 C. P. 452. (A Canadian statute involved.)

<sup>93</sup> *Regina v. Templeton*, 3 Vict. L. R. 24.

<sup>94</sup> *Ex parte Slack*, 8 Vict. L. R. 144.

feree is a proper person may proceed upon his own knowledge of his character and fitness.<sup>95</sup> Permission to have more than one bar on the premises does not pass with a transfer of the license; and to maintain more than one the transferee must obtain permission of the licensing board.<sup>96</sup> In New Zealand a statute requires a conviction to be recorded on the defendant's license. A transferred all of a license; and afterwards the first holder was convicted of an offense occurring while he held the license; but the court held that his conviction could not be noted on the license transferred.<sup>97</sup> In South Africa one K, who had a licensed hotel in Q, covenanted to hand over to O on the expiration of his tenancy the liquor license for the premises. Thereafter K entered into an agreement with P by which he purported to sell him the good will of the hotel, and O agreed to accept P as a tenant in place of K, but was not a party to the sale by K to P. Afterward K became insolvent and his trustee claimed the right to retain the license until P had paid the purchase price, and refused to hand it over to O. It was held that he was bound to hand the license over to O.<sup>98</sup>

<sup>95</sup> *Ex parte Slack*, 8 Vict. L. R. 144; *In re Logan*, 22 Austr. L. T. 109; 6 Austr. L. R. 253.

<sup>96</sup> *Oliver v. Connell*, 29 Vict. L. R. 329; 25 Austr. L. T. 76; 9 Austr. L. R. 177.

On a sale of a hotel and the license to retail liquors, the vendor is not bound to procure a

transfer of the license before suing for the purchase money. It is sufficient if he is ready and willing to transfer it. *Moloney v. Rogers*, 3 N. S. W. L. R. 351.

<sup>97</sup> *Low v. Hutchison*, 13 N. Z. L. R. 54.

<sup>98</sup> *Ohlsson v. Kuhr*, 18 Juta 205.

## CHAPTER XI.

### REVOCATION OF LICENSE.

#### SECTION.

- 427a. State may authorize a revocation.
- 428. Repeal of statute.
- 429. Causes for revocation —  
    Fraud in procuring license.
- 430. License issued for a prohibition territory.
- 431. Violation of the law.
- 432. Violation of statute by licensee's agent or servant.
- 433. Upon conviction of an offense against the liquor laws.
- 434. Violation of terms of bond.
- 435. Conducting place disorderly.
- 436. House used as a brothel.
- 437. Ordinance providing for a revocation.
- 438. New York statute—False statements.
- 439. False statements in application under New York statute.
- 440. Erroneous statements as to place in application for a license.
- 441. License issued by mistake.
- 442. The license to be revoked.

#### SECTION.

- 443. Revocation after assignment for prior illegal acts.
- 444. What board or court may revoke a license.
- 445. Mandamus to compel a revocation.
- 446. Who may commence proceedings.
- 447. Who to be made defendant —Assignment of license.
- 448. The petition for revocation.
- 449. Joint proceeding to revoke several licenses.
- 450. Notice of proceedings for revocation.
- 451. The answer.
- 452. Trial.
- 453. Dismissal of proceedings—  
    Expiration of license.
- 454. Estoppel to revoke.
- 455. Appeal—*Certiorari*.
- 456. Effect of revocation—Stay of proceedings.
- 457. Costs.
- 458. Rebate of fees.
- 459. Liability of city for mistakenly revoking license.
- 460. Action on bond when license forfeited.

#### **Sec. 427a. State may authorize a revocation.**

Licenses, as we have seen, are not contracts; they are only permits. Hence the State may authorize their revocation, with



or without cause assigned.<sup>1</sup> And a city, under the general licensing power, may provide by ordinance that if the licensee violate the ordinances, or even the State law, with reference to the sale of intoxicating liquors, and perhaps any other law, the license shall be forfeited.<sup>2</sup> And so a city may insert in a license certain conditions the violation of which will work its forfeiture.<sup>3</sup> If a city may revoke a license, of course it may revoke an order granting it before the license is issued.<sup>4</sup> It cannot be argued that the licensee has a property in his license, and if it be revoked he will be deprived of his property and not be able to use and cannot put his bar fixtures to other use.<sup>5</sup> A city may adopt an ordinance requiring a licensee before receiving his license to enter into an agreement that if he be convicted of a violation of either the ordinance of the city or of a State law he shall forfeit his license;<sup>6</sup> and it may by ordinance revoke a license, although thereby it creates a system by special enactment contrary to the local

<sup>1</sup> *In re Livingston*, 24 N. Y. App. Div. 51; 48 N. Y. Supp. 989; *Hirn v. State*, 1 Ohio St. 15; *Barnett v. Pemiscot Co. Ct.*, 111 Mo. App. 693; 86 S. W. 575; *Pleuler v. State*, 11 Neb. 547; 10 N. W. 481; *People v. McBride*, 234 Ill. 146; 84 N. E. 865; *Commonwealth v. Jones*, 10 Pa. Co. Ct. Rep. 611; *Spraberry v. Atlanta*, 87 Ga. 120; 13 S. E. 197; *Brown v. State*, 82 Ga. 224; 7 S. E. 915; *Martin v. State*, 23 Neb. 371; 36 N. W. 554; *Fell v. State*, 42 Md. 71; *Commonwealth v. Brennan*, 103 Mass. 70; *Calder v. Kurby*, 5 Gray 597; *People v. Brooklyn Police*, 59 N. Y. 92; *Borek v. State* (Ala.), 39 So. 580; *Sarlo v. Pulaski Co.*, 76 Ark. 336; 88 S. W. 953; *McCorkie v. Remley*, 119 Iowa 512; 93 N. W. 505; *Croix v. Fairfield Co.*, 50 Conn. 321; 47 Am. Rep. 648; *Krueger v. Colville*, 49 Wash. 295; 95 Pac. 81.

<sup>2</sup> *Ottumwa v. Schaub*, 52 Iowa 515; 3 N. W. 529; *Hoboken v. Goodman*, 68 N. J. L. 217; 51 Atl. 1092; *Carbondale v. Wade*, 106 Ill. App. 654; *Wallace v. Reno*, 27 Nev. 71; 73 Pac. 528; *Anderson v. Galesburg*, 118 Ill. App. 525; *Campbell v. Thoms-ville* (Ga.), 64 S. E. 815.

<sup>3</sup> *Huber v. Baugh*, 43 Iowa 514; *Cox v. Jackson*, 152 Mich. 630; 116 N. W. 456; *Malken v. Chicago*, 217 Ill. 471; 75 N. E. 548; affirming 119 Ill. App. 542.

<sup>4</sup> *Sights v. Yarnells*, 12 Gratt. 292; *Hagan v. Boonton*, 62 N. J. L. 150; 40 Atl. 688; *Ex parte Vaccarezza*, 52 Tex. Cr. App. 311; 106 S. W. 392. See *Varnaman v. Adams*, 74 N. J. L. 125; 65 Atl. 204.

<sup>5</sup> *Graziano v. New Orleans*, 121 La. 440; 46 So. 566.

<sup>6</sup> *Cox v. Jackson*, 152 Mich. 630; 116 N. W. 456.

option law.<sup>7</sup> In the absence of charter or statutory restrictions, a city may revoke a license at any time without incurring a liability for damages, even though there be no cause for the revocation;<sup>8</sup> and an authority to issue a license is a grant of power, for good cause, to revoke it.<sup>9</sup> In Ontario it is held that if a license has been granted, though not issued, the grant cannot be revoked in order to give it to another.<sup>10</sup> A statute may provide that a license may be annulled upon the petition of a certain specified number of house holders living near the licensed premises.<sup>11</sup> A statute is not invalid because it provides for a revocation without a return of the license fee or any part of it.<sup>12</sup> If a city may revoke a license at its pleasure, yet if the resolution for a revocation shows it was not passed in pursuance of that power, but under an ordinance declaring a given act to be a sufficient cause for a revocation, its action will be erroneous.<sup>13</sup> A license may be revoked because of an offense the licensee had committed before it was issued;<sup>14</sup> and the fact that a criminal proceeding is pending against a licensee for a violation of the liquor laws is no bar to a proceeding to revoke his license.<sup>15</sup>

### Sec. 428. Repeal of statute.

A repeal of the law authorizing the grant of a license has the effect to at once annul all licenses issued under it, unless it have a saving clause.<sup>16</sup> While the repeal of the existing

<sup>7</sup> McGehee v. State, 114 Ga. 833; 40 S. E. 1004.

<sup>8</sup> Isan v. Griffin, 98 Ga. 623; 25 S. E. 611.

<sup>9</sup> Hevren v. Reed, 126 Cal. 219; 58 Pac. 536.

<sup>10</sup> Haslem v. Schnarr, 30 Ont. 89, not following Leeson v. Board. 19 Ont. 67.

<sup>11</sup> Crothers v. Monteith, 11 Manitoba 373; Young v. Blaisdell, 138 Mass. 344.

<sup>12</sup> Krueger v. Colville, 49 Wash. 295; 95 Pac. 81; *Ex parte Vaccarezza*, 52 Tex. Cr. App. 105; 105 S. W. 1119.

<sup>13</sup> Carr v. Augusta, 124 Ga. 116; 52 S. E. 300.

<sup>14</sup> Cherry v. Commonwealth, 78 Va. 375.

<sup>15</sup> Laeroix v. Fairfield County, 50 Conn. 321; 47 Am. Rep. 648.

An individual in his private capacity cannot insist on a forfeiture. *Leon Mercantile Co. v. Anderson* (Tex.), 121 S. W. 868.

<sup>16</sup> Pleuler v. State, 11 Neb. 547; 10 N. W. 481; *Commonwealth v. Jones*, 10 Pa. Co. Ct. Rep. 611; *Menken v. Atlanta*, 78 Ga. 668; 2 S. E. 559. See *Regina v. Stafford*, 22 C. P. 177.

law may be by implication,<sup>17</sup> yet the courts will not hold that a repeal was effected unless it clearly so appears in the enactment of the later act.<sup>18</sup> On the adoption of a constitutional provision prohibiting the sale of liquor, all existing licenses are at once revoked.<sup>19</sup> And the same is true on the adoption of local option prohibition.<sup>20</sup>

### **Sec. 429. Causes for revocation—Fraud in procuring license.**

The right to revoke a license can only be done for the cause and in the manner prescribed by statute.<sup>21</sup> But if a license has been obtained by fraud, or the consent of certain neighbors had been procured by fraud, then a statute authorizing its revocation is not necessary; and it is not necessary to proceed in accordance with a statute providing for the revocation of a license.<sup>22</sup> Where a statute provided that application for a license might be refused only for good cause, in the discretion of the city council, a subsequent statute providing that the council may revoke a license "whenever in the judgment of the city council such action may be necessary" to good order does not authorize an arbitrary revocation.<sup>23</sup> If it is sought to enjoin a city council from revoking a license issued under an ordinance, it must be shown that the council had no power to revoke it, as otherwise it will be presumed it had.<sup>24</sup>

<sup>17</sup> *Commonwealth v. Jones*, 10 Pa. Co. Ct. Rep. 611.

<sup>18</sup> *Hirn v. State*, 1 Ohio St. 15.

<sup>19</sup> *Prohibitory Amendment Cases*, 24 Kan. 700; *State v. Tonks*, 15 R. I. 385; 5 Atl. 636.

<sup>20</sup> *Robertson v. State*, 12 Tex. App. 541; *State v. Cooke*, 24 Minn. 247; 31 Am. Rep. 344; *Ex parte Vaccarezza*, 52 Tex. Cr. App. 352; 106 S. W. 392. See § 430.

<sup>21</sup> *Lyman v. Malcom Brewing Co.*, 160 N. Y. 96; 55 N. E. 577,

affirming 40 N. Y. App. Div. 46; 57 N. Y. Supp. 634; *People v. Woodman*, 15 Daly 136; 3 N. Y. Supp. 926.

<sup>22</sup> *State v. Schroff*, 123 Wis. 98; 100 N. W. 1030. See *Lantz v. Hightstown*, 46 N. J. L. 102; *Decker v. Board*, 57 N. J. L. 603; 31 Atl. 235.

<sup>23</sup> *Pehrson v. Ephraim*, 14 Utah 147; 46 Pac. 657.

<sup>24</sup> *Hevren v. Reed*, 126 Cal. 219; 58 Pac. 536.

**Sec. 430. License issued for a prohibition territory.**

A license issued, in the district for which it is granted, when by local option the sale of liquors has been prohibited may be revoked.<sup>25</sup>

**Sec. 431. Violation of the law.**

Statutes are sometimes so broad as to call for a cancellation of a license if the holder shall have violated any criminal law of the State during the period for which it was issued; but this is rare, the right to cancel being limited to certain offenses. But usually the right to cancel a license is limited, under this head, to a violation of the liquor laws; and the cancellation may take effect, unless the statute otherwise provides, whether the licensee has been convicted or not. The offence authorizing a cancellation must, however, be one of those for which the statute authorizes a cancellation, and not one against the liquor law generally, unless the statute is broad enough to cover the instance. This is very well illustrated by a New York case. In that State a liquor tax certificate could be issued for the sale of liquors to be consumed on the premises, and another for sales not to be there consumed under subdivisions one and two of section 11 of the liquor laws. To sell liquors without a certificate was illegal under section 31 Subdivision 2 of section 34, provided that anyone selling liquor in violation of sections 11 or 31 should be punished and forfeit his license, but also provided that its provisions should not apply to violations of section 31, which prescribed a punishment for its violation in its first subdivision. The first subdivision of section 34 inflicted a fine and imprisonment on anyone selling without first procuring a proper tax certificate. Under these several provisions it was held that a tax certificate could not be revoked for a sale of liquors to be consumed on the premises.<sup>26</sup> Unless the evidence be clear that the licensee has violated the law, a revocation of his license for that cause will not be ordered.<sup>27</sup> Sales to minors

<sup>25</sup> McIntyre v. Asheville (S. C.), 59 S. E. 1007. See cases in note 20.

<sup>26</sup> *In re* Lyman, 27 N. Y. Misc. Rep. 327; 57 N. Y. Supp. 888.

<sup>27</sup> *In re* Matey, 9 Kulp 215; Appeal of Moyer, 8 Pa. Super. Ct. Rep. 475; 43 W. N. C. 100.



may be sufficient to authorize a revocation of the license,<sup>28</sup> or other illegal sales.<sup>29</sup> If the applicant was not entitled to receive a tax certificate, sales by him are illegal; but a previous conviction of a violation of the statute is not necessary to a revocation of his certificate.<sup>30</sup> A statute may provide for a revocation of a city license for a failure of the licensee to obey an ordinance of the city.<sup>31</sup> A statute requiring a license to be revoked upon three convictions for offenses committed, does not require the offenses to have been committed within the licensing year.<sup>32</sup> Provisions in one section of a statute providing that a licensee violating the liquor law may be punished by having his license forfeited are not inconsis-

<sup>28</sup> Appeal of Moyer, *supra*; *In re* Gordon, 16 Montg. Co. Law Rep. 25; *In re* Tierney, 11 Pa. Co. Ct. Rep. 406; Lewis v. Commonwealth, (Ky.), 121 S. W. 643.

<sup>29</sup> Voight v. Board, 59 N. J. L. 358; 36 Atl. 686; *In re* Lyman, 62 N. Y. App. Div. 616; 70 N. Y. Supp. 822; Clement v. Martin, 117 N. Y. App. Div. 5; 102 N. Y. Supp. 37; *In re* McLaughlin, 24 Pa. Co. Ct. Rep. 92; *In re* Arnold, 30 Pa. Super. Ct. 93; *In re* Cullinan, 45 N. Y. Misc. Rep. 497; 92 N. Y. Sup. 802; 90 N. Y. App. Div. 607; 86 N. Y. Supp. 1046; Parrent v. Little, 72 N. H. 566; 58 Atl. 510; Lyman v. Young Men's, etc. Club, 28 N. Y. App. Div. 127; 50 N. Y. Supp. 977; Board v. Mayr, 31 Colo. 173; 74 Pac. 458; State v. Corron, 73 N. H. 434; 62 Atl. 1094; Carr v. Augusta, 124 Ga. 116; 52 S. E. 300; State v. Seebold, 192 Mo. 720; 91 S. W. 491; Belt v. Paul, 77 Ark. 211; 91 S. W. 301; State v. Os-kosh (Wis.), 70 N. W. 300; Appeal of Meenan, 11 Pa. Super. Ct. 579; Anderson v. Galesburg, 118 Ill. App. 525.

A sale on Sunday is cause sufficient for the revocation of the license. *In re* Clement, 59 N. Y. Misc. Rep. 367; 112 N. Y. Supp. 126.

<sup>30</sup> *In re* Halbran, 30 N. Y. Misc. Rep. 515; 63 N. Y. Supp. 1024; Lacroix v. Fairfield County, 50 Conn. 321; 47 Am. Rep. 648.

<sup>31</sup> State v. Curtis, 136 Wis. 357; 110 N. W. 189. In this case section one of a statute authorized any member of the city to give an order forbidding the sale of liquor to spendthrifts; section two provided for a revocation of a license for failure to observe "any order" of the aldermen made pursuant to law; section three required a bond of a licensee conditioned that he would "obey all orders of such aldermen or any of them made pursuant to law." It was held that an ordinance requiring saloons to be closed during certain hours of the day was an order within the meaning of section two. State v. Curtis, 136 Wis. 357; 110 N. W. 189.

<sup>32</sup> Rex v. Wexford, J. J. [1904], 2 Irish Rep. 251.

tent with a provision in another section authorizing the licensing board to revoke the license for the same violation of the statute, since the licensee may be brought before the court and punished where no revocation of the license has been made.<sup>33</sup> But a license issued after a conviction of a sale of liquors without a license cannot be revoked because of such conviction.<sup>34</sup> A failure to keep the bar of a saloon exposed, as a statute requires, is sufficient to authorize a revocation of the proprietor's license.<sup>35</sup> Under the New York statute a licensed hotel proprietor may serve his guests with drinks at their meals; and if he does so in good faith his license cannot be revoked; for he has committed no offense.<sup>36</sup> Permitting gambling on the premises is a sufficient cause for a revocation of a license,<sup>37</sup> but the gambling must take place with the permission or connivance of the licensee. Thus, a licensee as tenant occupied a room adjacent to a billiard hall, with a door between them, usually open; and at times billiard players ordered drinks from his bar. The proprietor of the billiard hall installed a slot machine in his room, concerning which the licensee protested, and there was no evidence of fraud. It was held that the evidence was not sufficient to authorize a revocation of his license, on the charge that he permitted gambling to be carried on upon his premises.<sup>38</sup> When a statute requires a saloon door to be closed on Sunday, and no one shall be permitted to pass through the door except the proprietor, members of his family or his servants, the licensee cannot justify his conduct in keeping the door open so that customers may pass through the door and reach his restaurant situated in the barroom; and for such conduct his license may be revoked.<sup>39</sup> Where a license could be revoked because of a sale or gift of liquor "to a person of

<sup>33</sup> *Parrent v. Little*, 72 N. H. 566; 58 Atl. 510.

<sup>34</sup> *People v. Clement*, 58 N. Y. Misc. Rep. 631; 111 N. Y. Supp. 1033.

<sup>35</sup> *Cuireczak v. Keron* (N. J. L.), 70 Atl. 366.

<sup>36</sup> *In re Cullinan*, 75 N. Y. App. Div. 301; 78 N. Y. Supp. 118.

<sup>37</sup> *Brockway v. State*, 36 Ark. 629.

<sup>38</sup> *In re Clement*, 190 N. Y. 523; 83 N. E. 1123; affirming 119 N. Y. Div. 622; 104 N. Y. Supp. 25.

<sup>39</sup> *In re Cullinan*, 68 N. Y. App. Div. 119; 74 N. Y. Supp. 182.

known intemperate habits," it was held that it was not necessary to show that the licensee knew of the intemperate habits of the person to whom he furnished the liquor.<sup>40</sup> And the same was held true of a sale to a minor.<sup>41</sup> So under a provision authorizing a revocation if certain "disreputable persons" visit the premises, it is no defense that they behaved decently when they made their visit.<sup>42</sup> A license may be revoked for a sale off the premises, in violation of the law.<sup>43</sup> Where a statute provides for a revocation in case the licensee violates its provisions, a previous conviction of such violation is not necessary to authorize a revocation.<sup>44</sup> If a licensee runs two places of business under a license which is for only one of them, his license may be revoked.<sup>45</sup> But the temporary closing of the place licensed and the running of it at another place without transfer of the license, has been held in Texas not to furnish sufficient grounds for revocation of the license.<sup>46</sup>

A license may be revoked for a violation of the law even though an appeal has been taken from the judgment of conviction.<sup>47</sup> If one of two licensed partners sell liquors to a minor, the license may be revoked as to both of them.<sup>48</sup> A violation of the screen law is sufficient to justify a revocation of a license.<sup>49</sup> An agreement between a non-resident and a resident that the latter should get the license in his name but the former should conduct the business, is sufficient cause for revoking the license because it is an evasion of the statute requiring licensees to be residents.<sup>49\*</sup>

<sup>40</sup> *In re* Garey, 11 Pa. Co. Rep. 468.

<sup>41</sup> *In re* Eick, 17 Pa. Co. Ct. Rep. 50; 4 Pa. Dist. R. 461.

<sup>42</sup> *Commonwealth v. Simmons*, 4 Pa. Dist. Rep. 35.

<sup>43</sup> *Commonwealth v. Joseph Kohline Brewing Co.*, 1 Pa. Super. Ct. 627.

<sup>44</sup> *Miles v. State*, 53 Neb. 305; 73 N. W. 678; *Krueger v. Colville*, 49 Wash. 295; 95 Pac. 81; *State v. Seebold*, 192 Mo. 720; 91 S. W. 491; *Board v. Mayr*, 31 Colo. 173; 74 Pac. 458; *Lacroix v.*

*Fairfield County*, 50 Conn. 321; 47 Am. Rep. 648.

<sup>45</sup> *Malkan v. Chicago*, 217 Ill. 471; 75 N. E. 548; affirming 119 Ill. App. 542.

<sup>46</sup> *McLeod v. State*, 33 Tex. Civ. App. 170; 76 S. W. 216.

<sup>47</sup> *Harrison v. People*, 124 Ill. App. 519.

<sup>48</sup> *Lewis v. Commonwealth (Ky.)*, 121 S. W. 643.

<sup>49</sup> *In re Chapman (N. Y.)*, 119 N. Y. Supp. 352.

<sup>49\*</sup> *Leon Mercantile Co. v. Anderson (Tex.)*, 121 S. W. 868.

**Sec. 432. Violation of statute by licensee's agent or servant.**

A statute requiring a revocation of a license for a violation of the liquor law by the licensee applies to a violation by his agent or servant. Thus a holder of a tax certificate assigned it as security to a brewing company, which the law permitted, to secure a debt; and the company removed it from the saloon licensed. A statute required its exposure to the public view in the place licensed. Thereafter the brother of the licensee, who was his general manager, sold liquors in his absence. It was held that the liquor tax certificate must be cancelled.<sup>50</sup> It is no defense that the licensee's bartender made illegal sales contrary to his orders when the statute provides that he must see that his bartender or agent committed no violations of its provisions.<sup>51</sup> And so where a licensee permitted a boy, having charge of a lunch room, free access to his bar from which he obtains liquors to serve customers of the lunch room; and he serves minors with liquors, his license may be revoked.<sup>52</sup> But where a licensee's agent, or one whom a licensee permits to do business under his license at the place designated therein, engages in unlawful sales of his own elsewhere, the license cannot be revoked; for his act is not the act of the licensee.<sup>53</sup> If one of two partners violates the liquor laws, the license may be revoked as to both of them.<sup>54</sup>

**Sec. 433. Upon conviction of an offense against the liquor laws.**

It is a common provision of the statutes relating to the sale of intoxicating liquors that a conviction of the licensee

<sup>50</sup> *In re Mitchell*, 41 N. Y. App. Div. 271; 58 N. Y. Supp. 632; *In re Cullinan*, 88 N. Y. App. Div. 6; 84 N. Y. Supp. 492; *In re Lyman*, 29 N. Y. Misc. Rep. 524; 61 N. Y. Supp. 946; *People v. Meyers*, 95 N. Y. 223.

<sup>51</sup> *In re Cullinan*, 85 N. Y. App. Div. 620, 621; 83 N. Y. App. Div. 643; 82 N. Y. Supp. 1098, affirming 39 N. Y. Misc. Rep. 636; 80 N. Y. Supp. 607; *In re Gordon*, 16

Montg. Co. Law Rep. 25; *People v. Woodman*, 15 Daly 136; 3 N. Y. Supp. 926.

<sup>52</sup> *In re Moyer*, 20 Pa. Co. Ct. Rep. 663.

<sup>53</sup> *Lyman v. Malcom Brewing Co.* 160 N. Y. 96; 54 N. E. 577; 55 N. E. 408; affirming 40 N. Y. App. Div. 46; 57 N. Y. Supp. 634.

<sup>54</sup> *Lewis v. Commonwealth (Ky.)*, 121 S. W. 643.



of having violated their provisions, or the provisions of any other similar statute, shall work a revocation of the defendant's license. Where under a statute providing that a conviction" of a "violation" of the liquor laws should "of itself, make the license of said person void," it was held that a final judgment, conclusively establishing the guilt of the offender, was necessary to satisfy the provisions of the statute, and that a verdict of a jury, unsupported by a judgment was not a "conviction" within the meaning of the statute.<sup>55</sup> A statute providing that upon a conviction of having violated the liquor laws the license of the defendant shall *ipso facto* be revoked and annulled does not supersede another statute providing for the revocation and annulling of a license when a conviction has been obtained for a penalty or upon a bond under another statute.<sup>56</sup> A statute providing that on conviction of a licensee his license shall be forfeited applies to a city license in a prosecution for having violated a State tax liquor law.<sup>57</sup> In some instances statutes are in force which provide *ipso facto* for a revocation of a license upon conviction of the liquor laws, and when that is the case a conviction of such a violation works a forfeiture of the license at once.<sup>58</sup> In cases of a conviction for a second offense the offenses must be against the liquor laws, and usually a second offense against the act providing for the forfeiture, and not an offense against another liquor law.<sup>59</sup>

<sup>55</sup> Commonwealth v. Kiley, 150 Mass. 325; 23 N. E. 55; Sullivan v. Borden, 163 Mass. 470; 40 N. E. 859. See White v. Creamer, 175 Mass. 567; 56 N. E. 832.

<sup>56</sup> People v. Tighe, 5 Hun 25.

<sup>57</sup> State v. Horton, 21 Ore. 83; 27 Pac. 165.

<sup>58</sup> People v. Meyers, 95 N. Y. 223; Ballentine v. State, 48 Ark. 45; 2 S. W. 340.

<sup>59</sup> *In re Authers*, 22 Q. B. Div. 345; 53 J. P. 116; 58 L. J. M. C. 62; 37 W. R. 320; 60 L. T. 454.

In Iowa (in 1903) under § 2451 of the Code the filing by the re-

quired number of persons with the county auditor of a verified petition for the removal of the saloon is a bar to prosecutions, for violation of the liquor law *ipso facto* removed the bar. *McConkie v. Remley* (Iowa), 93 N. W. 505.

In Missouri under a statute providing that on a second conviction a judgment must be entered cancelling the defendant's license, the first conviction **must** be charged in the indictment. *State v. Watts*, 101 Mo. App. 666; 74 S. W. 376.

A finding of guilty, not followed by a judgment, but by a

**Sec. 434. Violation of terms of bond.**

Where a license court may require conditions to be inserted in the bond the licensee must give, his license may be revoked if he violates any of the conditions.<sup>60</sup> But a statute authorizing a licensing board to revoke a license whenever it shall appear to its satisfaction that any conditions of the bond have been violated" does not give it arbitrary power to revoke the license, but only for good cause shown.<sup>61</sup> If the licensee agree that his license may be revoked for sales on Sunday, and he sells liquor on that day in violation of the agreement, he cannot complain if it be revoked for that reason.<sup>62</sup>

**Sec. 435. Conducting place disorderly.**

Statutes are in force providing that if the licensee conduct his business at the licensed place in a disorderly manner his license may be revoked. Under such a statute where a licensed hotel keeper (who could sell liquors) maintained a concert garden in connection with his hotel in a disorderly manner by permitting drunken and disorderly persons to there congregate and disturb the neighborhood, his license may be revoked, because his business was illegally conducted.<sup>63</sup> Such is the case where a proprietor permits women of bad repute to visit his place of business.<sup>64</sup> A single sale to two minors cannot be construed to constitute the house a disorderly one;<sup>65</sup> but permitting soldiers to sing and dance at the licensed place, thus

suspension of sentence, is a conviction within the meaning of the law that a license shall not be issued to a person convicted of a violation of the liquor law, and such a person is a person not "authorized to sell liquors under the provisions" of the statute. *H. Koehler & Co. v. Clement* (N. Y.), 111 N. Y. Supp. 151.

<sup>60</sup> *In re Gerstlauer*, 5 Pa. Dist. Rep. 97.

<sup>61</sup> *State v. Dwyer*, 21 Minn. 512.

<sup>62</sup> *Belt v. Paul*, 77 Ark. 211; 91 S. W. 301.

<sup>63</sup> *In re Gordon*, 16 Montg. Co. Law Rep. 25; *In re McLaughlin*, 24 Co. Ct. Rep. 92; *State v. Kirk*, 112 Mo. App. 447; 86 S. W. Rep. 1099.

<sup>64</sup> *In re Gerver*, 7 North Co. R. (Pa.) 382; *State v. Barnett*, 111 Mo. App. 552; 86 S. W. 460; *In re Clement*, 58 N. Y. Misc. Rep. 257; 110 N. Y. Supp. 893.

<sup>65</sup> *State v. Lichta*, 130 Mo. App. 284; 109 S. W. 825.

attracting a crowd which fills the room and obstructs the sidewalk, resulting in sales to minors and intoxicated persons, renders a place a disorderly house.<sup>66</sup>

### **Sec. 436. House used as a brothel.**

Some statutes require a forfeiture of a license where the licensee permits or uses the licensed premises as a brothel, either with or without a conviction for that offense. Thus, the English statute of 1872 provides that "if any licensed person is convicted of permitting his premises to be a brothel, he shall be liable to a penalty not exceeding twenty pounds, and shall forfeit his license, and he shall be disqualified forever from holding any license for the sale of intoxicating liquors."<sup>67</sup> To convict a licensee of keeping a brothel it is not material there was no outward sign of indecency,<sup>68</sup> or that there was no actual disorderly conduct.<sup>69</sup> A brothel is the same thing as a "bawdy house;" and is a house or place resorted to by persons of both sexes for the purpose of prostitution. But where a woman kept a house to which men resorted for the purposes of fornication with her, it was held that she could not be convicted of having kept a brothel, no other woman coming there for the purpose of prostitution.<sup>70</sup> Permitting the licensed premises to be used once for the purposes of prostitution is some evidence to support the charge of permitting the premises to be used as a brothel;<sup>71</sup> but permitting them to be used on the 26th, 28th, 29th and 31st of

<sup>66</sup> *Commonwealth v. Elliott*, 1 Lack. Leg. N. 140; 16 Pa. Co. Ct. Rep. 122; 4 Pa. Dist. Rep. 89.

<sup>67</sup> 35 and 36 Vict. c. 94 § 15; *Patterson's Licensing Acts* (19th Ed.), p. 372.

<sup>68</sup> *Regina v. Rice*, L. R. 1 C. C. R. 21; 35 L. J. M. C. 93; 13 L. T. 382; 14 W. R. 56.

<sup>69</sup> *Greig v. Bendeno*, E. B. & E. 133; 27 L. J. M. C. 294.

<sup>70</sup> *Singleton v. Ellison* [1895], 1 Q. B. 607; 64 L. J. M. C. 123; 59

J. P. 119; 72 L. T. 236; 43 W. R. 426; 18 Cox C. C. 79.

The landlord of the tenant licensee cannot be convicted of keeping a brothel when the licensee so kept the place rented. *Regina v. Stannard*, 1 L. & C. 349; 33 L. J. M. C. 61; 9 L. T. 428; 12 W. R. 208; 28 J. P. 20; *Regina v. Barrett*, 1 L. & C. 263; 32 L. J. M. C. 36; 7 L. T. 435; 11 W. R. 124.

<sup>71</sup> *Regina v. Holland J. J.*, 46 J. P. 312. See *Webb v. Catchlove*, 50 J. P. 795.

one month and on the 1st, 4th, 5th and 6th of the following month is only one continuing offense, notwithstanding the days are not consecutive.<sup>72</sup> It is sometimes made an offense to permit prostitutes to visit a saloon and a cause for a revocation of the keeper's license. The element of knowledge of the character of such persons is essential, as a rule, to render the licensee guilty of an offense and consequently of a liability to have his license revoked. Thus, where it was made an offense for "any licensed person knowingly" to permit his premises "to be the habitual resort or place of meeting of reputed prostitutes," and he should, on conviction, be fined, it was held that the word "knowingly" applied to the character of the persons who were permitted to resort to the premises; and it was said that this word was necessary, because if that, or some similar word, were not used it might be contended that if women were knowingly permitted to resort to the premises, it would be no defense that it was not known they were reputed prostitutes.<sup>73</sup> Under the statute just referred to, "in order to prove the offense it must be shown: (1) That the licensed person, or at least his manager, knew the women were reputed prostitutes, and the court inquires into the grounds of belief of witnesses as to the evil reputation; (2) that he allowed them to remain longer than necessary for reasonable refreshment, which is partly a matter of arithmetic, the nature of the meal or refreshment being generally the best materials for showing whether they remained longer than was necessary for its consumption. Accordingly, where a woman of this unfortunate class was found on licensed premises by a police constable, and the woman immediately left on being spoken to by the publican as soon as the constable entered, it was held that this was not enough to sustain a conviction.<sup>74</sup> In this case there was no evidence as to whether the woman had gone to the house for the pur-

<sup>72</sup> *Ex parte* Burnby [1901], 2 K. M. C. 126; 70 L. T. 452; 42 W. B. 458; 70 L. J. K. B. 739; 85 L. T. 168.

<sup>74</sup> Citing *Miller v. Dudley J. J.*,

<sup>73</sup> *Somerset v. Wade* [1894], 1 Q. B. 574; 58 J. P. 231; 63 L. J. 46 W. R. 606.



pose of obtaining refreshment or not, nor how long she had been upon the premises, but the constable stated that at the time when he saw the woman she was not partaking of any refreshments. The evidence was thus consistent with the woman having finished her refreshment and being on the point of leaving when the constable entered, and was therefore insufficient to sustain a conviction.<sup>75</sup> It may be shown that prostitutes had been seen previously in the licensed premises, that being some evidence of the keeper's knowledge of their character.<sup>76</sup> Under this statute it is not essential that the prostitutes who "meet" on the premises should be the same persons; it is enough that persons of their class frequently come to the house, and that one is there, though for the first time, if known as to her character.<sup>77</sup>

### **Sec. 437. Ordinance providing for a revocation.**

A city may provide by ordinance that an applicant for a license must agree that if he violate the liquor ordinances of the city or of the State it shall be a sufficient cause for a revocation of his license; and such an ordinance in the provision which says a licensee shall agree that his license may be revoked if he violates a "State law" will be con-

<sup>75</sup> Patterson's Licensing Acts (19th Ed.), p. 368.

<sup>76</sup> Belasco v. Hannant, 3 B. & S. 13; 26 J. P. 823; 31 L. J. M. C. 225; 6 L. T. 577; 10 W. R. 867; Parker v. Green, 2 B. & S. 299; 26 J. P. 247; 31 L. J. M. C. 133; 10 W. R. 316; Cole v. Coulton, 24 J. P. 596; 2 E. & E. 695; 29 L. J. M. C. 125; 2 L. T. 216; 8 W. R. 412.

<sup>77</sup> Wray v. Toke, 12 Q. B. 492; 17 L. J. M. C. 183; 12 J. P. 804. In a charge of allowing prostitutes to meet on the premises, it is not necessary to name them nor allege they were unknown.

Where a statute provided that if any keeper of a beer or public house "knowingly lodges or knowingly harbors thieves or reputed thieves, or knowingly permits or knowingly suffers them to meet or assemble therein" shall be liable to a fine, a meeting called at an ale house by a circular to get up a subscription for the wife and children of a convicted thief, several thieves being in the company, was held to render the keeper liable to punishment. Marshall v. Fox, L. R. 6 Q. B. 370; 24 L. T. 751; 40 L. J. M. C. 142; 19 W. R. 1108; 35 J. J. 631.

strued to mean a "State liquor law."<sup>78</sup> Under a power to license and regulate the sale of intoxicating liquors a city may provide that upon violation of its provisions the mayor may revoke the license; for in doing so he acts as the agent or arm of the council.<sup>79</sup> But an ordinance providing that upon a second conviction of the licensee for having violated the liquor laws he shall forfeit his license and the fee paid for it, notwithstanding he may appeal and secure an acquittal of the offense charged against him, is so oppressive as to be void and cannot be enforced.<sup>80</sup> And a statute authorizing a city to require a bond of the licensee, and empowering it to revoke his license "whenever it shall appear to its \* \* \* satisfaction \* \* \* that any conditions of the bond have been violated" does not empower it to arbitrarily revoke the license, but only upon a showing that a condition of the bond has been violated.<sup>81</sup> Having once granted a license, the council of a city after the session at which it was granted cannot revoke it, except pursuant to the statute or ordinance empowering it to revoke it upon grounds therein provided for its revocation.<sup>82</sup> And if a council is authorized to revoke a license upon certain conditions found to exist, it cannot by ordinance delegate the power to the police justice or city judge, but must itself act in the matter.<sup>83</sup>

### Sec. 438. New York statute—False statements.

A New York statute provides that "at any time after a liquor tax certificate has been issued" it "may be revoked and cancelled if material statements in the application of the holder of such certificate were false," or if the proper consents of property owners to the granting of the certificate

<sup>78</sup> *Cox v. Jackson*, 152 Mich. 630; 116 N. W. 456; *Hurber v. Baugh*, 43 Iowa, 514; *Ottumwa v. Schaub*, 52 Iowa, 515; 3 N. W. 529.

<sup>79</sup> *Harrison v. People*, 124 Ill. App. 519.

<sup>80</sup> *McInerey v. Denver*, 17 Col. 302; 29 Pac. 516.

<sup>81</sup> *State v. Dwyer*, 21 Minn. 512.

<sup>82</sup> *Lantz v. Hightstown*, 46 N. J. L. 102; *Decker v. Board*, 57 N. J. L. 603; 31 Atl. 235; *Vanaman v. Adams*, 74 N. J. L. 125; 65 Atl. 204.

<sup>83</sup> *Lambert v. Rahway*, 58 N. J. L. 578; 34 Atl. 5.

to sell liquors at the place designated in the application were "not properly filed," "or if the holder of said certificate was not for any reason entitled to receive or hold the same, or to traffic in liquors, or if any provision" of the liquor "act is violated at the place designated in said certificate as the place where such traffic is to be carried on by the holder of said certificate, or by his agent, servant, bartender or any person whomsoever in charge of said premises, or if the holder of said certificate shall violate any of the provisions" of the liquor act "at any place." The State commissioner of excise, the deputy State commissioner of excise, "or any taxpayer of the city, village or town for which such liquor tax certificate was issued may present a verified petition" to the judge of the court "of the county in which such traffic in liquor is designated to be carried on, or in which the holder of such certificate resides" "for an order revoking or cancelling such certificate upon either or all of the grounds" above stated. This "petition must state the facts upon which such application is based;" and when the application is by a taxpayer the State commissioner of excise must be "made a party to the proceeding, and is entitled to due notice thereof. Upon the presentation of the petition the "justice, judge or court" must grant an order requiring the holder of the certificate to show cause before him, on a day specified therein, not more than ten days after the granting thereof, "why an order revoking and cancelling" his tax certificate should not be granted, and the order must also contain an injunction restraining the certificate holder from transferring or surrendering his certificate for rebate, as the statute allows.<sup>84</sup>

**Sec. 439. False statements in application under New York statute.**

As we have seen a liquor tax certificate may be revoked and cancelled in New York "if material statements in the application of the holder of such certificate were false." One of the statements required of an applicant under the statute

<sup>84</sup> Laws 1906, ch. 272, subdiv. 2.

of that State is that there are no buildings exclusively occupied as dwellings within two hundred feet of the place where liquor is to be sold under the certificate to be issued to the applicant; and if the statement in this respect be false, it is sufficient to call for a revocation and cancellation of the certificate issued thereon, although the statement was made in good faith.<sup>85</sup> An application which refers to and relies upon material statements made in a previous application which are false, requires the tax certificate to be cancelled.<sup>86</sup> A saloon may be located within the two hundred feet limit, if the owners of dwellings therein consent; and a false statement that they had so consented is sufficient to authorize a cancellation and revocation of the tax certificate, though it is made in good faith, in reliance upon statements of persons expert in such matters employed to obtain the necessary consents;<sup>87</sup> and the necessary consents given after the issuance of the certificate is not sufficient to prevent its revocation.<sup>88</sup> An entire failure to answer a question propounded in the application is not a false statement.<sup>89</sup> A false statement that the applicant had complied with the statute

<sup>85</sup> *In re Harper*, 30 N. Y. Misc. Rep. 663; 64 N. Y. Supp. 524; *In re Clement*, 116 N. Y. App. Div. 148; 101 N. Y. Supp. 683; affirmed 118 N. Y. App. Div. 575; 103 N. Y. Supp. 157; *In re Haight*, 33 N. Y. Misc. Rep. 544; 68 N. Y. Supp. 920; *In re Halbran*, 30 N. Y. App. 515; 63 N. Y. Supp. 1024; *In re Auerbach*, 31 N. Y. Misc. Rep. 44; 64 N. Y. Supp. 602; *In re Lyman*, 34 N. Y. Misc. Rep. 296; 69 N. Y. Supp. 781; *People v. Pettit* (N. Y.), 113 N. Y. Supp. 243.

<sup>86</sup> *In re Tonatio*, 49 N. Y. App. Div. 84; 63 N. Y. Supp. 560.

<sup>87</sup> *Lyman v. Murphy*, 33 N. Y. Misc. Rep. 349; 68 N. Y. Supp. 490. In this case the court refused to render judgment for

costs against the holder of the certificate, regarding the cancellation of the certificate as a sufficient punishment. *In re Rasquin*, 37 N. Y. Misc. Rep. 693; 76 N. Y. Supp. 404; *In re Dérrel*, 55 N. Y. Misc. Rep. 618; 106 N. Y. Supp. 1030.

<sup>88</sup> *Lyman v. Murphy*, *supra*; *In re Haight*, 33 N. Y. Misc. Rep. 544; 68 N. Y. Supp. 920; *In re Halbran*, 30 N. Y. Misc. Rep. 515; 63 N. Y. Supp. 1024; *In re Washburn*, 32 N. Y. Misc. Rep. 303; 66 N. Y. Supp. 732; *In re Johnson*, 18 Misc. Rep. 498; 42 N. Y. Supp. 1074, the revocation was held to be discretionary with the court.

<sup>89</sup> *In re Lyman*, 163 N. Y. 536; 57 N. E. 745; reversing 51 N. Y. App. Div. 52; 64 N. Y. Supp. 756.



authorizing the issuance of a liquor tax certificate to a hotel keeper will authorize its cancellation; and a compliance after its issuance will not prevent the cancellation, for in determining the truth of such statements the court is restricted to the time when the application was made.<sup>90</sup> But a statement that the building had been used as a hotel, followed by a false statement that it had ever since been so used, is no ground for the cancellation of the certificate.<sup>91</sup> Where the consent of property owners within the two hundred feet limit is not necessary, a false statement that they had given their consent is not a false material statement, and not a sufficient cause for a revocation of the liquor certificate.<sup>92</sup> The fact that a protest against the issuance of a tax certificate was filed with the treasurer, whose duty it was to issue the certificate, will not prevent its revocation, where he had no discretion as to its issuance, the statute authorizing proceedings for its cancellation to be brought "at any time" after its issuance.<sup>93</sup> At a date prior to the enactment of the statute, cited at the beginning of this section, the consent of only two-thirds of the owners of buildings used exclusively for dwellings was required; and when that was the case it was held that the application need not contain a statement how many such dwellings there were. Consequently a false state-

<sup>90</sup> *In re* Smith, 48 N. Y. App. 423; 63 N. Y. Supp. 255; *In re* Cullinan, 39 N. Y. Misc. Rep. 646; 80 N. Y. Supp. 626; *In re* Ryon, 85 N. Y. Misc. Rep. 621; 83 N. Y. Supp. 123; affirming 80 N. Y. Supp. 1114; *In re* Brewster, 85 N. Y. App. Div. 235; 83 N. Y. Supp. 235; 13 N. Y. Ann. Cas. 250; reversing 80 N. Y. Supp. 666; *In re* McMonagle, 41 N. Y. Misc. Rep. 407; 84 N. Y. Supp. 1068.

<sup>91</sup> *In re* Brewster, 39 N. Y. Misc. Rep. 689; 80 N. Y. Supp. 666; *In re* Clement, 52 N. Y. Misc. Rep. 325; 102 N. Y. Supp. 178.

<sup>92</sup> *In re* Moulton, 168 N. Y. 645; 61 N. Y. 1131; affirming 59 N. Y. App. Div. 25; 69 N. Y. Supp. 14; *In re* Hawkins, 165 N. Y. 188; 58 N. E. 884; reversing 66 N. Y. Supp. 1132; *In re* Pierson, 32 N. Y. Misc. Rep. 293; 66 N. Y. Supp. 546; *In re* Kessler, 28 N. Y. Misc. Rep. 336; 59 N. Y. Supp. 888; affirmed 60 N. Y. Supp. 1141; reversed 163 N. Y. 205; 57 N. E. 402. But see *In re* Clement, 119 N. Y. App. Div. 622; 104 N. Y. Supp. 25; 53 N. Y. Misc. Rep. 358; 104 N. Y. Supp. 905.

<sup>93</sup> *In re* Lyman, 23 N. Y. Misc. Rep. 710; 53 N. Y. Supp. 52.

ment of the number of dwellings is an immaterial statement when it is alleged two-thirds thereof had given their consent.<sup>94</sup> A false material statement made unintentionally requires a cancellation of the certificate issued thereon.<sup>95</sup> But when, according to the statute, a hotel must have ten rooms, and the hotel did not have that number when the application was made, but did have when the certificate was issued, a revocation was refused.<sup>96</sup> A denial of a petition to cancel a certificate issued for a certain place, because within two hundred feet of a church, is no bar to the cancellation of another certificate issued for the same place to a different person.<sup>97</sup> The fact that a church was built within the two hundred feet limit after the tax certificate was issued is no reason for its cancellation; <sup>98</sup> but it is on an application for a second or renewal of the certificate.<sup>99</sup> A statement that "the traffic in liquors had been lawfully carried on upon the premises on and since" a certain date, "and that since that date the premises had been occupied continuously for such traffic" is not false where the premises were occupied on that date with a saloon which was accidentally destroyed by fire three years later, compelling the occupant to suspend traffic therein for three months, when he resumed business, he not having abandoned his intention to continue his occupancy of the premises. Such an interruption was held not to constitute an abandonment.<sup>1</sup> The forging of a property owner's signature to a paper purporting to give his consent to a location of the saloon within two hundred feet of his dwelling is sufficient ground for a revocation of the tax certificate issued pursuant thereto; but the burden is upon the party alleging the forgery to prove it.<sup>2</sup> Where a statute forbade

<sup>94</sup> *In re* Lyman, 23 N. Y. Misc. Rep. 710; 53 N. Y. Supp. 52.

<sup>95</sup> *In re* Fall, 26 Misc. Rep. 611; 57 N. Y. Supp. 858.

<sup>96</sup> *In re* Purdy, 40 N. Y. App. Div. 133; 57 N. Y. Supp. 629.

<sup>97</sup> *In re* McCusker, 47 N. Y. App. Div. 111; 62 N. Y. Supp. 201.

<sup>98</sup> *In re* Rupp, 55 N. Y. Misc. Rep. 313; 106 N. Y. Supp. 483;

affirmed 122 N. Y. App. Div. 891; 106 N. Y. Supp. 1143.

<sup>99</sup> *In re* Clement, 57 N. Y. Misc. Rep. 47; 107 N. Y. Supp. 205.

<sup>1</sup> *In re* Kessler, 163 N. Y. 205; 57 N. E. 402; reversing 60 N. Y. Supp. 1141.

<sup>2</sup> *In re* Whittaker, 63 N. Y. App. Div. 442; 71 N. Y. Supp. 497.

the location of a saloon within one-half mile of any State hospital or lands occupied by such a hospital, it was held that a saloon located within seventy-five feet of an eight hundred acre-tract of land on which was located a State hospital more than one-half mile from it was a violation of law, and a liquor tax certificate therefor must be revoked.<sup>3</sup> A false representation that one of two applicants was a citizen of the State and that he and other applicants were equal partners, as the statute required, is sufficient to revoke the license granted on such representation.<sup>4</sup>

**Sec. 440. Erroneous statements as to place in application for a license.**

If a license be issued upon an application containing such an error in the description of the place to be licensed that there is no such place as that described, it may be cancelled.<sup>5</sup>

**Sec. 441. License issued by mistake.**

A license issued under a mistake of facts necessary to authorize its issuance may be revoked; and the officer issuing it is not estopped by his conduct in issuing it to revoke or cancel it.<sup>6</sup> And where the issuance of a license has been procured by fraud, the court or licensing board, on notice given, may proceed to investigate the fraud, and if found true, withdraw the license. Such a proceeding does not come under the statute authorizing a revocation of a license because of misconduct of the holder, and a writ of *certiorari* does not lie to review the court or board's action, for its action will be entirely ignored in a subsequent proceeding to determine the validity of the license.<sup>7</sup>

<sup>3</sup> *In re Clement*, 110 N. Y. Supl. 57, 59; 125 N. Y. App. Div. 676.

<sup>4</sup> *People v. Hilliard*, 81 N. Y. App. Div. 71; 80 N. Y. Supl. 792.

<sup>5</sup> *In re Hoyniak*, 9 Kulp. 368.

<sup>6</sup> *In re Clement*, 118 N. Y. App. Div. 575; 103 N. Y. Supl. 157;

affirming (N. Y.), 101 N. Y. Supl. 447; *In re Cullinan*, 87 N. Y. App. Div. 47; 83 N. Y. Supl. 1025.

<sup>7</sup> *State v. Schreff*, 123 Wis. 98; 109 N. W. 1030.

### Sec. 442 The license to be revoked.

Where a statute provides that a license may be revoked for a violation of the liquor laws it is usually understood that the violation must take place when the license is in force; but that is not always the case. Thus where the liquor law was violated by the licensee's bartender, and thereafter the license expired and at the date of the expiration another license was issued to him, and he was thirteen days afterward convicted of the offense committed while the first license was in force, it was held that his second license could be revoked because of such conviction.<sup>8</sup>

### Sec. 443. Revocation after assignment for prior illegal acts.

A license may be revoked after its assignment and while in the assignee's lawful possession and ownership for illegal acts of the licensee committed before the date of assignment,<sup>9</sup> although the assignee knew nothing of such illegal acts.<sup>10</sup>

### Sec. 444. What board or court may revoke a license.

As a rule statutes expressly empower certain courts or boards to revoke licenses, which is not always the licensing board or court. In Pennsylvania it is the quarter sessions that are thus empowered;<sup>11</sup> in New Hampshire, the board of commissioners;<sup>12</sup> in Colorado, the board of county commissioners;<sup>13</sup> in Missouri, the county court;<sup>14</sup> and in Canada, the recorder.<sup>15</sup> An officer may be empowered to revoke a

<sup>8</sup> *People v. Woodman* (N. Y.), 423; 58 L. J. M. C. 167; 61 L. T. 4 N. Y. Supp. 532. 240; 37 W. R. 605.

<sup>9</sup> *In re Clement*, 55 N. Y. Misc. Rep. 615; 105 N. Y. Supp. 1085. <sup>11</sup> *Dolan's Appeal*, 108 Pa. St. 564.

<sup>10</sup> *In re Cullinan*, 185 N. Y. 546; 77 N. E. 1184; affirming 104 N. Y. App. Div. 205; 93 N. Y. Supp. 492. <sup>12</sup> *State v. Carron*, 73 N. H. 434; 62 Atl. 1044.

If a license has been forfeited, it cannot be transferred. *Rex v. West Riding J. J.*, 21 Q. B. Div. 258; 52 J. P. 455; 57 L. J. M. C. 103; 36 W. R. 258; *Stevens v. Green*, 23 Q. B. Div. 142; 53 J. P. <sup>13</sup> *Board v. Mayr*, 31 Colo. 173; 74 Pac. 458.

<sup>14</sup> *Barnett v. Pemiscott Co. Ct.* 111 Mo. App. 693; 86 S. W. 575.

<sup>15</sup> *Ex parte Richler*, 1 L. N. (Can.) 59.



license,<sup>16</sup> or a city council,<sup>17</sup> or a police board,<sup>18</sup> But where a city was given exclusive authority "to license, tax, regulate, restrain, suppress and prohibit barrooms, groceries and tippling houses" and also to "impose forfeitures" it was held that did not supersede a general law of the State providing that upon conviction of a licensee for certain offenses against the liquor law the court must revoke his license.<sup>19</sup> If the power to revoke a license be vested in the city council it cannot by ordinance delegate its power, as to a police justice of the city,<sup>20</sup> nor can it revoke the license by rescinding the order granting it after it has been issued, at least.<sup>21</sup> Where one of the three members of a town board hired minors to purchase liquor from a licensee, in order to secure evidence against him of selling to minors, it was held that he was incompetent to sit in a proceeding for the revocation of such license because of such sales, and his sitting on the board at the trial avoided the proceedings.<sup>22</sup>

#### **Sec. 445. Mandamus to compel a revocation.**

If there be no other adequate remedy, mandamus lies to compel a revocation after the proceedings for a revocation has been instituted. Thus where a statute required a city council to revoke a license if it found "the complaint to be true," and it was admitted that the testimony concerning illegal sales was uncontradicted, and the licensee admitted them, a refusal of the council to find the charge true was held to be an abuse of discretion on its part, and accordingly mandamus lay to compel a revocation, there being no other adequate remedy.<sup>23</sup> But mandamus does not lie to compel

<sup>16</sup> Richler v. Judah, 1 L. N. (Can.) 591; *Ex parte* Molinari, 6 L. N. (Can.) 395.

<sup>17</sup> Carbondale v. Wade, 106 Ill. App. 654; Carr v. Augusta, 124 Ga. 116; 52 S. E. 300.

<sup>18</sup> Sullivan v. Borden, 163 Mass. 470; 40 N. E. 859.

<sup>19</sup> State v. Horton, 21 Ore. 83; 27 Pac. 165. See People v. Tighe, 5 Hun, 25.

<sup>20</sup> Lambert v. Rahway, 58 N. J. L. 578; 34 Atl. 5.

<sup>21</sup> Dziok v. Board, 28 R. I. 526; 68 Atl. 479.

<sup>22</sup> State v. Bradish, 95 Wis. 205; 70 N. W. 172.

<sup>23</sup> State v. Oshkosh (Wis.), 70 N. W. 300. See also Cox v. Jackson, 152 Mich. 630; 116 N. W. 456; People v. Meakin, 133 N. Y. 214; 30 N. E. 828; affirming 15 N. Y.

the revocation of a void license; because the granting of it is a mere idle act, fruitless in its effect.<sup>24</sup> If a license be issued after an appeal has been taken, or during the time when an appeal may be taken, mandamus lies to compel the licensing board or court to withdraw or revoke the license.<sup>25</sup>

### Sec. 446. Who may commence proceedings.

The statute almost invariably provides who may institute proceedings for a cancellation of a license or liquor tax certificate. Not infrequently some officer is authorized to institute the proceedings. A citizen or taxpayer of the vicinity or district for which the license is granted may usually institute the proceedings, regardless of the fact that some officer is also authorized to bring them. In New York the State Commissioner of Excise, the Deputy State Commissioner of Excise, "or any taxpayer of the city, village or town for which" the liquor tax certificate was issued may present a verified petition to the judge of the court of the county "for an order revoking or cancelling" the tax certificate.<sup>26</sup> Under this statute if it be alleged in the answer that the action for a revocation was unauthorizedly brought, evidence may be taken to prove the allegation.<sup>27</sup> The petition for a revocation must show the right of the petitioner to institute the proceedings.<sup>28</sup> The licensee who has transferred the license cannot bring an action to revoke it because the transferee has failed, or has become unable, to pay him for it.<sup>29</sup> Where a statute provided that any taxpayer of the district for which the license was granted might institute proceedings for its revocation, an allegation in the petition that the petitioner was the owner of certain described property in the district

Supp. 917; *State v. Johnson*, 37 Neb. 362; 55 N. W. 874.

<sup>24</sup> *State v. Hammel*, 134 Wis. 61; 114 N. W. 97.

<sup>25</sup> *Swan v. Wilderson*, 10 Okla. 547; 62 Pac. 422. In such a case the holder is neither a necessary or proper party defendant.

<sup>26</sup> Laws 1906, ch. 272, subdiv. 2.

<sup>27</sup> *In re Halbran*, 30 N. Y. Misc. Rep. 515; 63 N. Y. Supp. 1024.

<sup>28</sup> *People v. McGowan*, 44 N. Y. App. Div. 30; 60 N. Y. Supp. 407; *In re Schopp*, 119 N. Y. App. Div. 192; 104 N. Y. Supp. 307.

<sup>29</sup> *In re Flosser*, 8 Kulp. 343.

was held to presumptively allege he was a taxpayer.<sup>30</sup> Trustees under a will, in whom the legal title to the testator's real estate is vested, are taxpayers, and under the statute referred to may institute the proceedings.<sup>31</sup> A statute authorizing "any citizen" to institute the proceedings does not require him to be a taxpayer.<sup>32</sup> Where a statute required that no saloon should be located within 200 feet of a dwelling house, it was held that a citizen not within that distance might apply for the revocation of its license.<sup>33</sup>

**Sec. 447. Who to be made defendant—Assignment of license.**

The rule is invariable that the holder of the license at the time the proceedings are instituted must be made the defendant or respondent. If the license be assigned (when that is permissible) the assignee should be made a party defendant or the respondent, and not the assignor; and if he be not the proceedings will be void.<sup>34</sup> But where the statute provides that the proceedings might be brought against "the holder of record," they may be brought against "the holder of record," though he has no connection with the place designated in the license or with the violation of the law at that place which authorizes its revocation.<sup>35</sup> But if the license or tax certificate be assigned (as may be sometimes done) as collateral security, the assignee need not be made a party; for he is not a holder of record.<sup>36</sup> Nor can the wife of the

<sup>30</sup> *In re Schopp*, 119 App. Div. 119; 104 N. Y. Supp. 307.

<sup>31</sup> *In re Rupp*, 54 N. Y. Misc. Rep. 1; 105 N. Y. Supp. 467.

Under the Pennsylvania Act, May 13, 1887 (P. L. 108), it is not necessary that the petitioner be a resident of the ward for which the license was issued. *In re McGrinley*, 32 Pa. Super. Ct. 324.

<sup>32</sup> *In re Halbron*, 30 N. Y. Misc. Rep. 515; 63 N. Y. Supp. 1024.

<sup>33</sup> *In re Kessler*, 28 N. Y. Misc.

Rep. 336; 59 N. Y. Supp. 888.

Sometimes the judge of the licensing court is empowered to institute proceedings. *Newman v. Lake*, 70 Kan. 848; 79 Pac. 675.

<sup>34</sup> *Bertzel v. Court of Common Pleas* (N. J. L.), 48 Atl. 1013.

<sup>35</sup> *Cullinan v. Kuch*, 39 N. Y. Misc. Rep. 641; 80 N. Y. Supp. 186.

<sup>36</sup> *In re Lyman*, 26 N. Y. Misc. Rep. 300; 56 N. Y. Supp. 1020; *In re Clement*, 55 N. Y. Misc. 615; 105 N. Y. Supp. 1085.

licensee, to whom it has been assigned by consent of the excise commissioner, be brought in as a defendant.<sup>37</sup> When A loaned S the necessary amount to obtain a license, who obtained it and assigned it to A as collateral security, together with the right to receive all rebates on its surrender; and S then discontinued the business, and A surrendered the license and received a certificate for the amount of rebate; and thereafter B took up the traffic of liquor at the place licensed, without authority, and a proceeding was brought to cancel S's license because of illegal sales by B (which could be done), it was held that A had a right to intervene and show that B had not violated the law, in order to protect the license and secure the rebate.<sup>38</sup>

#### Sec. 448. The petition for revocation.

As a basis for the proceedings, it is necessary to aver that the defendant or respondent holds a license at the time of beginning of the proceedings.<sup>39</sup> But the proceedings usually being of a summary character, the same strictness in the petition is not required as in ordinary proceedings in the court in civil actions.<sup>40</sup> Where a statute provides that an application shall be founded or a complaint made to the licensing board, it is not sufficient for the board to issue a warrant reciting that information calling for its revocation has come to its knowledge. There must be a formal written complaint placed on file for the licensee's information.<sup>41</sup> Merely alleging that the licensee had violated the liquor ordinance or statute without stating in what respect, is not sufficient.<sup>42</sup> The petition for a revocation must show that the petitioner is one authorized to bring the pro-

<sup>37</sup> *Nieland v. McGrath*, 29 N. Y. Misc. Rep. 682; 62 N. Y. Supp. 760.

<sup>38</sup> *In re Cullinan*, 94 N. Y. App. Div. 445; 88 N. Y. Supp. 164.

<sup>39</sup> *Breubaker v. State*, 89 Ind. 577.

<sup>40</sup> *People v. Houghton*, 41 Hun. 558; *People v. Wright*, 3 Hun. 506; 5 T. & C. 518; Appeal of

*Burns*, 76 Conn. 395; 56 Atl. 611; *Cherry v. Commonwealth*, 78 Va. 375.

<sup>41</sup> *State v. Lamos*, 26 Me. 258.

<sup>42</sup> *State v. Tomah*, 80 Wis. 198; 49 N. W. 753; *In re Halbran*, 30 N. Y. Misc. Rep. 515; 63 N. Y. Supp. 1024.



ceedings; as for instance, that he is a taxpayer where a statute authorizes a taxpayer to institute the proceedings.<sup>43</sup> If the petition must be verified it is not necessary to give the petitioner's grounds of belief that the facts alleged are true when he states them on information and belief;<sup>44</sup> but where the statute requires him to state "the facts on which said application is based," it is not sufficient for him to state that he believes that certain facts exist, or that the licensee has committed an act in violation of law, without stating the grounds of his information.<sup>45</sup> An insufficient petition gives the court jurisdiction when a proper notice is served.<sup>46</sup> In New York deficient allegations in a petition may be supplemented by affidavits accompanying it, as where the petition stated the facts on information and belief—which was an insufficient statement—and the accompanying affidavits stated the facts on personal knowledge of the affiant.<sup>47</sup> If the petition proceeds upon the theory that the licensee has violated a particular provision of the law, but fails to state facts sufficient to show a violation, it is deficient; thus charging a sale after the hour of 12 o'clock midnight does not charge a violation of a statute or ordinance providing that saloons shall be closed between the hours of 12 o'clock midnight and 5 o'clock A. M.<sup>48</sup> But if a petition be defective, and no objection be taken to it; and the proof shows that

<sup>43</sup> *People v. McGowan*, 44 N. Y. App. Div. 30; 60 N. Y. Supp. 407; *In re Schopp*, 119 N. Y. App. Div. 192; 104 N. Y. Supp. 307.

<sup>44</sup> *People v. McGowan*, *supra*. In such an instance the provisions of the Civil Code may be followed.

<sup>45</sup> *In re Peck*, 167 N. Y. 391; 60 N. E. 775; 53 L. R. A. 888; reversing 68 N. Y. Supp. 1145; *Voight v. Board*, 59 N. J. L. 358; 36 Atl. 686; 37 L. R. A. 292.

<sup>46</sup> *In re Cullinan*, 39 N. Y. Misc. Rep. 354; 79 N. Y. Supp. 840; *McConkie v. Remley*, 119 Iowa, 512; 93 N. W. 505.

<sup>47</sup> *In re Cullinan*, 76 N. Y. App. Div. 362; 78 N. Y. Supp. 466; 12 N. Y. Ann. Cas. 68; affirmed 173 N. Y. 610; 66 N. E. 1106; *In re Cullinan*, 89 N. Y. App. Div. 613; 85 N. Y. Supp. 1129; affirming 41 N. Y. Misc. Rep. 392; 84 N. Y. Supp. 1075; *In re Cullinan*, 40 N. Y. Misc. Rep. 423; 82 N. Y. Supp. 337.

<sup>48</sup> *State v. Curtis*, 130 Wis. 357; 110 N. W. 189.

But in this case it was held that the city council was not justified in dismissing the petition. It should have been amended.

the license ought to be revoked, it may be amended to correspond to the proof.<sup>49</sup> In New York the State Excise Commissioner is not required to state the facts of his own knowledge which justify a revocation, but he may allege such facts upon his information and belief, based upon the public records and statements of his deputy commissioner or subordinates.<sup>50</sup> Reasonable certainty is required in the petition.<sup>51</sup> But where the illegal sales are charged to have been made by the respondent, "the holder of said license," it will be presumed they were made after the license was issued.<sup>52</sup> If it is sought to revoke a license issued for a hotel because it does not comply with the statute in its structure and number of spare rooms and beds required by the statute for the accommodation of travelers, the petition must sufficiently set forth that such hotel did not have such accommodations to bring it within the exemptions of the statute.<sup>53</sup>

#### **Sec. 449. Joint proceeding to revoke several licenses.**

A petition to revoke two or more licenses held by the respondent, even if they be of different classes, is not fatally defective because the allegations charge the commission of the acts of forfeiture to have been committed at the same time.<sup>54</sup> If a statute do not forbid it, no objection can be made to a joinder of licenses for several places granted to the same person.<sup>55</sup>

<sup>49</sup> *In re Stedler*, 52 N. Y. Misc. Rep. 322; 102 N. Y. Supp. 147; *Plass v. Clark*, 71 N. Y. App. Div. 488; 76 N. Y. Supp. 2. See *Crothers v. Monteith*, 11 Manitoba, 373.

<sup>50</sup> *In re Cullinan*, 89 N. Y. App. Div. 613; 85 N. Y. Supp. 1129; affirming 41 N. Y. Misc. 392; 84 N. Y. Supp. 1075; *In re Clement*, 116 N. Y. App. Div. 148; 101 N. Y. Supp. 683.

<sup>51</sup> *Appeal of Meenan*, 11 Pa. Super. Ct. 579; *Voight v. Board*,

59 N. J. L. 358; 36 Atl. 686; *Cuirezak v. Keron* (N. J. L.), 70 Atl. 366.

<sup>52</sup> *In re McGinley*, 32 Pa. Super. Ct. 324.

<sup>53</sup> *Cuirezak v. Keron* (N. J. L.), 70 Atl. 366.

<sup>54</sup> *Commonwealth v. Bearee*, 150 Mass. 389; 23 N. E. 99.

<sup>55</sup> *In re Lyman*, 59 N. Y. Supp. Div. 217; 69 N. Y. Supp. 309; affirming 32 N. Y. Misc. Rep. 309; 67 N. Y. Supp. 48.

### Sec. 450. Notice of proceedings for revocation.

As a general rule a license cannot be revoked without notice of the proceedings to revoke it being first given to the licensee or holder and an opportunity given him to show cause why it should not be revoked. The proceedings without notice are void and the revocation a nullity.<sup>56</sup> A statute, however, is not void because it does not provide for a notice; it being implied that the licensee is to be notified.<sup>57</sup> If the license be issued to two or to a partnership, notice to one of the two or to one member of the partnership, is a sufficient notice.<sup>58</sup> Where a statute provided that "after ten days' notice to any person \* \* \* the court may revoke" his license, it was held that an order served on the licensee to show cause why his license should not be revoked "for selling and causing to be sold to minors whisky" was sufficiently definite to render the proceedings valid.<sup>59</sup> But where a statute provides that for a conviction of an offense against the liquor laws the license of the defendant may be revoked, notice of the proposed revocation is not necessary;<sup>60</sup> and this is especially so where the license itself contains the conditions of forfeiture as prescribed by the statute or ordinance under which it is issued.<sup>61</sup> Where notice is required to be given to a licensee that his license has been revoked, it is held sufficient to give him a verbal notice.<sup>62</sup> An order to show cause why the license should not be cancelled, directed to be personally served on the partners who hold the license, or by leaving it at their place of business as designated in the license with a person in charge,

<sup>56</sup> *Plummer v. Commonwealth*, 1 Bush, 26; *Lambert v. Rahway*, 58 N. J. L. 578; 34 Atl. 5; *Commonwealth v. Wall*, 145 Mass. 216; 13 N. E. 486; *Crothers v. Monteth*, 11 Manitoba, 373; *Balling v. Board* (N. J. L.), 74 Atl. 277.

<sup>57</sup> *Young v. Blaisdell*, 138 Mass. 344; *Oshkosh v. State*, 59 Wis. 425; 18 N. W. 324; *Gaertner v. Fond du Lac*, 34 Wis. 497.

<sup>58</sup> *Commonwealth v. Bearce*, 150 Mass. 389; 23 N. E. 99.

<sup>59</sup> *Lillienfeld v. Commonwealth*, 92 Va. 118; 23 S. E. 882.

<sup>60</sup> *Martin v. State*, 23 Neb. 371; 36 N. W. 554; *Carr v. Augusta*, 124 Ga. 116; 52 S. E. 300; *Appeal of Londry*, 79 Conn. 1; 63 Atl. 293.

<sup>61</sup> *Sprayberry v. Atlanta*, 87 Ga. 120; 13 S. E. 197.

<sup>62</sup> *Commonwealth v. Hamer*, 128 Mass. 76.

is sufficient if served in either of the specified ways.<sup>63</sup> The notice should specify definitely when and where the proceedings for a revocation will be heard; but an irregularity or indefiniteness that does not mislead the respondent is not sufficient to avoid the proceedings or call for a reversal on appeal.<sup>64</sup> The notice should be served on the holder of the license at the time the proceedings are commenced; and if the licensee has assigned the license (as may sometimes be done), notice to him is not necessary.<sup>65</sup> If a statute or ordinance under which the license is issued provides that it may be revoked for a violation of its terms without notice, a revocation without notice is valid.<sup>66</sup> But the general rule is that a statute authorizing a revocation of a license without notice and a hearing is unconstitutional.<sup>67</sup> If on the return day the notice be not served on all interested, a new order for a notice may be entered in New York on the original papers, and a second notice be issued and served on those not served.<sup>68</sup> Notice in this State need not be served on one who holds the liquor tax certificate as collateral for a loan.<sup>69</sup>

<sup>63</sup> *In re Cullinan*, 68 N. Y. App. Div. 119; 74 N. Y. Supp. 182.

<sup>64</sup> *In re Judkins*, 126 N. Y. App. Div. 524; 110 N. Y. Supp. 587.

<sup>65</sup> *In re Lyman*, 53 N. Y. App. Div. 330; 65 N. Y. Supp. 673.

<sup>66</sup> *Anderson v. Galesburg*, 118 Ill. App. 525.

<sup>67</sup> *People v. Flynn*, 110 N. Y. App. Div. 279; 96 N. Y. Supp. 655; reversing 48 N. Y. Misc. Rep. 159; 96 N. Y. Supp. 653.

Under the Nevada Act, May 16, 1903, incorporating the town of Reno, a license may be revoked without notice for a sufficient cause. *Wallace v. Reno*, 27 Nev. 71; 73 Pac. 528.

<sup>68</sup> *In re Lyman*, 28 N. Y. Misc. Rep. 385; 59 N. Y. Supp. 971.

<sup>69</sup> *In re Lyman*, 26 N. Y. Misc. Rep. 300; 56 N. Y. Supp. 1020; *In re Clement*, 55 N. Y. Misc. Rep. 615; 105 N. Y. Supp. 1085.

Under the New York statute authorizing the Board of Excise to "summon before it" a person charged with violating the excise law and revoke his license if guilty, a summons signed "The Board of Excise of the City of Utica, by Benjamin Brady, Commissioner of Excise and Chairman of said Board," is sufficient. *People v. Board*, 17 N. Y. Misc. Rep. 98; 40 N. Y. Supp. 741.

In New Jersey a conviction of the offense for which a revocation is sought does not dispense with the right to a notice. *Tindall v. Monmouth (N. J. L.)*, 68 Atl. 799.



**Sec. 451. The answer.**

An answer positively denying the charges in the petition requires a hearing and trial on the merits;<sup>70</sup> but a failure to controvert a fact if true requires a revocation without a hearing or reference.<sup>71</sup> An answer that the respondent had been tried and acquitted in a criminal prosecution on the same facts alleged in the petition for a revocation does not state a defense.<sup>72</sup> Nor is an answer sufficient which avers that the license sought to be revoked has expired since the proceedings began by its own limitations.<sup>73</sup> Where the charge is that the licensee kept his saloon open on certain prohibited hours, and in his answer he admits it was open during those hours, the burden is on him to show a valid excuse for having it open at that time;<sup>74</sup> and the same is true because of sales on Sunday when the answer alleges the sales were made to guests on Sunday by the licensee, as the occupant of a hotel, at their meals.<sup>75</sup> An answer in such a case admitting the issuance of the license but not averring it was issued to respondent as a hotel keeper, or that he was a hotel keeper, will not entitle him to show he conducted a hotel and that the sales were within the exception of the statute permitting him to furnish liquors to his guests at their meals.<sup>76</sup> If the answer denies only a part of the charges, the evidence will not be limited to the denials, for the defendant may succeed on the charges denied and yet forfeit his

<sup>70</sup> *In re McGinley*, 32 Pa. Super. Ct. 324.

<sup>71</sup> *In re Bridge*, 56 N. Y. Supp. 1105; 36 N. Y. App. Div. 533; 55 N. Y. Supp. 54; affirming 25 N. Y. Misc. Rep. 213.

<sup>72</sup> *In re Schuyler*, 32 N. Y. Misc. Rep. 221; 66 N. Y. Supp. 251.

<sup>73</sup> *In re Schuyler*, *supra*; *In re Clement*, 62 N. Y. Misc. Rep. 512; 116 N. Y. Supp. 1070; *In re Clement*, 59 N. Y. Misc. Supp. 367; 112 N. Y. Supp. 337.

<sup>74</sup> *State v. Curtis*, 130 Wis. 357; 110 N. W. 189.

<sup>75</sup> *In re Cullinan*, 45 N. Y. Misc. Rep. 497; 92 N. Y. Supp. 802. But it should be noted that this is because the right to furnish liquors by a hotel keeper to his guests is given by an exception in the statute.

<sup>76</sup> *In re Schuyler*, 63 N. Y. App. Div. 206; 71 N. Y. Supp. 437.

license on those charges undenied.<sup>77</sup> But the Legislature cannot provide that if the defendant fails to deny under oath a material allegation in the petition his license shall be revoked; for it cannot raise a presumption of guilt from an omission of the accused to testify, by a provision that proof shall not be necessary if the defendant does not deny the charges under oath.<sup>78</sup>

### Sec. 452. Trial.

If a license has been once granted, it cannot be revoked, even by the court granting it, without a hearing or trial.<sup>79</sup> The trial may be, and usually is, without a jury; and a statute providing for a trial without a jury is constitutional.<sup>80</sup>

<sup>77</sup> *In re Cullinan*, 39 N. Y. Misc. Rep. 354; 79 N. Y. Supp. 840; *In re Cullinan*, 39 N. Y. Misc. Rep. 646; 80 N. Y. Supp. 626.

<sup>78</sup> *In re Peck*, 167 N. Y. 391; 60 N. E. 775; 53 L. R. A. 888; reversing 57 N. Y. App. Div. 635; 68 N. Y. Supp. 1145; *In re Cullinan*, 40 N. Y. Misc. 583; 83 N. Y. Supp. 9; *In re Cullinan*, 41 N. Y. Misc. Rep. 392; 84 N. Y. Supp. 1075; affirmed 89 N. Y. App. Div. 613; 85 N. Y. Supp. 1129.

<sup>79</sup> *Vanaman v. Adams*, 74 N. J. L. 125; 65 Atl. 204; *Lantz v. Hightstown*, 46 N. J. L. 102; *Decker v. Board*, 57 N. J. L. 603; 31 Atl. 235; *Dziok v. Board*, 28 R. I. 526; 68 Atl. 479; *Ferron v. Board*, 28 R. I. 529; 68 Atl. 480.

<sup>80</sup> *State v. Schmidt*, 65 Iowa, 556; 22 N. W. 673; *LaCroix v. Fairfield Co.*, 49 Conn. 591; *People v. Brooklyn Police*, 59 Conn. 92; *LaCroix v. Fairfield Co.*, 50 Conn. 321; 47 Am. Rep. 648; *Cherry v. Commonwealth*, 78 Va. 375; *Low v. Pilotage Commissioners*, 1 R. M. Charl. 302; *In re*

*Livingston*, 24 N. Y. Div. 51; 48 N. Y. Supp. 989; *Lyman v. Erie Co.*, 46 N. Y. App. Div. 387; 61 N. Y. Supp. 884; affirmed 161 N. Y. 641; 57 N. E. 1115.

[Citing *Board v. Barrie*, 34 N. Y. 657; *People v. Wright*, 3 Hun 306; *People v. Meakim*, 56 Hun 631; 10 N. Y. S. 163; *People v. Board of Commissioners of Police and Excise*, 59 N. Y. 92; *People v. Murray*, 149 N. Y. 367; 44 N. E. 146; 32 L. R. A. 344; *Colon v. Lisk*, 153 N. Y. 188; 47 N. E. 302; *Beer Co. v. Massachusetts*, 97 U. S. 25; 24 L. Ed. 989; *Stone v. Mississippi*, 101 U. S. 814; 25 L. Ed. 1079; *In re Bradley*, 22 Misc. Rep. 301; 49 N. Y. S. 1100; *In re Livingston*, 24 App. Div. 51; 48 N. Y. 989; *In re Lyman*, 25 Misc. Rep. 638; 56 N. Y. S. 359; *Id.* 26 Misc. Rep. 300; 56 N. Y. S. 1020; *In re Bridge*, 36 App. Div. 533; 25 Misc. Rep. 213; 55 N. Y. S. 54; *In re Place*, 27 App. Div. 561; 50 N. Y. S. 640; *In re Lyman*, 29 App. Div. 391; 49 N. Y. S. 559; 52 N. Y. S. 1145; *Id.* 28 Misc.

But where the forfeiture takes place upon a conviction of the licensee of having violated the law—the judgment of forfeiture is a part of the judgment of conviction—the defendant is entitled to a jury upon the question of his guilt.<sup>81</sup> Under the New York statute, where the charge is that the licensee has violated the liquor law, the proof must show that he has been regularly convicted of the offense before the proceedings for a revocation were begun.<sup>82</sup> Of course, showing a prior conviction of the offense charged in the petition is no bar to the proceedings for a revocation.<sup>83</sup> When witnesses are called, they must be sworn;<sup>84</sup> and usually witnesses must be called to prove the facts alleged in the petition;<sup>85</sup> unless the petition alleges as the basis of the proceeding a prior conviction, then a proper certificate of such conviction is all the evidence necessary, unless evidence of identification be necessary.<sup>86</sup> If the conviction was in the same court it may be proved by the judgment docket or register of conviction.<sup>87</sup> If the proceedings for a revocation is based upon the fact that the licensee had failed to answer a material question in his application, he cannot defeat the proceedings by asking leave to amend his application in that particular.<sup>88</sup> If the petition be sufficient, the petitioner is entitled to a hearing and to introduce proof; and it is error

Rep. 385; 59 N. Y. S. 971; *Id.* 28 Misc. Rep. 278; 59 N. Y. S. 828; *In re Kinze*, 28 Misc. Rep. 622; 59 N. Y. 682.]

<sup>81</sup> *Regina v. Cockshott* [1898], 1 Q. B. 582; 62 J. P. 325; 67 L. J. Q. B. 467; 78 L. T. 168; 14 T. L. R. 264.

<sup>82</sup> *In re Lyman*, 44 N. Y. App. Div. 507; 60 N. Y. Supp. 805, affirming 27 N. Y. Misc. Rep. 327; 55 N. Y. Supp. 888; *Lyman v. Malcom Brewing Co.*, 160 N. Y. 96; 54 N. E. 577; 55 N. E. 408, affirming 40 N. Y. App. Div. 46; 57 N. Y. Supp. 634.

<sup>83</sup> *Cherry v. Commonwealth*, 78 Va. 375.

<sup>84</sup> *License Comrs. v. O'Conner*, 17 R. I. 40; 19 Atl. 1080.

<sup>85</sup> *Deignan v. License Comrs.*, 16 R. I. 727; 19 Atl. 332.

<sup>86</sup> *Martin v. State*, 23 Neb. 371; 36 N. W. 554. Usually this certificate is conclusive. *People v. Lyman*, 53 N. Y. App. Div. 470; 65 N. Y. Supp. 1062.

<sup>87</sup> *Commissioner of Police v. Donovan* [1903], 1 K. B. 895; 67 J. P. 147; 72 L. J. K. B. 545; 52 W. R. 14; 88 L. T. 555; 19 T. L. R. 392.

<sup>88</sup> *In re Deuel*, 55 N. Y. Misc. Rep. 618; 106 N. Y. Supp. 1030.

to deny him that right.<sup>89</sup> Under the former New York statute the case could be referred to a referee to take and report the evidence and his conclusions thereon;<sup>90</sup> but not under the present statute.<sup>90\*</sup> The trial must be upon the facts alleged; and there can be no revocation upon facts not alleged,<sup>91</sup> even though the respondent avers he is entitled to hold his license.<sup>92</sup> But where the application was for the revocation of five liquor tax certificates for five different places, and the evidence showed a violation at only four of the places, it was held that there must be a judgment of forfeiture for the fifth place.<sup>93</sup> Where an order was issued for the licensee to show cause why his license should not be revoked, and he appeared before the city council by attorney as ordered and confessed that such council had authority to revoke the license, and a warrant for the rebate of the unexpired part of the license fee was ordered drawn, it was held that it sufficiently appeared that he consented to the revocation.<sup>94</sup> If the licensee agreed in writing when the license was granted that he would not sell liquors on Sunday, he cannot complain of a judgment revoking his license because of his violation of the agree-

<sup>89</sup> *In re* Clement, 116 N. Y. App. Div. 148; 101 N. Y. Supp. 683; *In re* Campbell, 8 Pa. Super. Ct. 524; *In re* Arnold, 30 Pa. Super. Ct. 93.

<sup>90</sup> *In re* Bridge, 56 N. Y. Supp. 1105; 36 N. Y. App. Div. 533; 55 N. Y. Supp. 54, affirming 25 N. Y. Misc. Rep. 213; *Plass v. Clark*, 71 N. Y. App. Div. 488; 76 N. Y. Supp. 2; *In re* Halbran, 30 N. Y. Misc. Rep. 515; 63 N. Y. Supp. 1024; *Cullinan v. Sabating*, 49 N. Y. Misc. Rep. 442; 99 N. Y. Supp. 977.

<sup>90\*</sup> *In re* Clement, 187 N. Y. 274; 79 N. E. 1003; (see *In re* Lawson, 109 N. Y. App. Div. 195; 96 N. Y. Supp. 33); *In re* Cullinan, 109 N. Y. App. Div. 816;

96 N. Y. Supp. 751; order [1904], 89 N. Y. S. 683; 97 App. Div. 122, 630, affirmed; *In re* Cullinan, 73 N. E. 1122, 181 N. Y. 527-530; Appeal of Kray, Id.; Appeal of Jacobs, 73 N. E. 1122; 181 N. Y. 529; Appeal of Johnson, 73 N. E. 1122; 181 N. Y. 528; Appeal of Kojan, Id.; Appeal of Koster, 73 N. E. 1122; 181 N. Y. 529; Appeal of Arkenau, 73 N. E. 1122; 181 N. Y. 527; Appeal of Straus, 73 N. E. 1122; 181 N. Y. 530.

<sup>91</sup> *Plass v. Clark*, 71 N. Y. App. Div. 488; 76 N. Y. Supp. 2.

<sup>92</sup> *Plass v. Clark*, *supra*.

<sup>93</sup> *In re* Lyman, 59 N. Y. App. Div. 217; 69 N. Y. Supp. 309; 67 N. Y. Supp. 48.

<sup>94</sup> *Holpa v. Aberdeen*, 34 Wash. 554; 76 Pac. 79.



ment.<sup>95</sup> The board, council or court may grant continuances of the trial, as in other matters.<sup>96</sup>

### Sec. 453. Dismissal of proceedings—Expiration of license.

A proceeding to revoke a license cannot be dismissed merely because the license to be revoked has expired by its own limitation, unless the petitioner consent thereto; for the petitioner has a right to have the question involved determined upon its merits, in order to recover his costs.<sup>97</sup> But the petitioner may apply for a discontinuance of the proceedings.<sup>98</sup> Under the New York statute proceedings may be maintained after an abatement of prior proceedings by reason of the petitioner's death.<sup>99</sup>

### Sec. 454. Estoppel to revoke.

As a rule a licensing officer or board cannot estop itself so as to prevent a revocation of a license for a proper cause, even where an innocent person may suffer by the revocation. Thus, where a statute forbade a transfer of a license after the holder had violated any provision of the liquor law, an approval of a transfer by a deputy excise commissioner without any knowledge of a violation of the law by the holder, was held not to estop or preclude the excise commissioner from proceeding against the assignee for the revocation of the license,

<sup>95</sup> *Belt v. Paul*, (Ark.), 91 S. W. 301.

<sup>96</sup> *State v. Common Council*, 41 Minn. 211; 42 N. W. 1058; *In re Lyman*, 53 N. Y. App. Div. 330; 65 N. Y. Supp. 673.

It is no defense that the license was surrendered before the proceedings were begun. *In re Clement*, 62 N. Y. Misc. Rep. 512; 116 N. Y. Supp. 1070; *In re Clement*, 59 N. Y. Misc. Rep. 367; 112 N. Y. Supp. 337.

<sup>97</sup> *In re Lyman*, 28 Misc. Rep.

408; 59 N. Y. Supp. 968; 48 N. Y. App. Div. 275; 62 N. Y. Supp. 846; *In re Schuyler*, 32 Misc. Rep. 221; 66 N. Y. Supp. 251; *In re Faber*, 115 N. Y. App. Div. 451; 101 N. Y. Supp. 429; *In re Clement*, 59 N. Y. Misc. Rep. 367; 112 N. Y. Supp. 337; *In re Clement*, 62 N. Y. Misc. Rep. 512; 116 N. Y. Supp. 1076.

<sup>98</sup> *In re Cullinan*, 39 N. Y. Misc. Rep. 558; 79 N. Y. Supp. 582.

<sup>99</sup> *In re Halbran*, 30 N. Y. Misc. Rep. 517; 63 N. Y. Supp. 1026.

although he knew of the violation of the law at the time of the transfer.<sup>1</sup>

### Sec. 455. Appeal—Certiorari.

Unless some statute provides for an appeal from an order or judgment of the licensing board or court revoking a license, none can be taken.<sup>2</sup> But where no appeal can be taken, a writ of *certiorari* lies to review the legality of the proceedings;<sup>4</sup> yet not to review the sufficiency of the evidence,<sup>4</sup> unless it be to determine whether or not the board or court were authorized to draw the inference it did and not that they rightly found the facts.<sup>5</sup> *Certiorari* cannot be used as a substitute for an appeal; but may be used to determine whether the court or board revoking the license acted without jurisdiction or in excess of its jurisdiction.<sup>6</sup> In Pennsylvania where the affidavit filed with the petition specifically alleges the ground for the revocation and the order of revocation specifies no other ground, the Appellate Court will examine the petition in order to determine whether the alleged act was a violation of the law.<sup>7</sup> In determining the qualifications of the applicant and the suitability of his place for the liquor traffic, a court acts judicially; and an objection cannot be made that the order granting or refusing the license cannot be appealed from because it is not a judicial

<sup>1</sup> *In re Cullinan*, 87 N. Y. App. Div. 47; 83 N. Y. Supp. 1025. *Simpson v. Commonwealth* (Ky), 104 S. W. 269; 31 Ky. L. Rep. 821; 104 S. W. 270; 31 Ky. L. Rep. 851.

<sup>2</sup> *Appeal of Wakeman*, 70 Conn. 313; 50 Atl. 733; *Regina v. Crothers*, 11 Manitoba 567; *State v. Superior Court* (Wash.), 87 Pac. 818; *Barnett v. Pemiscot Co. Ct.*, 111 Mo. App. 69; 86 S. W. 575; *State v. Kirk*, 112 Mo. App. 447; 86 S. W. 1099; *Dolan's Appeal*, 108 Pa. St. 564.

<sup>3</sup> *Gaertner v. Fond du Lac*, 34 Wis. 497; *State v. Lichta*, 130 Mo. App. 294; 109 S. W. 825.

<sup>4</sup> *In re Carlson*, 127 Pa. St. 330; 18 Atl. 8; 24 W. N. C. 184; *Appeal of Meenan*, 11 Pa. Super. Ct. 579; *People v. Board*, 24 Hun 195; *In re McGinley*, 32 Pa. Super. Ct. 324.

<sup>5</sup> *Rodden v. License Commissioners* (R. I.), 21 Atl. 1020.

<sup>6</sup> *State v. Lichta*, 130 Mo. App. 294; 109 S. W. 825; *People v. Board*, 24 Hun 195.

<sup>7</sup> *Appeal of Meenan*, 11 Pa. Super. Ct. 579.

act.<sup>8</sup> But it has also been held that in such a case the court acts in an administrative and ministerial capacity, and therefore no appeal lies from its order of revocation.<sup>9</sup> A writ of *certiorari* does not lie to review the resolution of a city council revoking a license on the ground that the applicant was not qualified to receive it and was guilty of a fraud in securing it; because the resolution will be entirely disregarded in a subsequent proceeding to determine the validity of the license.<sup>10</sup> But where an ordinance of a city provided for a revocation of a license issued under its provision on the holder's conviction of a violation of its provisions, and that the council's clerk should submit to the council each conviction; it was held that the ordinance contemplated that the clerk should submit the evidence of the conviction before any action was taken revoking the license, and if a revocation was made without the evidence being so submitted, the action of the council might be reviewed by *certiorari*.<sup>11</sup> A statute giving an appeal in instances of granting and revoking licenses does not give one from the decision of a licensing board approving a transfer of a license previously granted.<sup>12</sup> So one cannot appeal from a revocation of a license after the time has expired for which it was granted; because he has no beneficial interest in its revocation after that time.<sup>13</sup> On appeal matter not presented in the petition for revocation of the license cannot be considered.<sup>14</sup> For acts of a court done after the revocation—as the criminal prosecution and conviction of the licensee for the violation of law for which his license had

<sup>8</sup> Appeal of Burns, 76 Conn. 395; 56 Atl. 611; Carr v. Augusta, 124 Ga. 116; 52 S. E. 300 (action of city council reviewed on *certiorari*); Barry v. Little (N. H.), 68 Atl. 40 (State Board of License Commissioners).

<sup>9</sup> State v. Kirk, 112 Mo. App. 447; 86 S. W. 1099; Barnett v. Pemiscot Co. Ct., 111 Mo. App. 693; 86 S. W. 575.

<sup>10</sup> State v. Schroff, 123 Wis. 98; 100 N. W. 1030.

<sup>11</sup> Carr v. Augusta, 124 Ga. 116; 52 S. E. 300; People v. McGlyn, 131 N. Y. 602; 30 N. E. 864, affirming 62 Hun 237; 16 N. Y. Supp. 736.

<sup>12</sup> Appeal of Wakeman, 70 Conn. 313; 50 Atl. 733.

<sup>13</sup> Holpa v. Aberdeen, 34 Wash. 554; 76 Pac. 79.

<sup>14</sup> *In re Purdy*, 40 N. Y. App. Div. 133; 57 N. Y. Supp. 629.

been previously revoked—a review does not lie in reviewing its action in revoking the license.<sup>15</sup> In order to appeal from the action of a court or board revoking a license, the order or resolution of revocation need not be delivered to the licensee.<sup>16</sup> If the revocation has been made on the ground that the licensee had been convicted of a violation of the liquor laws, then a review of the proceedings for the conviction cannot be had in a review of the proceedings for a revocation; as, for instance, the sufficiency of the indictment on which he was convicted.<sup>17</sup> Where the petition for a writ of *certiorari* alleges that the licensing board revoked his license without informing the petitioner for the writ of the nature of the accusation against him, or hearing any witnesses, the writ will be granted.<sup>18</sup> A failure to swear the witnesses is sufficient to quash the proceedings under a statute providing that “witnesses for and against” the licensee “may be heard.”<sup>19</sup> A resolution of a city council that “in view of the evidence presented, the license of the respondent be, and the same is hereby revoked,” is not subject to be set aside on a writ of *certiorari* because there are no express findings that the allegations of the petition are true.<sup>20</sup> A statute providing for an appeal from an order of court revoking a city license entitles the city to a notice of the appeal, and in the absence of such a notice, an order restoring the license revoked is irregular.<sup>21</sup> But until set aside, an order of revocation is valid, if notice of the proceedings has been given.<sup>22</sup>

<sup>15</sup> Commonwealth v. Wall, 145 Mass. 216; 13 N. E. 486.

<sup>16</sup> People v. Forbes, 52 Hun 30; 4 N. Y. Supp. 757; 22 N. Y. St. Rep. 278; State v. Schmidt, 65 Iowa 556; 22 N. W. 673.

<sup>17</sup> Conner v. Commonwealth (Ky.), 16 S. W. 454; 13 Ky. L. Rep. 403.

<sup>18</sup> Deignan v. Providence License Comrs., 16 R. I. 727; 19 Atl. 332.

<sup>19</sup> License Comrs. v. O’Conner, 17 R. I. 40; 10 Atl. 1080. But a failure to object to the testimony

of an unsworn witness is a waiver of the right to have him sworn. Stroup v. State, 70 Ind. 495; Strange v. Prince, 17 Ind. 524.

<sup>20</sup> State v. Beloit, 74 Wis. 267; 42 N. W. 110.

<sup>21</sup> Commonwealth v. Campbell (Ky.), 107 S. W. 797; 32 Ky. L. Rep. 1131. See also Commonwealth v. Wall, 145 Mass. 216; 13 N. E. 486, and Carr v. Augusta, 124 Ga. 116; 52 N. E. 300.

<sup>22</sup> Barry v. Little (N. H.), 68 Atl. 40. In this case the State



Statutes sometimes give to any person—as a taxpayer or citizen of the community—feeling aggrieved by the decision of the licensing board or court, the right to appeal.<sup>23</sup> If the record or appeal show that the court acted wholly upon the evidence given in a criminal prosecution wherein the licensee was acquitted, the judgment of revocation will be reversed.<sup>24</sup> On a *certiorari* to review the action of a city council, the court should require the council to file an answer.<sup>25</sup>

### Sec. 456. Effect of revocation—Stay of proceedings.

The act of revocation avoids the license, and renders all sales thereunder thereafter illegal, even though a writ of *certiorari* has been sued out.<sup>26</sup> The order of revocation is not a bar to a criminal proceeding because of sales made by the licensee on Sunday.<sup>27</sup> A judgment or order of revocation is valid until reversed or set aside;<sup>28</sup> and binds the servants and agents of the licensee.<sup>29</sup> Where a prohibition order was set aside, and then an order entered setting aside the order of revocation of such prohibition order, whereby a licensee's license was revoked, and thereafter the prohibition order was revoked, it was held that a second license could not be issued without the payment of a new license fee.<sup>30</sup> A stat-

Board of License Commissioners heard *ex parte* evidence prior to the regular hearing, and it did not appear that at the subsequent hearing the licensee was ignorant of the board's act, or that an objection was made to the act of the board.

<sup>23</sup> Appeal of Cole, 79 Conn. 679; 66 Atl. 508.

<sup>24</sup> *In re McGinley*, 32 Pa. Super. Ct. 324.

<sup>25</sup> Carr v. Augusta, 124 Ga. 116; 52 N. E. 300.

<sup>26</sup> Neuman v. State, 76 Wis. 112; 45 N. W. 30; Melton v. Moultrie, 114 Ga. 462; 40 S. E. 302 (*In re Washburn*, 32 N. Y. Misc. Rep. 303; 66 N. Y. Supp. 732; *In re*

Lyman, 32 N. Y. Misc. Rep. 210; 67 N. Y. Supp. 502; *In re Auerbeck*, 31 N. Y. Misc. Rep. 46; 64 N. Y. Supp. 603; Clement v. Viscosi, 63 N. Y. App. Div. 514; 118 N. Y. Supp. 613. In some jurisdictions the appeal keeps the license in force. *Simonton v. Colbourne*, 3 Terr. L. R. 372. See *Cullinan v. Devito* (N. Y.), 99 N. Y. Supp. 976.

<sup>27</sup> State v. O'Connor, 58 Minn. 193; 59 N. W. 999.

<sup>28</sup> State v. Corron, 73 N. H. 434; 62 Atl. 1044; State v. Barnett, 111 Mo. App. 552; 86 S. W. 460.

<sup>29</sup> State v. Barnett, *supra*.

<sup>30</sup> Alexander v. State, 77 Ark. 294; 91 S. W. 181.

ute requiring the licensed premises to be closed by a police officer when the license is revoked will not justify the officer in forcibly ousting the licensee from the premises and thereby depriving him of the use of his property.<sup>31</sup> A statute empowering a board to enter and take possession of a license and cancel it, where necessary, requires no formal revocation, and it is sufficient to write the licensee his license is revoked and they will call on him for it. On the day such a notice is given the license may be taken away.<sup>32</sup> An appeal from a judgment or order cancelling a license does not reinstate such judgment or order, and no stay of proceedings will be granted.<sup>33</sup>

### Sec. 457. Costs.

If the license be cancelled upon the charges set forth in the petition, the petitioner recovers his costs; and although the license expires by efflux of time before the proceedings are carried to a final determination, the petitioner is entitled to have the charges set forth in his petition tried in order to recover his costs.<sup>34</sup> But a judgment cannot be rendered against an officer personally whose duty it is to institute and prosecute the proceedings for cancellation.<sup>35</sup> Where an applicant acted in good faith and was awarded a license when he was not entitled to it, on application of the commissioner

<sup>31</sup> *Baldwin v. Smith*, 82 Ill. 162; See also *Born v. Hopper*, 110 N. Y. App. Div. 218; 96 N. Y. Supp. 671; 48 N. Y. Misc. Rep. 177; 96 N. Y. Supp. 671.

<sup>32</sup> *People v. Woodman*, 4 N. Y. Supp. 532; 22 N. Y. St. Rep. 435.

<sup>33</sup> *In re Auerbach*, 31 N. Y. Misc. Rep. 46; 64 N. Y. Supp. 603; *In re Lyman*, 32 N. Y. Misc. Rep. 210; 67 N. Y. Supp. 502; *Goldman v. Goodrum*, 77 Ark. 580; 92 S. W. 865. In an action to revoke his license because of

a violation of law, a judgment for the defendant is a bar to an action for a penalty based on the same violation, the issue being the same in both actions. *Clement v. Moore* (N. Y. App. Div.), 119 N. Y. Supp. 883.

<sup>34</sup> *In re Lyman*, 28 N. Y. Misc. Rep. 408; 59 N. Y. Supp. 968; *In re Clement*, 59 N. Y. Misc. Rep. 367; 112 N. Y. Supp. 337; *In re Clement*, 62 N. Y. Misc. Rep. 512; 116 N. Y. Supp. 1070.

<sup>35</sup> *In re Seymour*, 47 N. Y. App. Div. 320; 62 N. Y. Supp. 25.

of excise to cancel it, judgment for costs in his favor was refused.<sup>36</sup>

### Sec. 458. Rebate of fees.

As a holder of a license has only a permit and not a property or vested right therein,<sup>37</sup> a statute providing for a revocation of a license need not provide for a return of the unearned part of the fee;<sup>38</sup> and the authorities cannot be enjoined from ordering a revocation on that ground.<sup>39</sup> The public authorities may retain so much of the license fee as covers that portion of the period for which the license is revoked.<sup>40</sup> Where a license was granted and the license fee paid, an appeal taken and the license suspended, but an appeal was finally determined in favor of the grant of the license, it was held that the licensee was entitled to a repayment of such proportion of the fee as the time when the license was suspended bore to the period for which the license should have run.<sup>41</sup>

### Sec. 459. Liability of city for mistakenly revoking license.

A municipality cannot be held liable for the mistaken action of its council in attempting to revoke or in revoking a license.<sup>42</sup>

<sup>36</sup> *In re Clement*, 57 N. Y. Misc. Rep. 47; 107 N. Y. Supp. 205.

In Massachusetts, under Pub. St. c. 100, sec. 7, the court cannot render a judgment against the licensee for costs on revocation of his license. *Young v. Blaisdell*, 138 Mass. 344.

<sup>37</sup> *People v. Wright*, 3 Hun 306; 5 T. & C. 518; *People v. McBride*, 234 Ill. 146; 84 N. E. 865.

<sup>38</sup> *Melton v. Moultrie*, 114 Ga. 462; 40 S. E. 302; *Ex parte Vaccarezza*, 52 Tex. Cr. App. 105; 105 S. W. 1119.

<sup>39</sup> *Melton v. Moultrie*, *supra*

<sup>40</sup> *Kreuger v. Colville*, 49 Wash.

295; 95 Pac. 81; *Alexander v. State*, 77 Ark. 294; 91 S. W. 181; *In re Lyman*, 28 N. Y. Misc. Rep. 278; 59 N. Y. Supp. 828; *In re Cullinan*, 87 N. Y. App. Div. 47; 83 N. Y. Supp. 1025; *H. Koehler & Co. v. Clement*, 111 N. Y. Supp. 151; *In re Faber*, 115 N. Y. App. Div. 451; 101 N. Y. Supp. 429; *People v. Lyman*, 168 N. Y. 669; 61 N. E. 1133, affirming 53 N. Y. App. Div. 470; 65 N. Y. Supp. 1062.

<sup>41</sup> *Auburn v. Mayer*, 58 Neb. 161; 78 N. W. 462.

<sup>42</sup> *Claussen v. Luverne*, 103 Minn. 491; 115 N. W. 643.

**Sec. 460. Action on bond when license forfeited.**

Statutes sometimes provide for an action on the licensee's bond when his license is forfeited. Where the court could certify that in its opinion, on conviction, the bond ought not to be forfeited and no action could then be maintained, but upon a forfeiture the clerk of the court should mail a copy of the judgment to the county treasurer who should bring suit thereon, and on the conviction of a licensee no forfeiture was decreed, the court postponing its determination of that question for its final determination, yet the clerk by mistake issued a copy of the judgment of forfeiture, and suit was brought upon the bond, and subsequent to this the court issued, upon the licensee complying with the provisions of the statute with reference to the arrangement of his premises, a certificate that the bond should not be forfeited, it was held that the action of the court was a good defense to the action on the bond.<sup>43</sup>

<sup>43</sup> *Jacobs v. Reilly*, 80 Conn. 275; 68 Atl. 251.



## CHAPTER XII.

### BOND OF LICENSEE.

#### SECTION.

- 461. Power to require a bond.
- 462. No statute requiring a bond.
- 463. Statute unconstitutional —  
Local option.
- 464. Giving bond a condition  
precedent to granting a  
license.
- 465. Retroactive effect.
- 466. Form.
- 467. Who may be sureties there-  
on.
- 468. Approving and filing—Man-  
damus.
- 469. Void license.
- 470. Cancellation of bond.
- 471. Breach of conditions of  
bond.
- 472. Breach of conditions—Of-  
fenses as to minors.

#### SECTION.

- 473. Liability of sureties.
- 474. Transfer of license.
- 475. Persons entitled to sue on  
bond.
- 476. A civil action—Agent.
- 477. Judgment of forfeiture on  
conviction, a prerequisite  
to suit.
- 478. Effect of judgment against  
principal upon surety —  
Evidence.
- 479. Attacking validity of license  
and proceedings therefor.
- 480. Pleading.
- 481. Evidence.
- 482. Amount of damages recov-  
erable on bond.
- 483. Compromise of liability.

#### Sec. 461. Power to require a bond.

As a condition precedent to engaging in the liquor traffic, and as one of the conditions on which a license can be claimed, the Legislature has full power to require that a bond be given by the licensee with sureties obligating himself to pay penalties and liabilities incurred by his violation of the liquor laws. Such statutes are constitutional.<sup>1</sup>

<sup>1</sup> Cullinan v. Burkhard, 93 N. Y. App. Div. 31; 86 N. Y. Supp. 1003, reversing 41 N. Y. Misc. Rep. 321; 84 N. Y. Supp. 825.

There is nothing unreasonable in an ordinance requiring a licensee to sell "near beer" to give a bond

conditioned to keep an orderly house, to comply with the regulations governing it, not to violate the State law, and to pay all fines assessed against him for violation of its provisions. Campbell v. Thomasville (Ga.), 64 S. E. 815.

### Sec. 462. No statute requiring a bond.

In order to render a bond valid some statute must require it. If no statute require it, then the licensing board cannot, and if one pursuant to a demand of an officer be executed and filed, it will be void. Even as a voluntary bond it is not valid.<sup>2</sup> A subsequent law making the law under which the bond was supposed to be required applicable to the principal in the bond will not render it valid.<sup>3</sup> Until filed and approved there is no liability on a bond.<sup>4</sup> A bond imposing restraints upon a licensee in addition to those required by statute has been held void,<sup>5</sup> but the better rule is that it is not.<sup>6</sup> A second bond given under the belief that the first was invalid, on request of the licensing officer, when it was not, is invalid.<sup>7</sup> But where the licensing board, as a condition precedent to the issuance of a license, demanded the execution of a bond running to the State, it was held to be a good common law bond.<sup>8</sup>

### Sec. 463. Statute unconstitutional—Local option.

If a statute under which a bond is given be unconstitutional the bond is void;<sup>9</sup> but one who has never executed a bond when a license was granted, and has been arrested for sales without a license, is not in a position, on an application for his release from arrest, to be heard upon the validity of the conditions of the bond as required by the statute.<sup>10</sup> If local option be adopted a right of action to recover a penalty ceases.<sup>11</sup>

<sup>2</sup> Commonwealth v. Ledford (Ky.), 110 S. W. 889; 33 Ky. L. Rep. p. 624.

<sup>3</sup> Gorman v. Williams, 117 Iowa 560; 91 N. W. 819.

<sup>4</sup> Allen v. Houck (Tex. Civ. App.), 92 S. W. 993.

<sup>5</sup> Crosby v. Snow, 16 Me. 121.

<sup>6</sup> Lyman v. Brucker, 26 N. Y. Misc. Rep. 594; 56 N. Y. Supp. 767; Walker v. Holtsclaw, 57 S. C. 459; 35 S. E. 754; Dowiat v. People, 92 Ill. App. 433; affirmed 193 Ill. 264; 61 N. E. 1059.

<sup>7</sup> Howes v. Maxwell 157 Mass. 333; 32 N. E. 152.

<sup>8</sup> People v. Eckman, 63 Hun 209; 18 N. Y. Supp. 654. See also O'Brien Co. v. Mahon, 126 Iowa 539; 102 N. W. 446.

<sup>9</sup> Cassel v. Scott, 17 Ind. 514; Dunham v. Hough, 80 Mich. 648; 45 N. W. 497.

<sup>10</sup> *Ex parte* Bell, 24 Tex. App. 428; 6 S. W. 197.

<sup>11</sup> Long v. A. L. Green & Co. (Tex. Civ. App.), 95 S. W. 79.

**Sec. 464. Giving bond a condition precedent to granting a license.**

In many of the States, if not all, applicants are required to give a bond before the license is issued. The conditions of these bonds vary, but usually they are conditioned to pay all fines and penalties assessed against the principal or licensee and to pay all civil damages occasioned by illegal sales of liquors. It is an invariable rule that a license issued—without a bond being filed with the proper officer is invalid.<sup>12</sup> A statute requiring a licensed saloon keeper to give a bond does not require a druggist to give one, though selling liquors for medical or mechanical purposes;<sup>13</sup> nor does it apply to physicians;<sup>14</sup> nor to a city or town license unless specifically designated.<sup>15</sup> But a statute requiring “wholesalers” to take out licenses “in such manner as is provided by existing laws” requires them to give a bond.<sup>16</sup> If a bond after its approval be withdrawn, no license can be issued though the application has been granted.<sup>17</sup> The State has the right to require a bond to be given before a license be granted, conditioned for the observance of the liquor law;<sup>18</sup> and so has a municipality.<sup>18\*</sup> Statutes sometimes authorize a court to require a bond of a person whom it has reasonable cause to suspect has sold liquor without a license. In such a case

<sup>12</sup> *State v. Fisher*, 33 Wis. 154; *State v. Bennett*, 101 Mo. App. 224; 73 S. W. 737; *State v. Shaw*, 32 Me. 570; *State v. Schreiner*, 86 Minn. 253; 90 N. W. 401; *People v. Berdenstein*, 65 Mich. 65; 31 N. W. 623. See *People v. Utley*, 129 Mich. 628; 89 N. W. 349; 8 Detroit L. N. 1077.

<sup>13</sup> *Moore v. People*, 109 Ill. 499; *State v. Courtney*, 73 Iowa 619; 35 N. W. 685; *State v. Ferguson*, 72 Mo. 297.

But a statute may require a druggist to give a bond. *People v. Utley*, 129 Mich. 628; 89 N. W. 349; 8 Det. Leg. N. 1077.

<sup>14</sup> *State v. Ferguson*, 72 Mo. 297.

<sup>15</sup> *State v. Willard*, 39 Mo. App. 251.

<sup>16</sup> *Commonwealth v. Deibert*, 12 Pa. Co. Ct. Rep. 504; 2 Pa. Dist. Rep. 446; *People v. Eckman*, 63 Hun 209; 18 N. Y. Supp. 654.

<sup>17</sup> *State v. Schreiner*, 86 Minn. 253; 90 N. W. 401.

<sup>18</sup> *Cullinan v. Burkhard*, 93 N. Y. App. Div. 31; 86 N. Y. Supp. 1003; reversing 41 N. Y. Misc. Rep. 321; 84 N. Y. Supp. 825.

<sup>18\*</sup> *In re Greystock*, 12 U. C. 458.

an indictment found, of a sale without a license, is a sufficient cause for the requiring of the bond.<sup>19</sup> While the general rule is that a license issued before the license fee is paid is void, yet a bond given in such an instance cannot be avoided if it was subsequently paid.<sup>20</sup> It is no excuse for a failure to give a bond that the licensing officer would not issue a license until he received certain blanks from the State excise commissioners.<sup>21</sup>

### Sec. 465. Retroactive effect.

A bond does not have a retroactive effect so as to render the sureties liable for past acts of the principal. Thus, where the sureties at first only signed the bond, and the principal did not sign it until after it had been filed and approved and the acts complained of committed, it was held that the bond was invalid and an action could not be maintained thereon by reason of the commission of such acts.<sup>22</sup> But it has been held that where, pursuant to a statute, a bond must be executed every year, the execution relates back to the date it bears and covers the period of time between that date and the date of filing it.<sup>23</sup>

### Sec. 466. Form.

A bond should comply with the requirements of the statute, and if it adds restraints in addition to those required by the statute, it is void in that respect.<sup>24</sup> One condition that the licensee shall "duly observe all laws relating to intoxicating liquors" is valid and not void for uncertainty.<sup>25</sup> Where a statute required the bond to be given to the county treasurer and

<sup>19</sup> *Anderson v. Commonwealth*, 105 Va. 533; 54 S. E. 305.

<sup>20</sup> *State v. Harper*, (Tex. Civ. App.) 87 S. W. 878.

<sup>21</sup> *Clement v. Smith*, 60 N. Y. Misc. Rep. 595; 112 N. Y. Supp. 955.

<sup>22</sup> *State v. Teague* (Tex. Civ. App.), 111 S. W. 234; *Allen v.*

*Houck & Dieter Co.* (Tex. Civ. App.), 92 S. W. 993.

<sup>23</sup> *Brockway v. Petted*, 79 Mich. 620; 45 N. W. 61.

<sup>24</sup> *Crosby v. Snow*, 16 Me. 121.

<sup>25</sup> *Quinterd v. Corcoran*, 50 Conn. 34; *Plucknett v. Tippey*, 45 Neb. 343; 63 N. W. 845; *Providence v. Bligh*, 10 R. I. 208.



his successors in office, one made payable to the county treasurer without giving his name and without the words "and his successors in office" was held valid, because it was considered payable to whomsoever was treasurer when the suit was brought thereon.<sup>26</sup> The bond should usually be made payable to the State and not to the county, nor to a municipality when it is a State bond.<sup>27</sup> But the statute may require it to be made payable to the county, even though a city therein grant the license.<sup>28</sup> A bond payable to the "city treasurer" of a city is valid without inserting the name of the person holding the office of treasurer when it was executed.<sup>29</sup> Failure to insert the name of the county in which the liquor traffic is to be carried on will not invalidate the bond.<sup>30</sup> Where a statute required the bond to be conditioned to "pay all fines and forfeitures," one conditioned to "pay all damages, fines, costs and penalties" is a sufficient one.<sup>31</sup> Where it required a dealer to give a general bond in a named amount and a second bond in a named amount not to sell adulterated liquors, a single bond in an amount equal to both such amounts was held valid.<sup>32</sup> And where the amount of the penalty was left blank, and the sureties justified in the lowest penalty allowed by statute, the bond was held valid for that amount.<sup>33</sup> If signed by one of the sureties only and yet be approved by the proper officer, it will be valid, and sales thereunder will be lawful.<sup>34</sup> A resolution of a city council fixing the amount of liquor bonds remains in force until repealed, and all bonds

<sup>26</sup> *Redpath v. Nottingham*, 5 Blackf. 267.

<sup>27</sup> *St. James v. Hingtgen*, 47 Minn. 521; 50 N. W. 700; *Thomas v. Hinkley*, 19 Neb. 324; 27 N. W. 231 (bond valid); *Minneapolis v. Olson*, 76 Minn. 1; 78 N. W. 877.

<sup>28</sup> *Sexson v. Kelley*, 3 Neb. 104.

<sup>29</sup> *Tripp v. Norton*, 10 R. I. 125; *Redpath v. Nottingham*, 5 Blackf. 267.

<sup>30</sup> *State v. Sitterle* (Tex. Civ. App.), 26 S. W. 764.

<sup>31</sup> *Crowley v. Commonwealth*, 123 Pa. 275; 16 Atl. 416; 23 W. N. C. 148.

<sup>32</sup> *Green County v. Wilhite*, 29 Mo. App. 459.

<sup>33</sup> *Garrison v. Steele*, 46 Mich. 98; 8 N. W. 696. Held valid in the lowest statutory amount.

*Contra*, *Louisville v. Cain* (Ky.), 119 S. W. 763.

<sup>34</sup> *North v. Barringer*, 147 Ind. 224; 46 N. E. 531. But see *State v. Teague* (Tex. Civ. App.), 111 S. W. 234.

until then should comply therewith.<sup>35</sup> Where a statute concerning State dispensaries required the dispenser to give a bond conditioned to obey the laws of the State in relation to the sale of liquors and not to sell at a price other than that fixed by the board of control, and a liquor dispenser gave a bond conditioned to obey the laws in relation to the sale of liquors and not to sell liquors at a charge exceeding fifty per cent. above their cost to him, it was held that it was valid as to the first provision but not as to the latter.<sup>36</sup> Mere clerical errors will not avoid a bond, even though the error be the insertion of an unauthorized condition.<sup>37</sup> A bond conditioned to comply with a certain designated act of the Legislature—the liquor statute of the State—is valid though superseded by a later act.<sup>38</sup> The bond need not contain a description of the principal's place of business.<sup>39</sup> A city cannot exact a greater number of sureties than the statute requires.<sup>40</sup> If a bond must accompany the application for a license, the fact that the space for the names of the proposed sureties is not filled in will not defeat the application, for it is not a substantial defect.<sup>41</sup> A bond signed after a liability under the liquor law has been incurred does not cover such liability.<sup>42</sup> Giving a bond in a penalty in a greater amount than the statute requires does not avoid it, and it is valid to the extent of the statutory penalty.<sup>43</sup> Where a bond on its face showed that two persons desired to engage in the liquor traffic, and were the principals therein, and was conditioned one of them should perform the

<sup>35</sup> *Hawkins v. Litchfield*, 120 Mich. 390; 79 N. W. 570.

<sup>36</sup> *Walker v. Holtzelaw*, 57 S. C. 459; 35 S. E. 754.

<sup>37</sup> *Dowiat v. People*, 92 Ill. App. 433; affirmed 193 Ill. 264; 61 N. E. 1059.

<sup>38</sup> *O'Brien Co. v. Mahon*, 136 Iowa, 539; 102 N. W. 446.

<sup>39</sup> *O'Brien Co. v. Mahon*, 126 Iowa 539; 102 N. W. 446; *Douthit v. State*, 36 Tex. Civ. App. 396; 82 S. W. 352; 83 S. W. 795; *Morris v. Mills* (Tex. Civ. App.), 82 S. W. 334.

<sup>40</sup> *Power v. Litchfield*, 141 Mich. 350; 104 N. W. 664; 12 Detroit Leg. N. 484.

<sup>41</sup> *In re Matthew*, 213 Pa. 269; 62 Atl. 837; *In re Regan*, 213 Pa. 279; 62 Atl. 841.

<sup>42</sup> *Cullinan v. Bowker*, 88 N. Y. App. Div. 170; 84 N. Y. Supp. 696, reversing 40 Misc. Rep. 439; 82 N. Y. Supp. 707.

<sup>43</sup> *Meador v. Adams*, 33 Tex. Civ. App. 167; 76 S. W. 238. Nor does it if made in a less amount. *Jones v. State* (Tex. Civ. App.), 81 S. W. 1010.

things required of them by the statute, it was held insufficient, though signed by both; and as the conditions were limited to one of them only by the repeated use of the pronouns "he" and "his" following their names, it was held that the omission of the other persons must be deemed intentional and could not be treated as a mere clerical error.<sup>44</sup> After receiving the benefits of a bond the principal is estopped to question its validity;<sup>45</sup> and a principal and his sureties cannot object to its validity that it was his intention before and at the time he received his license to permit another to conduct the business who was incompetent to receive a license.<sup>46</sup> A statute requiring a bond to be conditioned that the licensee would not sell intoxicating liquors in any quantity except upon the prescription is not rendered invalid by a failure to recite that the thing not to be sold was intoxicating liquor.<sup>47</sup> Where liquors could be sold only on the premises licensed, a failure to insert in the bond a clause that the liquors were to be drunk on the premises was held not to render the bond void, although bonds were only required when the liquors were sold on the premises.<sup>48</sup> A statute required the licensee to give a bond containing a provision that he would not use any screen which would obstruct the view "through" doors opening into the saloon from the street. The bond given provided that no screen should be used which would obstruct the view "to" such doors, and it was held not invalid as imposing a more onerous condition than the statute required.<sup>49</sup> A statute required saloon keepers to give a bond that he or they would not permit gambling on the premises. Under it a bond was given wherein the words "or they" were used after "he," and it was held that this did not invalidate the bond.<sup>50</sup>

<sup>44</sup> *State v. Harper*, 99 Tex. 19; 86 S. W. 920, reversing 85 S. W. 294.

<sup>45</sup> *Point Pleasant v. Greenlee*, 63 W. Va. 207; 60 S. E. 601; *State v. Golding*, 28 Ind. App. 233; 62 N. E. 502.

<sup>46</sup> *State v. English*, 74 N. H. 328; 68 Atl. 129; *Jones v. State* (Tex. Civ. App.), 81 S. W. 1010.

<sup>47</sup> *Edgar v. State* (Tex. Civ. App.), 102 S. W. 439.

<sup>48</sup> *Monigal v. State* (Tex. Civ. App.), 45 S. W. 1038.

<sup>49</sup> *State v. Whorton*, 22 Tex. Civ. App. 262; 63 S. W. 915.

<sup>50</sup> *State v. Whorton*, 26 Tex. Civ. App. 262; 63 S. W. 915.

A wrong description of the place to be licensed inserted in the application will not avoid the bond.<sup>51</sup> A bond conditioned that H will conform to the provisions of a liquor statute is valid though it recite that H and G desire to engage in the liquor traffic and that they are principals.<sup>52</sup> A bond purporting to bind the heirs and legal representatives of the obligors is not void.<sup>53</sup> But a bond with only one surety when two are required is not a valid statutory bond.<sup>54</sup> Where a statute required a bond to be given conditioned that the licensee "will not violate any of the provisions of this act, and that he will pay all damages, fines, penalties and forfeitures" adjudged against him, a bond conditioned that he would "comply with chapter 50 of the Compiled Statutes" of the State, entitled "Liquors, \* \* \* and, moreover, pay promptly all fines, penalties and forfeitures" adjudged against him, was held not to bind the sureties, though it did the principal.<sup>55</sup> If a bond be not properly conditioned, and it be accepted, on appeal from the proceedings an amended bond cannot be filed in the court to which the appeal has been taken.<sup>56</sup> It is error for a licensing board to approve an improper or defective bond.<sup>57</sup>

### Sec. 467. Who may be sureties thereon.

A bond requiring sureties to be freeholders of a county does not require them to be residents of the county.<sup>58</sup> Where

<sup>51</sup> *Cullinan v. Fidelity, etc. Co.*, 41 N. Y. Misc. Rep. 119; 83 N. Y. Supp. 969; *Castellano v. Marks*, 37 Tex. Civ. App. 273; 83 S. W. 729.

<sup>52</sup> *State v. Harper*, 99 Tex. 19; 86 S. W. 920; reversing 85 S. W. 294.

<sup>53</sup> *McLaury v. Watelsky*, 39 Tex. Civ. App. 394; 87 S. W. 1045.

<sup>54</sup> *Hillman v. Mayher*, 38 Tex. Civ. App. 377; 85 S. W. 818. But if one of the sureties be disqualified, it is sufficient. *Wolcott v. Burlingame* 112 Mich. 311; 70 N. W. 831.

<sup>55</sup> *Uldrich v. Gilmore*, 35 Neb. 288; 53 N. W. 135.

A statute of Michigan required a description of the place where the business was to be carried on to be inserted. *Courtwright v. Newaygo*, 96 Mich. 290; 55 N. W. 808.

<sup>56</sup> *In re Clyde*, 82 Neb. 537; 118 N. W. 90.

<sup>57</sup> *In re Clyde*, 82 Neb. 537; 118 N. W. 90; *In re Johnson* (Neb.), 118 N. W. 91.

<sup>58</sup> *Mathews v. People*, 159 Ill. 399; 42 N. E. 864; reversing 53 Ill. App. 305.



a statute required bonds to have two freehold sureties, and a subsequent statute provided that all bonds required by law might be executed by surety companies, and still later the first statute was re-enacted, still containing the provisions concerning two freehold sureties, it was held that a bond executed by a surety company was valid.<sup>59</sup> A statute required the applicant for a license to give the names of two freeholders as sureties and state that they were such *bona fide* owners of real estate, and that "he is not engaged in the manufacture of spirituous, vinous, or brewed liquors." It was held that this did not prohibit a brewer becoming surety on a bond because the clause quoted applied only to the applicant.<sup>60</sup> If a person can only be accepted on one bond, yet if he became surety on a second one, he cannot for that reason defend against an action on the second bond.<sup>61</sup>

#### Sec. 468. Approval and filing—Mandamus.

Approval of the bond is essential to the validity of the license for that is its acceptance, and until accepted it is not in force.<sup>62</sup> But the approval of the bond may be implied, as the issuance or receipt for the license money on presentation of a bond are a direction to the licensing clerk to issue the license;<sup>63</sup> and the filing of it is presumptive evidence of its approval.<sup>64</sup> But a report by a committee of a council to which

<sup>59</sup> Taggart v. Hillman, 42 Tex. Civ. App. 71; 93 S. W. 245; Taggart v. Graham (Tex. Civ. App.), 93 S. W. 246; Hicks v. Trustees, 151 Mich. 88; 114 N. W. 682; 14 Detroit L. N. 812.

An ordinance requiring the surety to be a guaranty or surety company is void. Campbell v. Thomsville (Ga.), 64 S. E. 815.

<sup>60</sup> *In re Schuykill Co.*, 24 Pa. Co. Ct. Rep. 571. See Attorney General v. Ball, 66 J. P. 553.

<sup>61</sup> Thomas v. Hinkley, 19 Neb. 324; 27 N. W. 231.

<sup>62</sup> Curtz v. State, 4 Ind. 385; State v. Bennett, 101 Mo. App. 224; 73 S. W. 737.

*Contra*, Harper v. Calder (Tex. Civ. App.), 39 S. W. 623.

<sup>63</sup> Prather v. People, 85 Ill. 36; Thomas v. Hinkley, 19 Neb. 324; 27 N. W. 231; Meinoz v. Brassel (Tex. Civ. App.), 108 S. W. 417; Deckard v. Drewrey, 64 Ark. 599; 44 S. W. 351; Coggeshall v. Pallett, 15 R. I. 168; 1 Atl. 413.

<sup>64</sup> Howes v. Maxwell, 157 Mass. 333; 32 N. E. 152. See Graves v. McHugh, 58 Mo. 499.

it has been referred for examination, in favor of its acceptance and approval, is not an approval by the council.<sup>65</sup> Approval by a majority vote of a council is all that is necessary, and the resolution of approval need not be approved by the mayor.<sup>66</sup> For a refusal to approve a bond a member of a city council is not liable, even though he assigns no reason for his refusal.<sup>67</sup> If one of the sureties of a bond has apparently been erased since it was executed, an officer or court need not approve it, but may decline to do so;<sup>68</sup> but he cannot arbitrarily refuse to approve a bond in proper form where the evidence shows the sureties are sufficient,<sup>69</sup> nor because he thinks the principal will conduct his place of business illegally.<sup>70</sup> If a married woman take out a license, her bond cannot be rejected because of her coverture.<sup>71</sup> If no statute requires it, a bond need not be recorded;<sup>72</sup> but it has been held that the filing of it is essential to its validity.<sup>73</sup> By refusing to approve a bond, a common council cannot exercise its power, when it has that power by adopting an ordinance, to suppress saloons.<sup>74</sup> If a bond is insufficient a new one may be presented for approval and the license granted.<sup>75</sup> If a proper bond be presented to the board or officer who is to approve it for approval and he refuses, he may be compelled

<sup>65</sup> *Garrison v. Steele*, 46 Mich. 98; 8 N. W. 696; *Contra*, *Drewrey v. Drewrey*, 64 Ark. 599; 44 S. W. 351.

Occasionally the license fee or tax cannot be received until the bond is approved. *Attorney General v. Huebner*, 91 Mich. 436; 51 N. W. 1072.

<sup>66</sup> *O'Halloran v. Jackson*, 107 Mich. 138; 64 N. W. 1046.

<sup>67</sup> *Amperse v. Winslow*, 75 Mich. 234; 42 N. W. 823.

<sup>68</sup> *Commonwealth v. Wilson*, 127 Pa. 542; 18 Atl. 601; 25 W. N. C. 148.

<sup>69</sup> *McLeod v. Scott*, 21 Or. 94;

26 Pac. 1061; *Post v. Sparta*, 63 Mich. 323; 29 N. W. 721.

<sup>70</sup> *Courtright v. Newaygo*, 96 Mich. 290; 55 N. W. 808.

<sup>71</sup> *Amperse v. Kalamazoo*, 59 Mich. 78; 26 N. W. 222.

<sup>72</sup> *Harper v. Golden* (Tex. Civ. App.), 39 S. W. 623.

<sup>73</sup> *Allen v. Houck & Dieter Co.* (Tex. Civ. App.), 92 S. W. 993.

*Contra*, *Brockway v. Petted*, 79 Mich. 620; 45 N. W. 61; 7 L. R. A. 740.

<sup>74</sup> *Hawkins v. Litchfield*, 120 Mich. 390; 79 N. W. 570.

<sup>75</sup> *In re Branch*, 164 Pa. 427; 30 Atl. 296; 35 W. N. C. 310.

to approve it by a writ of mandamus;<sup>76</sup> but if the refusal was based upon the insufficiency of the sureties, and there is evidence from which that conclusion may be drawn, mandamus will not issue to compel its approval.<sup>77</sup> A return by the officer or board that in his judgment the sureties on the bond are insufficient, is sufficient under a statute providing that "if, in the judgment" of the officer or board the sureties were insufficient they might reject the bond.<sup>78</sup> In a petition for a writ of mandamus the reasons given by the officer or the board for the refusal should be given or stated.<sup>79</sup> If the officer or board has a discretion in the matter it must be shown he exercised it unreasonably or arbitrarily, or that he was actuated by illegal or improper motives.<sup>80</sup> Whether or not a board acted in good faith or arbitrarily in refusing to approve a bond may be reviewed by the court.<sup>81</sup> A bond approved before an application for a license is filed is not void if an application was filed thereafter;<sup>82</sup> nor is it if no application be filed.<sup>83</sup> A failure of a transferee to have the transfer of the license recorded, as the statute requires, will not avoid the bond he is required to give when the transfer is made.<sup>84</sup> Whether or not a bond was filed on the date of its execution is one of fact

<sup>76</sup> *Potter v. Homer*, 59 Mich. 8; 26 N. W. 208; *Amperse v. Kalamazoo*, 59 Mich. 78; 26 N. W. 222; *Warner v. Lawrence*, 62 Mich. 251; 28 N. W. 844; *Court-right v. Newaygo*, 96 Mich. 290; 55 N. W. 808; *Keefer v. Hillsdale*, 70 Mich. 413; 38 N. W. 277.

*Contra*, *Parker v. Portland*, 54 Mich. 308; 20 N. W. 55.

See *Hicks v. Trustees*, 151 Mich. 88; 114 N. W. 682; 14 Detroit L. N. 812.

<sup>77</sup> *Wolfson v. Rubicon Tp.*, 63 Mich. 49; 29 N. W. 486; *Post v. Sparta Tp.*, 63 Mich. 323; 29 N. W. 721; *Briggs v. McKinley*, 131 Mich. 154; 91 N. W. 156; 9 Detroit Leg. N. 273.

<sup>78</sup> *Palmer v. Hartford*, 73 Mich. 96; 40 N. W. 850.

<sup>79</sup> *Goss v. Vermontville*, 44 Mich. 319; 6 N. W. 684.

<sup>80</sup> *McHenry v. Chippewa*, 65 Mich. 9; 31 N. W. 602; *Commonwealth v. Wilson*, 127 Pa. 542; 18 Atl. 601; 25 W. N. C. 148; *Post v. Sparta Tp.*, 64 Mich. 597; 31 N. W. 535.

<sup>81</sup> *Farr v. Anderson*, 135 Mich. 485; 98 N. W. 6; 10 Detroit Leg. N. 843; *Power v. Litchfield*, 141 Mich. 350; 104 N. W. 664; 12 Detroit Leg. N. 484; *Briggs v. McKinley*, 131 Mich. 154; 91 N. W. 156; 9 Detroit Leg. N. 273.

<sup>82</sup> *State v. Harper* (Tex. Civ. App.), 87 S. W. 878.

<sup>83</sup> *Faulkner v. Cassidy*, 39 Tex. Civ. App. 415; 87 S. W. 904.

<sup>84</sup> *Faulkner v. Cassidy*, 39 Tex. Civ. App. 415; 87 S. W. 904.

and not a presumption of law.<sup>85</sup> A failure of a city council to require the statutory affidavits of the sureties to accompany the bond does not avoid it, even though it may render the members of the council liable for a neglect of duty.<sup>86</sup> A liquor dealer is entitled to prompt approval of his bond when presented;<sup>87</sup> and until acceptance and approval there is no liability upon it.<sup>88</sup> The licensing officer or board should act fairly with the licensee in refusing to approve his bond and distinctly inform him of the reasons for its refusal; and in case of a city council its reasons should be entered on record.<sup>89</sup> The sureties must have the requisite qualifications.<sup>90</sup>

### Sec. 469. Void license.

If the license be void, the bond is void. Such was held to be the case where the license was void because it did not sufficiently designate the place where the liquor might be sold.<sup>91</sup> But where a license could not be legally issued to two persons, yet one was so issued which was for that reason void, it was held that the bond given on its issuance was valid.<sup>92</sup> An intention to engage in an illegal traffic in liquors will not avoid the bond.<sup>93</sup> Sureties cannot urge for the first time on appeal that the bond was void because of false statements made in the application for a license.<sup>94</sup>

### Sec. 470. Cancellation of bond.

Statutes sometimes provide for a cancellation of a bond and the substitution of another, and give sureties the right to

<sup>85</sup> *Allen v. Houck* (Tex. Civ. App.), 92 S. W. 993.

<sup>86</sup> *People v. Laning*, 73 Mich. 284; 41 N. W. 424.

<sup>87</sup> *Amperse v. Kalamazoo*, 59 Mich. 78; 26 N. W. 222.

<sup>88</sup> *Garrison v. Steele*, 46 Mich. 98; 8 N. W. 696.

<sup>89</sup> *Amperse v. Kalamazoo*, *supra*.

<sup>90</sup> *Campbell v. Thomasville* (Ga.), 64 N. E. 815; *Post v. Sparta*, 63 Mich. 323; 29 N. W. 721.

<sup>91</sup> *Green v. Southard* (Tex. Civ. App.), 61 S. W. 705, reversing 59 S. W. 839.

<sup>92</sup> *State v. Golding*, 28 Ind. App. 233; 62 N. E. 502. See also *State v. Harper* (Tex. Civ. App.), 87 S. W. 878.

<sup>93</sup> *Jones v. State* (Tex. Civ. App.), 81 S. W. 1010.

<sup>94</sup> *Cullinan v. O'Connor*, 100 N. Y. App. Div. 142; 91 N. Y. Supp. 628.



apply for the cancellation and be relieved of their liability on the bond for future conduct of the principal. The mere giving of the requisite notice to the licensing board or officer may have the effect to cancel the bond at the end of the time for which the notice is to run.<sup>95</sup> But a notice to the principal that he must give a new bond does not release the sureties until a new bond be given.<sup>96</sup> A statute providing that a surety on the bond of a public officer may apply for its cancellation and his release from future liability thereon has no application to the bond of a licensed liquor dealer.<sup>97</sup>

#### Sec. 471. Breach of conditions of bond.

Usually clauses are inserted in bonds of this character providing that if the liquor laws of the State be violated the principal in the bond and his sureties shall be liable thereon, and occasionally the bond is broad enough to cover the violation of other laws committed in connection with the liquor traffic authorized by the license to be conducted by the licensee. Thus where a bond was conditioned to "duly observe all laws relating to intoxicating liquors," a sale on Sunday, though not forbidden in the general liquor licensing statute, was held to be a violation of the obligation of the bond.<sup>98</sup> And so where bond was given to observe "all the provisions of the Revised Code of 1880," it covered an amendment of the code made before the bond was executed.<sup>99</sup> But the provisions of this character will not be extended by construction so as to apply to violations of other statutes, unless they plainly re-

<sup>95</sup> *Fidelity, etc., Co. v. Jenness*, 138 Iowa, 725; 116 N. W. 709.

<sup>96</sup> *Wright v. Treat*, 83 Mich. 110; 47 N. W. 243.

<sup>97</sup> *Fidelity, etc. Co. v. Jenness*, 138 Iowa 725; 116 N. W. 709.

<sup>98</sup> *Quintard v. Corcoran*, 50 Conn. 34; *O'Flinn v. State*, 66 Miss. 7; 5 So. 390; *Lyman v. City Trust, etc., Co.*, 166 N. Y. 274; 59 N. E. 903; affirming 62 N. Y. Supp. 1141; *Lightner v. Commonwealth*, 31 Pa. St. 341; *Lyman v.*

*Schenck* (N. Y.), 55 N. Y. Supp. 770.

The bond is given as an indemnity to protect the State as well as private parties authorized to maintain actions thereon. *State v. Larson*, 83 Minn. 124; 86 N. W. 3; 54 L. R. A. 487.

<sup>99</sup> *O'Flinn v. State*, 66 Miss. 7; 5 So. 390. But not separate and distinct statutes. *Jacobs v. Holgenson*, 70 Conn. 68; 38 Atl.

quire it.<sup>1</sup> A bond given not to "permit any game or games to be played in his house, whether licensed or not," known as "Horan's grocery, situated on Congress Avenue in the City of Austin, on lot No. 3," is broken by the principal letting games be played in a house in the rear of but connected with the grocery, and opening from it, as a billiard saloon.<sup>2</sup> If the principal permit another to do business under his name on the premises, and that other permits gambling there, the principal is liable on his bond.<sup>3</sup> Sales of liquor made by the principal's agent or barkeeper to a minor, or by one behind the bar not shown to be an interloper, renders the principal liable under a condition not to sell to minors.<sup>4</sup> A condition not to sell to a student is broken, even though he does not drink the liquor sold him.<sup>5</sup> A bond "conditioned upon the faithful observance of all the provisions" of an act covers a tax assessed under the act which it is the principal's duty to pay;<sup>6</sup> but not to obligations created by a city ordinance.<sup>7</sup> Where an application for a license to sell in quantities over a gallon at a time was followed by a tax receipt to the same effect and a like recital in the preamble of the bond, and the bond contained the usual statutory conditions not to sell to minors, it was held that the sureties were liable for a sale of less than a gallon to a minor.<sup>8</sup> Under a statute providing

<sup>1</sup> *Crawley v. Commonwealth*, 123 Pa. 275; 16 Atl. 416; 23 W. N. C. 148; *Jacobs v. Holgenson*, 70 Conn. 68; 38 Atl. 914; *Crouse v. Commonwealth*, 87 Pa. 168.

<sup>2</sup> *Horan v. Travis Co.*, 27 Tex. 226; *McPherson v. Simmons*, 63 Ark. 593; 40 S. W. 78.

<sup>3</sup> *Grady v. Ragan*, 2 Willson Civ. Cas. Ct. App., § 259; *Cullinan v. Burkhard*, 93 N. Y. App. Div. 31; 86 N. Y. Supp. 1003; reversing 41 N. Y. Misc. Rep. 321; 84 N. Y. Supp. 825.

<sup>4</sup> *O'Flinn v. State*, 66 Miss. 7; 5 So. 390; *Edgar v. State* (Tex. Civ. App.), 102 S. W. 439; *State v. Knotts*, 24 Ind. App. 477; 56

N. E. 941; *Boos v. State*, 11 Ind. App. 257; 39 N. E. 197; *State v. Terheide*, 166 Ind. 689; 78 N. E. 195; *Meinoz v. Brassel* (Tex. Civ. App.), 108 S. W. 417. See *Paducah v. Jones*, 126 Ky. 809; 104 S. W. 971; 31 Ky. Law Rep. 1203.

<sup>5</sup> *Daniels v. Grayson College*, 20 Tex. Civ. App. 562; 50 S. W. 205.

<sup>6</sup> *Marshall Co. v. Knoll* (Iowa), 69 N. W. 1146; *Bingham Co. v. Fidelity, etc., Co.*, 34 Idaho, 13; 88 Pac. 829.

<sup>7</sup> *Ottumwa v. Hodge*, 112 Iowa, 430; 84 N. W. 533.

<sup>8</sup> *Harper v. Golden* (Tex. Civ. App.), 39 S. W. 623.

that a bond shall stand good for "fines and costs recovered for any offense," a bond conditioned that the principal "shall pay all damages and costs recovered against him by any person under the Code," covers a liability for fines assessed for unlawful sales.<sup>9</sup> A condition not to sell on any prescription having the same number of another prescription given by the same person and dated during the year is violated by a sale on a prescription having the same number of another prescription given by the same person, and dated during the same year whether the prescription was given to the same or different persons.<sup>10</sup> A condition not to exhibit "vulgar" pictures on the premises is broken by an exhibition of "obscene" pictures.<sup>11</sup> So one not to permit gambling is violated by keeping a slot machine wherein one may drop a coin and press a trigger and either lose his coin or obtain a certain number of like coins as the machine may turn.<sup>12</sup> A condition not to keep a disorderly house, or to keep a "quiet house" is broken by permitting music in the saloon licensed where a statute defines a quiet house as one in which "no music, loud and boisterous talking" "or any other noise calculated to disturb or annoy persons residing in the vicinity" is allowed.<sup>13</sup> A condition to keep an orderly "house or place of business" includes an arbor across an alley where customers are served with liquors from the house licensed; and if boisterous talking, music and indecent and vulgar language be permitted therein, the condition is broken.<sup>14</sup> So a condition not to permit disorderly conduct on the premises is broken by such conduct on the premises carried on without the knowledge or consent of the

<sup>9</sup> *State v. Nutter*, 44 W. Va. 385; 30 S. E. 67; *State v. Corran*, 73 N. H. 434; 62 Atl. 1044.

<sup>10</sup> *Edgar v. State* (Tex. Civ. App.), 102 S. W. 439.

<sup>11</sup> *Raley v. State* (Tex. Civ. App.), 105 S. W. 342.

<sup>12</sup> *Lyman v. Brucker*, 26 N. Y. Misc. Rep. 594; 56 N. Y. Supp. 767.

<sup>13</sup> *State v. Curtis*, 8 Tex. Civ. App. 506; 28 S. W. 134.

<sup>14</sup> *Whitcomb v. State*, 2 Tex. Civ. App. 301; 21 S. W. 976; *Cunningham v. Porchet*, 23 Tex. Civ. App. 80; 56 S. W. 574 (in another room separated by a board partition not reaching the ceiling); *McPherson v. Simmons*, 63 Ark. 593; 40 S. W. 78 (question for jury).

principal.<sup>15</sup> A bond issued for a hotel conditioned not to permit the premises to become disorderly includes the rooms of the hotel in which the liquor business is carried on.<sup>16</sup> The licensee's bond does not cover illegal sales made by his agent, though in the general scope of his duty, made in direct violation of the licensee's orders.<sup>17</sup> Nor does it cover sales made by his agent for his own benefit.<sup>18</sup> Under a bond conditioned for the payment of any money lost at gambling in a saloon, "or any room or building attached thereto, under the [licensee's] control" it is essential to his liability that the money was lost by gambling in the saloon or in a room or building attached thereto under his control; and if there be doubt as to whether the room or building where it was lost was under his control, the jury must be instructed that the room or building must have been under his control at the time the money was lost by gambling therein to render him liable. There may be a liability, however, if he collusively rented out the room to persons who conducted therein gambling games for the purpose of escaping a liability.<sup>19</sup> A condition that the licensee would not "suffer or permit" any gambling on the premises covers gambling by persons other than the licensee; and is not limited by another clause to the effect that he will not violate the liquor tax law himself.<sup>20</sup> But under a bond that the principal will pay all fines and costs that may be assessed against him for violation of the liquor laws, he is not liable thereon for fines and costs assessed against his bartender for an unlawful sale made by such bartender without his knowledge or consent.<sup>21</sup> A bond conditioned to pay all damages by reason of the licensee ob-

<sup>15</sup> *Clement v. Federal Union Surety Co.*, 122 N. Y. App. Div. 18; 106 N. Y. Supp. 1061.

<sup>16</sup> *Cullinan v. Fidelity, etc., Co.*, 84 N. Y. App. Div. 292; 82 N. Y. Supp. 695; affirmed 177 N. Y. 574; 69 N. E. 1122.

<sup>17</sup> *Cullinan v. Burkhard*, 93 N. Y. App. Div. 31; 86 N. Y. Supp. 1003; reversing 41 N. Y. Misc. Rep. 321; 84 N. Y. App. 825.

<sup>18</sup> *Paducah v. Jones*, 126 Ky. 809; 104 S. W. 971; 31 Ky. Law Rep. 1203.

<sup>19</sup> *McPherson v. Simmons*, 63 Ark. 593; 40 S. W. 78.

<sup>20</sup> *Cullinan v. Burkhard*, 93 N. Y. App. Div. 31; 86 N. Y. Supp. 1003; reversing 41 N. Y. Misc. Rep. 321; 84 N. Y. Supp. 825.

<sup>21</sup> *State v. Leach*, 17 Ind. App. 174; 46 N. E. 549.



taining a license, under a statute requiring him to give a bond to pay all damages occasioned by his selling liquors, covers damages for the selling of liquors, and is not merely an indemnity for damages occasioned by the issuance of the license.<sup>22</sup> A surety on a bond, however, given where a license has been issued upon a false statement made in the application is not liable thereon by reason of such false statement. Such was held to be the case where the applicant falsely stated he had obtained the consent of certain resident householders necessary for him to obtain before the license could be issued, and this notwithstanding the fact that the entire traffic of the licensee was a violation of the law; for the bond was intended to protect the public against violations of the law under a license lawfully issued, and had no application to an instance of fraud in securing a license.<sup>23</sup> A bond conditioned to pay all "civil damages" does not render the sureties liable to pay a fine assessed against the principal for a sale to a minor.<sup>24</sup> Sureties are not liable for sales off the licensed premises.<sup>25</sup> A covenant in a bond not to "rent or let" any part of the licensed premises to any person for the purpose of running any game prohibited by law does not cover the independent acts of a vendee of the principal committed after a sale of the premises.<sup>26</sup> A sale to a police officer of a city is not a waiver of the right of the city to bring an action for a breach of the bond, unless, possibly, the sale was induced by what the officer said or did.<sup>27</sup>

### **Sec. 472. Breach of conditions—Offenses as to minors.**

Intoxicating liquor sold by an agent or barkeeper of the licensee, in his line of duty, renders such licensee liable on his bond conditioned not to sell to minors; and proof of a sale by a person behind defendant's bar, not shown to be an inter-

<sup>22</sup> *Dowiat v. People*, 193 Ill. 264; 61 N. E. 1059; affirming 92 Ill. App. 433.

<sup>23</sup> *Lyman v. Kane*, 57 N. Y. App. Div. 549; 67 N. Y. Supp. 1065.

<sup>24</sup> *Headington v. Smith*, 113 Iowa, 107; 84 N. W. 982.

<sup>25</sup> *Carter v. Nicol*, 116 Iowa, 519; 90 N. W. 352.

<sup>26</sup> *Allen v. Houck & Dieter Co.* (Tex. Civ. App.), 92 S. W. 993.

<sup>27</sup> *Tripp v. Flanigan*, 10 R. I. 128.

loper, is sufficient proof of a sale by the licensee.<sup>28</sup> But if a sale is made to a minor in good faith, the salesman believing that he is of age, he is not liable on his bond.<sup>29</sup> Statutes sometimes provide that in such instances the licensee shall not be liable if he or his salesman acted in good faith, believing the minor to be of age; in which event the burden is on him to plead and prove that fact.<sup>30</sup> A sale of liquor to an adult who "treats" a minor with it is not a sale to such minor nor a gift by the salesman to him.<sup>31</sup> But a statute providing that a liquor dealer shall neither "give nor permit to be given" any liquor to a minor obligates him not to knowingly permit the gift to be made to a minor on his premises, but goes further and requires him to prevent the gift there.<sup>32</sup> Where a bond is conditioned that the licensee will not permit a minor to "enter and remain" in his saloon, there can be no recovery for an entry "or" for remaining there; but both the entry and remaining must concur to create a liability.<sup>33</sup> If the licensee permitted the minor to enter and remain, believing in good faith he was of age, he is still liable; and a statute relieving him from liability where he sold liquor to a minor, believing in good faith he was of age, has no application and

<sup>28</sup> *O'Flinn v. State*, 66 Miss. 7; 5 So. 390; *State v. Terheide*, 166 Ind. 689; 78 N. E. 195; *Brooks v. Ellis* (Tex. Civ. App.), 98 S. W. 936; *George Sealfi & Co. v. State*, 31 Tex. Civ. App. 671; 73 S. W. 441; 74 S. W. 754; *State v. Knotts*, 24 Ind. App. 477; 56 N. E. 941; *Boos v. State*, 11 Ind. App. 257; 39 N. E. 197; *State v. Terheide*, 166 Ind. 689; 78 N. E. 417; *Munoz v. Brassel* (Tex. Civ. App.), 108 S. W. 417.

<sup>29</sup> *Gilbreath v. State* (Tex. Civ. App.), 82 S. W. 807; *Cox v. Thompson* (Tex. Civ. App.), 73 S. W. 950; *Holly & Co. v. Simmons*, 38 Tex. Civ. App. 124; 85 S. W. 325.

<sup>30</sup> *Farr v. Waterman* (Tex. Civ. App.), 95 S. W. 65; *Tinkle v. Sweeney* (Tex. Civ. App.), 78 S. W. 248; *Holly v. Simmons* (Tex. Civ. App.), 89 S. W. 776; *State v. Dittfurt* (Tex. Civ. App.), 79 S. W. 52; *Holly & Co. v. Simmons*, 38 Tex. Civ. App. 124; 85 S. W. 325.

<sup>31</sup> *Holly & Co. v. Simmons*, 38 Tex. Civ. App. 124; 85 S. W. 325; *Page v. State*, 84 Ala. 446; 4 So. 697; *Ward v. State*, 45 Ark. 351; *Topper v. State*, 118 Ind. 110; 20 N. E. 699; *People v. Neumann*, 85 Mich. 98; 48 N. W. 290.

<sup>32</sup> *Holly & Co. v. Simmons*, 38 Tex. Civ. App. 124; 85 S. W. 325.

<sup>33</sup> *Minter v. State*, 33 Tex. Civ. App. 182; 76 S. W. 312.

affords no defense.<sup>34</sup> Permitting a minor to enter and remain long enough to purchase, pay for and drink a glass of beer, though several times repeated, is not a breach of a condition against permitting him to "enter and remain."<sup>35</sup> But in such an instance the condition is broken if, after he has drunk his liquor, the licensee permit him to remain in the saloon ten or fifteen minutes, merely "loitering and hanging around."<sup>36</sup> It is error for the court to charge the jury that the length of time the minor remained is immaterial; for it is a question for the jury whether he "remained" in the defendant's place of business.<sup>37</sup> It is error in such an instance in the charge to the jury to use the word "knowingly" in connection with the word "permit,"<sup>38</sup> for it is not necessary to create a liability that the licensee knew the minor had entered the saloon.<sup>39</sup> The emancipation of the minor by the parent is no defense.<sup>40</sup> The parent may recover damages for such infraction of the statute—for a sale to his minor son and also for permitting him to "enter and remain" in the saloon.<sup>41</sup> Evidence that the minor was a gambler is inadmissible.<sup>42</sup> Evidence that signs were up in the saloon stating that minors were not allowed therein is immaterial.<sup>43</sup> If the parent consent to the minor entering and remaining in the saloon he waives his cause of action; but his non-consent may

<sup>34</sup> *Minter v. State*, *supra*; *Cox v. Thompson* (Tex. Civ. App.), 73 S. W. 950; *State v. Dittfurth* (Tex. Civ. App.), 79 S. W. 52; *Krick v. Dow* (Tex. Civ. App.), 84 S. W. 245.

<sup>35</sup> *Tinkle v. Sweeney* (Tex. Civ. App.), 78 S. W. 248; *Ghio v. Stephens* (Tex. Civ. App.), 78 S. W. 1084; *Tinkle v. Sweeney*, 97 Tex. 190; 77 S. W. 609; *Cox v. Thompson*, 32 Tex. Civ. App. 572; 75 S. W. 819.

<sup>36</sup> *White v. Manning*, 46 Tex. Civ. App. 298; 102 S. W. 1160; *Qualls v. Sayler*, 18 Tex. Civ. App. 400; 45 S. W. 839; *Dickson v.*

*Holt*, 30 Tex. Civ. App. 297; 70 S. W. 342.

<sup>37</sup> *Cox v. Thompson*, 32 Tex. Civ. App. 572; 75 S. W. 819.

<sup>38</sup> *Wakeman v. Price* (Tex. Civ. App.), 89 S. W. 1093.

<sup>39</sup> *Munoz v. Brassel* (Tex. Civ. App.), 108 S. W. 417.

<sup>40</sup> *Cox v. Thompson* (Tex. Civ. App.), 73 S. W. 950.

<sup>41</sup> *Coburn v. Gill* (Tex. Civ. App.), 60 S. W. 974.

<sup>42</sup> *Paynor v. Holzgraf*, 35 Tex. Civ. App. 233; 79 S. W. 829.

<sup>43</sup> *Krick v. Dow* (Tex. Civ. App.), 84 S. W. 245.

be inferred by evidence showing that he was absent in a distant State and that the minor had been in the city where the saloon was but a few days.<sup>44</sup> A complaint is not defective nor subject to a special exception which alleges that the violations of the law took place "on or about" a certain date, "and on divers days before and after said date during" the same month.<sup>45</sup> In such an instance the evidence need not be confined to the exact date given, but a recovery may be had on any of the "divers days before and after" the date.<sup>46</sup> A statute giving a cause of action to the parents of the minor authorizes the father and mother to join in one action; and if either die the other may file an amended complaint and prosecute the cause of action in his name alone.<sup>47</sup> Proof that the plaintiff minor "entered and remained" in the defendant's saloon is sufficient to show that the plaintiff was "aggrieved" thereby, and entitles him to recover.<sup>48</sup> The taking effect of local option prohibition is no defense.<sup>49</sup> Under the Texas statute the State may recover on the bond, although the father hired out his son to work in the saloon.<sup>50</sup>

### Sec. 473. Liability of sureties.

A repeal of the statute under which the bond was given is a cancellation of the bond as to all future liability thereunder.<sup>51</sup> The liability of the surety is coextensive with that of his principal's liability thereon.<sup>52</sup> Liability incurred under an old act is not cancelled by a repeal of the act and the substitution of another.<sup>53</sup> Mere irregularities in the justification

<sup>44</sup> *Krick v. Dow* (Tex. Civ. App.), 84 S. W. 245. But permitting him to occasionally enter and drink beer is not a consent to all sales made to him. *White v. Manning*, 46 Tex. Civ. App. 298; 102 S. W. 1160.

<sup>45</sup> *Patton v. Williams*, 35 Tex. Civ. App. 129; 79 S. W. 357.

<sup>46</sup> *Munoz v. Brassel* (Tex. Civ. App.), 108 S. W. 417.

<sup>47</sup> *Munoz v. Brassel*, *supra*.

<sup>48</sup> *White v. Manning* 46 Tex. Civ. App. 298; 102 S. W. 1160.

<sup>49</sup> *White v. Manning*, *supra*.

<sup>50</sup> *McMonigal v. State* (Tex. Civ. App.), 45 S. W. 1038.

<sup>51</sup> *Thompson v. Bassett*, 5 Ind. 535.

<sup>52</sup> *Gran v. Houston*, 45 Neb. 813; 64 N. W. 245. But see *Uldrich v. Gilmore*, 35 Neb. 288; 53 N. W. 135.

<sup>53</sup> *Gullickson v. Gjorud*, 89 Mich. 8; 50 N. W. 751.



of the sureties attached to the bond or the entire omission of such justification will not render a bond void which is correct in form;<sup>54</sup> and if the bond is complete, a mere failure to file it with the proper officers after it has been delivered to the board, accepted and approved, is no defense.<sup>55</sup> If a law be re-enacted the liability on the bond continues under the act as re-enacted; for the provisions of the act as it stood before its re-enactment is not repealed by the re-enactment, but simply continued in force.<sup>56</sup> A surety cannot defend on the ground that he has removed from the county or State where the statute, in that event, required the principal to give a new bond, but no new bond was given, although he was properly notified by the proper officer to give one.<sup>57</sup> A law enacted reducing the liability of the sureties has no application to a liability incurred thereon before its enactment.<sup>58</sup> Notice of the approval and acceptance of the bond need not be given the sureties; for they are bound to take notice of that fact.<sup>59</sup> If a bond be conditioned to pay whatever fine may be assessed against the principal, and in default of its payment he shall serve a day in prison for each dollar of the amount of the fine; his service in a prison because of his failure to pay does not release the sureties.<sup>60</sup> Where the license is for a particular place, the bond only applies to sales on the premises, though sales by the licensee off the premises be illegal.<sup>61</sup> Where the place could be changed on application to the proper officer,

<sup>54</sup> *People v. Laning*, 73 Mich. 284; 41 N. W. 424.

<sup>55</sup> *Brockway v. Potted*, 79 Mich. 620; 45 N. W. 61; 7 L. R. A. 740.

<sup>56</sup> *Gullickson v. Gjord*, 89 Mich. 8; 50 N. W. 751. See *O'Brien Co. v. Mahon* (Iowa), 102 N. W. 446.

<sup>57</sup> *Wright v. Trost*, 83 Mich. 110; 47 N. W. 243.

<sup>58</sup> *Lightner v. Casey*, 31 Pa. 341; *Commonwealth v. Johnson*, 8 Pa. Co. Ct. Rep. 378.

<sup>59</sup> *People v. Laning*, 73 Mich. 284; 41 N. W. 424.

<sup>60</sup> *People v. Laning*, 73 Mich. 284; 41 N. W. 424; *Stehle v. Commonwealth*, (Pa.), 7 Atl. 169; *Brown v. Commonwealth*, 114 Pa. 335; 6 Atl. 152. Otherwise if the principal has paid the fine. *Aiken v. Harbers*, 6 Rich. L. 96.

<sup>61</sup> *Saffroi v. Cobun*, 32 Tex. Civ. App. 79; 73 S. W. 828; *O'Banion v. DeGarmo*, 121 Iowa, 139; 96 N. W. 739; *Adams v. Miller*, 81 Miss. 613; 33 So. 489; *Carter v. Nicol*, 116 Iowa, 519; 90 N. W. 352; *Moniteau Co. v. Lewis*, 123 Mo. App. 673; 100 S. W. 1107.

and a licensee by false statements induced the officer to change the place named in the license, and he engaged in business on the new location, his sales then being illegal by reason of such false statements, it was held that his sureties were not liable for the penalties he incurred by reason of making them.<sup>62</sup> If the bond covers the licensee's taxes, the sureties cannot escape paying them, if the principal fail to pay, on the ground that after his failure he is no longer operating under the liquor law, where the failure to pay has that effect.<sup>63</sup> A surety is not liable for a false statement unknown to him made by the licensee in his application for a license, although the license issued thereon is void *ab initio* at the election of the State.<sup>64</sup> The death of a surety does not avoid the bond.<sup>65</sup> If the bond be irregular, yet under it the principal enjoy all the rights of a licensee, the sureties are estopped to deny its legality;<sup>66</sup> and if the licensee is a club or a corporation they are estopped to deny its incorporation.<sup>67</sup> As a rule the liability of the surety is secondary and that of the principal primary; and usually if the surety is compelled to pay a judgment rendered against them jointly it remains in force against the principal for his, the surety's benefit.<sup>68</sup> In some States the principal need not be first exhausted.<sup>69</sup> Where a surety was given a sum of money by his principal as an indemnity, to be held during the term of the bond and until his liability thereon ceased, it was held that the principal could recover back the amount so paid the surety without waiting to have the bond cancelled, there being no statute providing for its cancellation, and also without waiting until the statute of lim-

<sup>62</sup> Saffroi v. Cobun, *supra*.

<sup>63</sup> O'Brien Co. v. Mahon (Iowa), 102 N. W. 446.

<sup>64</sup> Lyman v. Schermerhorn, 167 N. Y. 113; 60 N. E. 324; affirming 53 N. Y. App. Div. 32; 65 N. Y. Supp. 538.

<sup>65</sup> McMonigal v. State (Tex. Civ. App.), 45 S. W. 1038.

<sup>66</sup> Lyman v. Brucker, 26 N. Y. Misc. Rep. 594; 56 N. Y. Supp. 767.

<sup>67</sup> Lyman v. Gramercy Club, 39 N. Y. App. Div. 459; 57 N. Y. Supp. 376.

<sup>68</sup> Jenkins v. Danville, 79 Ill. App. 339.

<sup>69</sup> O'Brien Co. v. Mahon (Iowa), 102 N. W. 446.

itations had run against the bond.<sup>70</sup> The recovery and payment of a penalty given under an independent statute against and by the principal is no defense for the surety to an action on the bond.<sup>71</sup> Occasionally statutes provide in addition to the fine a penalty may be recovered on the bond. When that is the case a payment of the fine is no defense for the surety in an action on the bond to recover the penalty.<sup>72</sup> A bond complete in form, but not to be delivered until another surety be added to it is binding if delivered and approved, though in violation of the surety's instructions and understanding.<sup>73</sup> Where the bond is a several one, the surety may be sued alone.<sup>74</sup>

#### **Sec. 474. Transfer of license.**

If a license may be transferred, the licensee is liable for the acts of the transferee until the assignment has been presented to the proper authorities and consent to the transfer obtained.<sup>75</sup> But it has been held that if the transfer of the license has not been approved by the licensing board or officer, the sureties on the bond are not liable for the illegal conduct of the transferee.<sup>76</sup>

#### **Sec. 475. Persons entitled to sue on bond.**

As the action on the bond is purely statutory, only a person or officer designated in the statute as the one who may

<sup>70</sup> *Shea v. Fidelity, etc., Co.*, 83 N. Y. App. Div. 305; 82 N. Y. Supp. 39.

<sup>71</sup> *People v. Eckman*, 63 Hun, 209; 18 N. Y. Supp. 654.

<sup>72</sup> *Paducah v. Jones*, 126 Ky. 809; 104 S. W. 971; 31 Ky. L. Rep. 1203.

<sup>73</sup> *Jacobs v. Hogan*, 73 Conn. 740; 49 Atl. 202.

<sup>74</sup> *Knott v. Peterson*, 125 Iowa, 404; 101 N. W. 173.

<sup>75</sup> *Cullinan v. Kuch*, 177 N. Y. 303; 69 N. E. 597; 84 N. Y. App. Div. 642; 82 N. Y. Supp. 1098; *Cullinan v. Parker*, 177 N. Y. 573; 69 N. E. 1122; affirming 84

N. Y. App. Div. 296; 82 N. Y. Supp. 827; affirming 39 N. Y. Misc. Rep. 446; 80 N. Y. 187; *Lyman v. City Trust Co.*, 166 N. Y. 274; 59 N. E. 903; affirming 62 N. Y. Supp. 1141.

<sup>76</sup> *Lyman v. Cheever*, 168 N. Y. 43; 60 N. E. 1047; reversing 54 N. Y. App. Div. 618; 66 N. Y. Supp. 1136.

As to what is sufficient allegation to show that a transfer had been made, in a suit on the transferee's bond, see *Faulkner v. Cassidy*, 39 Tex. Civ. App. 415; 87 S. W. 904.

sue thereon can bring the suit. No other person or officer can sue. But a bond given to an officer in his official character can be sued upon by his successor in office.<sup>77</sup> To collect fines and forfeitures the right of action is usually given to the State, and the State must bring it.<sup>78</sup> A general provision of a code providing that "where any bond shall be executed in a legal proceeding, it shall inure to the person to whom it is designed by law as a security, and be subject to judgment in his favor, no matter how it is conditioned," applies to a bond given by a liquor licensee.<sup>79</sup> Under a provision of the statute giving a right of action to any person "aggrieved by the violation of" the liquor statute, a father may maintain an action thereon where the principal has given liquor to his minor son, even with the father's consent, it being a question for the jury to determine whether the father had been "aggrieved" by the action of the principal.<sup>80</sup> In such an instance the father may bring the action in his own name, though the bond is payable to the State.<sup>81</sup> Where a statute provides that any person "aggrieved" by a sale of liquor to a student of any college, the college is the person "aggrieved," and may bring the suit.<sup>82</sup> A statute may change the right of action from one officer to another; and the latter may recover for a breach of the bond before such statute was enacted.<sup>83</sup>

<sup>77</sup> *Granger v. Hayden*, 17 R. I. 179; 20 Atl. 833.

<sup>78</sup> *State v. Whitener*, 23 Ind. 124; *State v. Pierce*, 26 Kan. 777; *McGrimes v. State*, 30 Ind. 140; *State v. Estabrook*, 29 Kan. 739.

<sup>79</sup> *State v. Depeder*, 65 Miss. 26; 3 So. 80.

<sup>80</sup> *Edgett v. Finn* (Tex. Civ. App.), 36 S. W. 830.

<sup>81</sup> *McGuire v. Glass*, (Tex. Civ. App.); 15 S. W. 127. This is a question of local practice, however, upon which no rule applicable to all jurisdictions can be

laid down. For cases in different States, see *People v. Eckman*, 63 Hun, 209; 18 N. Y. Supp. 654; *State v. Mortland*, 71 Iowa, 543; 32 N. W. 485; *State v. DeKruif*, 72 Iowa, 488; 34 N. W. 607; *State v. Humber*, 73 Iowa, 767; 34 N. W. 829; *Lyman v. Perimutter*, 166 N. Y. 410; 60 N. E. 21; affirming 66 N. Y. App. 866.

<sup>82</sup> *Daniels v. College* (Tex. Civ. App.), 50 S. W. 205.

<sup>83</sup> *Lyman v. Schenck* (N. Y.), 55 N. Y. Supp. 770.



**Sec. 476. A civil action—Agent.**

An action to recover on a bond is a civil action on a contract<sup>83\*</sup> and not a criminal one. Thus, while it might possibly be a defense in a criminal action if an agent of the principal sold liquor to a minor against the direct orders of his principal, yet it is not in an action on his bond, for the liability being a civil one the principal is bound by the act of his agent within the scope of his employment, though in direct violation of his express orders.<sup>84</sup> An action of debt is a proper form of action on a licensee's bond to recover damages.<sup>85</sup> But if the statute provide a specific remedy, that remedy must be followed.<sup>86</sup> In an action on the bond the State may appeal, though if it were to criminally prosecute the principal for the same act it could not.<sup>87</sup> A right of action on the bond to recover a penalty terminates with the taking effect of a local option law.<sup>88</sup>

**Sec. 477. Judgment of forfeiture or conviction as a prerequisite to suit.**

The general rule is that neither a judgment of forfeiture nor a conviction of the principal, where the action is for the benefit of the State or municipality, need be had or entered before an action can be brought on the bond.<sup>89</sup> And this is true where the action is by a private individual to recover damages the statute awards him.<sup>90</sup> If the principal be sued on his bond and defeat the action, that is a bar to an action against him individually.<sup>91</sup>

<sup>83\*</sup> *Cullinan v. Burkhard*, 93 N. Y. App. Div. 31; 86 N. Y. Supp. 1003; reversing 41 N. Y. Misc. Rep. 321; 84 N. Y. Supp. 825.

<sup>84</sup> *Greene Co. v. Wilhite*, 29 Mo. App. 459; *State v. Terheide*, 166 Ind. 689; 78 N. E. 195.

<sup>85</sup> *State v. Walker*, 56 N. H. 176.

<sup>86</sup> *Commonwealth v. Thompson*, 2 Gray, 82. See also *Anthony v. Krey*, 70 Mich. 629; 38 N. W. 603.

<sup>87</sup> *State v. Nutter*, 44 W. Va. 385; 30 S. E. 67.

<sup>88</sup> *Long v. A. L. Gren & Co.* (Tex. Civ. App.), 95 S. W. 79.

<sup>89</sup> *Coggeshall v. Pollitt*, 15 R. I. 168; 1 Atl. 413; *Granger v. Hayden*, 17 R. I. 179; 20 Atl. 833; *State v. Corron*, 73 N. H. 434; 62 Atl. 1044; *Knott v. Peterson*, 125 Iowa, 404; 101 N. W. 173; *Lyman v. Schenck* (N. Y.), 55 N. Y. Supp. 770.

<sup>90</sup> *Quintard v. Knoedler*, 53 Conn. 485; 2 Atl. 752.

<sup>91</sup> *Carter v. Nicol*, 116 Iowa, 519; 90 N. W. 352.

### Sec. 478. Effect of judgment against principal upon his surety—Evidence.

If judgment is to be given both against a principal and his surety, then the surety is not bound thereby unless he has regular notice of the proceedings.<sup>92</sup> But where a statute provides that upon conviction of having violated the liquor law the bond of the licensee shall become forfeited, the record of the conviction may be put in evidence, and is sufficient evidence of the breach of the bond.<sup>93</sup> If the condition is that there shall be a liability upon the bond if the licensee violates the liquor law, then a judgment of conviction for the same offense charged in the complaint is *prima facie* evidence of such violation, but not conclusive.<sup>94</sup> But if the statute provides that the sureties shall be liable for the amount of any judgment recovered against the licensee for having violated the liquor law, then a judgment against him is conclusive on them and they are not entitled to retry the alleged fact of violation.<sup>95</sup> Where the cause of action arises by reason of the recovery of a judgment against the principal, a plea of *nul tiel* record is a proper plea to test the existence of the judgment.<sup>96</sup> If the cause of action be given because of a violation of the statute by the principal, his sureties may show he had not violated it, even though he has been convicted of its violation.<sup>97</sup>

### Sec. 479. Attacking validity of license and proceedings therefor.

In an action on his bond neither the principal nor his surety can attack the validity of the proceedings for a license nor the

<sup>92</sup> *Margoley v. Commonwealth*, 3 Met. (Ky.) 405; *Webbs v. State*, 4 Coldw. 199.

<sup>93</sup> *Welch v. McKane*, 55 Conn. 25; 10 Atl. 168.

<sup>94</sup> *Albrecht v. State*, 62 Miss. 516; *Webbs v. State*, 4 Coldw. 199.

<sup>95</sup> *People v. Laning*, 73 Mich. 284; 41 N. W. 424; *Jacobs v. Hol-gensen*, 70 Conn. 68; 38 Atl. 914;

*Point Pleasant v. Greenlee*, 63 W. Va. 207; 60 S. E. 601; *State v. Nutter*, 44 W. Va. 385; 30 S. E. 67.

<sup>96</sup> *Point Pleasant v. Greenlee*, 63 W. Va. 207; 60 S. E. 601.

<sup>97</sup> *Paducah v. Jones*, 126 Ky. 809; 104 S. W. 971; 31 Ky. L. Rep. 1203.

validity of the license. The giving of the bond precludes them from thus making a collateral attack upon them.<sup>98</sup>

### Sec. 480. Pleading.

If the action is brought to recover a penalty because of the commission of a public offense, facts must be stated with sufficient precision to show its commission. Thus where a statute forbade the sale of liquors "between 11 o'clock P. M. and 5 o'clock A. M. of each and every day," a recovery cannot be had on a complaint charging a sale between 11 o'clock P. M. and 5 o'clock A. M. of the "following" day.<sup>99</sup> Where the condition of the bond is to prevent disorderly conduct in the place licensed, a charge that the licensee permitted such conduct in his saloon, and permitted A, B and C to there conduct themselves in a disorderly manner, by then and there fighting and quarreling together, is a sufficient allegation of a breach of the bond.<sup>1</sup> An omission to state the day and year of the breach does not render the complaint defective on general demurrer.<sup>2</sup> Under a condition not to allow rioting, gambling, disorderly conduct or unlawful assemblies in his saloon an allegation that he permitted unlawful assemblies in and about his house is not sufficient, being too general.<sup>3</sup> Several offenses cannot be charged in the same paragraph of complaint, for if it be so done the paragraph will be bad for duplicity.<sup>4</sup> As a rule technical defects in a pleading must be raised by a demurrer, such as a failure to allege the approval of the bond or that the judgment against the principal sued on was rendered during the lifetime of the bond, or it will be waived;<sup>5</sup> and this is especially true after the evidence is all

<sup>98</sup> Schullherr v. State, 68 Miss. 227; 8 So. 328; Ludwig v. State, 18 Ind. App. 518; 48 N. E. 390; Hendersonville v. Price, 96 N. C. 423; 2 S. E. 155; Bechtle v. Lewis, 123 Mo. App. 673; 100 S. W. 1107.  
<sup>99</sup> Eureka v. Diaz, 89 Cal. 467; 26 Pac. 961.

<sup>1</sup> Boles v. McCarty, 6 Blackf. 427; State v. Golding, 28 Ind. App. 233; 62 N. E. 502.

<sup>2</sup> Redpath v. Nottingham, 5 Blackf. 267.

<sup>3</sup> Boles v. McCarty, 6 Blackf. 427.

<sup>4</sup> Boles v. McCarty, 6 Blackf. 427. But see Jones Co. v. Sales, 25 Ind. 25.

<sup>5</sup> Gullickson v. Gjord, 89 Mich. 8; 50 N. W. 751; Maier v. State, 2 Tex. Civ. App. 296; 21 S. W. 974; Cullinan v. O'Connor, 100 N.

heard.<sup>6</sup> It is sufficient to charge the execution of the bond and that the principal knowingly committed the breaches which are fully described.<sup>7</sup> If the pleading show that the breach was committed after the bond was executed, it need not allege the date of execution.<sup>8</sup> A complaint reciting that the licensee sold or gave or permitted liquors to be given to a minor is sufficient on a motion in arrest of judgment where the condition in the bond is that the licensee will not sell or permit to be sold, nor give nor permit to be given, in his premises, liquor to a minor.<sup>9</sup> So a complaint is sufficient to withstand such a motion which alleges that the licensee did not keep an orderly place of business, allowing therein boisterous talking and the use of vulgar and indecent language where the condition in his bond was that he should keep an orderly place of business.<sup>10</sup> It is sufficient to set out the substance of the condition charged to have been violated.<sup>11</sup> To allege that the offense occurred on a specified date "and on divers other days thereafter during" certain named consecutive months is sufficiently definite as to the time of the offense.<sup>12</sup> Upon a charge that the license permitted a minor to enter and remain in his saloon, an allegation that he was employed in the saloon as a bartender is surplusage and need not be proven.<sup>13</sup> The pleading should allege that the violation of law occurred while the license was in force.<sup>14</sup> An allegation that the bond was duly executed is an allegation that it was delivered.<sup>15</sup> If it is sought to recover damages for an injury occasioned by the intoxication of the person purchasing liquor, a connection must

Y. App. Div. 142; 91 N. Y. Supp. 628.

<sup>6</sup> Wright v. Treat, 83 Mich. 110; 47 N. W. 243.

<sup>7</sup> Grady v. Ragan, 2 Wilson, Tex. Civ. Cas. Ct., § 259.

<sup>8</sup> Maier v. State, 2 Tex. Civ. App. 296; 21 S. W. 974.

<sup>9</sup> Maier v. State, *supra*; Jacobs v. Holgenson, 70 Conn. 68; 38 Atl. 914.

<sup>10</sup> Whitcomb v. State, 2 Tex. Civ. App. 301; 21 S. W. 376.

<sup>11</sup> Drake v. State (Tex. Civ. App.), 23 S. W. 398.

<sup>12</sup> Drake v. State, *supra*; Patton v. Williams, 35 Tex. Civ. App. 129; 79 S. W. 357; Munoz v. Brasel (Tex. Civ. App.), 108 S. W. 417.

<sup>13</sup> State v. Curtis, 8 Tex. Civ. App. 506; 28 S. W. 134.

<sup>14</sup> Lyman v. Siebert, 31 N. Y. Misc. Rep. 285; 65 N. Y. Supp. 367.

<sup>15</sup> Jacobs v. Hogan, 73 Conn. 740; 49 Atl. 202



be shown by the pleading between the unlawful sale and the injury.<sup>16</sup> It is not necessary to mention the statute under which the action is brought.<sup>17</sup> If the complaint does not allege the granting or issuance of a license it is fatally defective.<sup>18</sup> If several breaches be alleged, proof of any one of them entitles the plaintiff to recover.<sup>19</sup> A complaint by an individual alleging a violation of the statute and condition of the bond and then alleging that for that reason the defendant became indebted to the people of the State in a certain named sum contains a sufficient allegation of indebtedness and non-payment.<sup>20</sup>

### Sec. 481. Evidence.

The recitals in the bond that the principal was duly licensed establishes the granting of the license *prima facie*, and the license need not be put in evidence. In such an instance while the license is the best evidence of its issuance and existence, yet it is not error to admit proof of the license by the records of the board or court issuing it.<sup>21</sup> Where it is a matter of identification of prescriptions for liquors that have been issued, the affidavit of the druggist made pursuant to a liquor statute is admissible for that purpose.<sup>22</sup> The affidavit stating that no other liquors were sold except those stated in the prescriptions is *prima facie* evidence of that fact.<sup>23</sup> Putting the license in evidence raises a presumption that an application

<sup>16</sup> State v. Terheide, 166 Ind. 689; 78 N. E. 195.

<sup>17</sup> Lucas v. Johnson (Tex. Civ. App.), 64 S. W. 823.

<sup>18</sup> Quist v. American Bonding, etc., Co., 74 Neb. 692; 105 N. W. 255. But see Earl v. State, 33 Tex. Civ. App. 161; 76 S. W. 207.

<sup>19</sup> Wakeham v. Price (Tex. Civ. App.), 89 S. W. 1093. In this case the court instructed the jury that if they failed to find there was any violation of the conditions of the bond "on said dates," they should find for the defendant, and this was held error, because they might

have concluded the plaintiff was required to prove all the breaches alleged in his complaint.

<sup>20</sup> Cullinan v. Fidelity, etc., Co., 41 N. Y. Misc. Rep. 119; 83 N. Y. Supp. 969.

<sup>21</sup> Moniteau Co. v. Lewis, 123 Mo. 673; 100 S. W. 1107; Lucas v. Johnson (Tex. Cr. App.), 64 S. W. 823. Proof of license by copy produced by witness. King v. State, 53 Tex. Cr. App. 101; 109 S. W. 182.

<sup>22</sup> Edgar v. State, 46 Tex. Civ. App. 171; 102 S. W. 439.

<sup>23</sup> Edgar v. State, *supra*.

for it had been duly made.<sup>24</sup> If the charge is illegal sales on Sunday, and the evidence shows the sale was made by a clerk of the defendant, evidence is also admissible to show that such clerk made sales on other Sundays, to show he acted with the consent of his employer in making the sale charged.<sup>25</sup> If the alleged breach is the keeping of a disorderly house, evidence that the plaintiff rented his adjoining house to objectionable characters is inadmissible as a defense, such proof showing neither consent nor contributory negligence on the plaintiff's part.<sup>26</sup> If the complaint alleges illegal sales off the licensed premises it is demurrable.<sup>27</sup> The breach need not be proven of the exact time laid, and evidence, therefore, of a breach at another time is admissible.<sup>28</sup> Evidence of the exhibition of the license in the place licensed is admissible, and with this may be coupled the testimony of the licensing officer that the licensee obtained no other license covering any of the period the license was in force.<sup>29</sup> In a suit on the bond the application for a license is admissible in evidence.<sup>30</sup> Unless the proof show a violation of the law as alleged the plaintiff must fail in his action.<sup>31</sup> Evidence that the law was violated by a sale to an officer of the State who purchased for the purpose of entrapping the defendant is admissible, especially if it was the duty of the officer to investigate to ascertain if breaches of the liquor laws were being committed.<sup>32</sup> Proof of the issuance

<sup>24</sup> *White v. Manning*, 46 Tex. Civ. App. 298; 102 S. W. 1160.

<sup>25</sup> *Paducah v. Jones*, 126 Ky. 809; 104 S. W. 971; 31 Ky. L. Rep. 1203.

<sup>26</sup> *Cunningham v. Porchet*, 23 Tex. Civ. App. 80; 56 S. W. 574.

<sup>27</sup> *Adams v. Miller*, 81 Miss. 613; 33 So. 489.

<sup>28</sup> *Hawthorne v. State*, 39 Tex. Civ. App. 122; 87 S. W. 839.

<sup>29</sup> *Cullinan v. Horan*, 116 N. Y. App. Div. 711; 102 N. Y. Supp. 132.

<sup>30</sup> *Lucas v. Johnson* (Tex. Civ. App.), 64 S. W. 823.

<sup>31</sup> *Lyman v. Mead*, 56 N. Y. App.

Div. 582; 67 N. Y. Supp. 254; *Cullinan v. Parker*, 177 N. Y. 573; 69 N. E. 1122; affirming 84 N. Y. App. Div. 296; 82 N. Y. Supp. 827; 39 N. Y. Misc. Rep. 446; 80 N. Y. Supp. 187; *Quist v. American Bonding, etc., Co.*, 74 Neb. 692; 105 N. W. 255; *Cullinan v. Quinn*, 95 N. Y. App. Div. 429; 88 N. Y. Supp. 963.

<sup>32</sup> *Lyman v. Oussani*, 33 N. Y. Misc. Rep. 409; 68 N. Y. Supp. 450; citing *Commissioners v. Backus*, 29 How. Prac. 33; *People v. Smith*, 28 Hun, 626; *Tripp v. Flanigan*, 10 R. I. 128; *Mayor v. Dickerson*, 45 N. J. L. 38.

of the license need not be expressly made where the testimony affords strong presumptive evidence of the issuance.<sup>33</sup> If the accused be notified to produce his license at the trial and does not do so, parol evidence of its contents may be given.<sup>34</sup>

### **Sec. 482. Amount of damages recoverable on bond.**

If the bond be given in a certain named amount—as the statute requires—the surety is not bound beyond that amount though the principal may be personally liable for a much greater sum.<sup>35</sup> He is liable, as a rule, for actual and not for exemplary damages.<sup>36</sup> In Kansas, at an early day, if the licensee forfeited his bond and paid the judgment and costs rendered because of such forfeiture, though it was less than the penalty named, the bond was extinguished.<sup>37</sup> Occasionally statutes provide the giving of bonds with no limit as to the amount of the liability.<sup>38</sup> If the bond provide for the recovery of a certain penalty, the amount of damages occasioned by the violation of the law has no place in the case.<sup>39</sup> If the State sue on more than one breach of the bond, it may recover more than one penalty,<sup>40</sup> up to the limit of the bond.<sup>41</sup> The sum named in the bond, where it is the amount of recovery for any breach of its conditions is treated as liquidated damages.<sup>42</sup> Under a statute giving a parent an action for a sale to his minor child and

<sup>33</sup> *Munoz v. Brassel* (Tex. Civ. App.), 108 S. W. 417 (license stub put in evidence).

<sup>34</sup> *State v. Walker*, 129 Mo. App. 371; 108 S. W. 615; *Oldham v. State* (Mo. App.), 108 S. W. 667.

<sup>35</sup> *People v. United Surety Co.*, 120 N. Y. App. Div. 655; 105 N. Y. Supp. 72; *Lyman v. Fidelity, etc., Co.*, 39 N. Y. App. Div. 459; 57 N. Y. Supp. 372; *Douthitt v. State*, 36 Tex. Civ. App. 396; 82 S. W. 352; 83 S. W. 795.

<sup>36</sup> *Cobb v. People*, 84 Ill. 511.

<sup>37</sup> *State v. Estabrook*, 29 Kan. 739.

<sup>38</sup> *Day v. Frank*, 127 Mass. 497.

<sup>39</sup> *Paducah v. Jones*, 126 Ky. 809; 104 S. W. 971; 31 Ky. L. Rep. 1203; *State v. Lawson*, 83 Minn. 124; 86 N. W. 3; 54 L. R. A. 487.

<sup>40</sup> *Douthitt v. State* (Tex. Civ. App.), 87 S. W. 190; *Wakeman v. Price* (Tex. Civ. App.), 89 S. W. 1093; *Douthitt v. State*, 36 Tex. Civ. App. 396; 82 S. W. 352; 83 S. W. 795.

<sup>41</sup> *Hawthorne v. State*, 39 Tex. Civ. App. 122; 87 S. W. 839.

<sup>42</sup> *Cullinan v. Burkhard*, 93 N. Y. App. Div. 31; 86 N. Y. Supp. 1003; reversing 41 N. Y. Misc. Rep. 321; 84 N. Y. Supp. 825.

also for allowing him "to enter and remain" in a saloon, and the child enters the saloon and purchases liquor and then remains there, the parent may recover one penalty for the sale and another for the entry and remaining in the saloon.<sup>43</sup> If the bond be exhausted a new one may usually be required.<sup>44</sup>

### **Sec. 483. Compromise of liability.**

While the liability is due an individual, there may be a compromise of the claim or amount due. Such is not the case when the amount is due the public. Thus, where a State revenue agent had power to bring suit to recover damages growing out of the violation of any contract with the State, county or municipality where he might sue, it was held that the county supervisors could not relinquish a judgment on a liquor bond due the county.<sup>45</sup>

<sup>43</sup> Coburn v. Gill (Tex. Civ. App.), 60 S. W. 974. Civ. App. 396; 82 S. W. 352; 83 S. W. 795.

<sup>44</sup> Douthitt v. State, 36 Tex. 45 Adams v. Cox, 80 Miss. 561; 32 So. 117.



## CHAPTER XIII.

### LICENSE FEES AND TAXES.

#### SECTION.

- 484. Definition of license fee.
- 485. License fee—Police power—  
    Restraint of trade.
- 486. License fee, when not a tax  
    —Police regulation.
- 487. Uniformity of taxation.
- 488. Liability for fee or tax.
- 489. Amount of fee or tax.
- 490. Payable in money.
- 491. Payment in advance.
- 492. To what officer payable.
- 493. Suit to collect.
- 494. Tax lien—Landlord's prop-  
    erty—Prospective statute.

#### SECTION.

- 495. Disposition of fees and taxes  
    collected.
- 496. Refunding fees or taxes paid  
    under void or illegal ordi-  
    nance or statute.
- 497. Refunding fees or taxes, con-  
    tinued—No statute requir-  
    ing it.
- 498. Refunding fees or taxes,  
    continued—Cases allowing.
- 499. Refunding fees or taxes, con-  
    tinued — Payment under  
    mistake of fact.
- 500. Rebate of fees or taxes un-  
    der statute.

#### Sec. 484. Definition of license fee.

A license fee is the price paid for the license. It is usually such a sum as will compensate those issuing it for the expense of such issuance and the recording of it; and when it is issued for the purpose of securing public control over the business licensed, then such further sum as will probably be expended in the regulating and inspecting the business and enforcing the law regulating such business. If the license may be issued the fee may be exacted.<sup>1</sup>

#### Sec. 485. License fee—Police power—Restraint of trade.

A Legislature may pass any law not inhibited by the Constitution, and a law requiring an amount or sum of money to

<sup>1</sup> People v. Jarvis, 19 N. Y. App. Div. 466; 46 N. Y. Supp. 596; Wiggins v. Ferry Co., 102 Ill. 560; Laundry License Case, 22 Fed. 201; Ulterminova v. Ze-kind, 95 Iowa, 622; 64 N. W. 646; 29 L. R. A. 734; 58 Am. St. 447.

be paid for a license to sell intoxicating liquors, is not a tax in the sense of the constitutional provision that "no tax shall be levied except in pursuance of law," etc.<sup>2</sup> A State law, taxing by way of a license fee, those who sell, in small quantities intoxicating liquors manufactured by themselves within the State, is constitutional; it is a law which the State has the power to pass, in the exercise of the right to regulate its internal police, and everything that relates to the morals and health of the community is within that power. Pursuits that are pernicious and detrimental to the public morals may be prohibited altogether, or licensed for a compensation to the public.<sup>3</sup> Nor is such a law void as being in restraint of trade.<sup>4</sup>

**Sec. 486. License fee, when not a tax—Police regulation.**

A license fee for retailing intoxicating liquors is in no proper sense a tax for revenue. Its object is not to raise revenue. From time almost immemorial it has been thought that the traffic in intoxicating liquors was dangerous to the public peace and morals, and it has been the uniform practice in this country to subject it to regulation, to require a license from some public officer before it is engaged in, and to prescribe as a crime the pursuit of it without a license. Such a license is a part of the police regulation of a State, and the fee is intended rather to prevent the indiscriminate opening of such establishments than to raise revenue by taxation. Taxation is not the object of imposing such a license fee and the Legislature is not bound to appropriate the proceeds for any object for which the State may raise money by local or special taxation. It is imposed in the exercise of the rightful police power of the State, and is an incident of legitimate police regulation. Such being the nature of the business, under the law, it is the province of the Legislature

<sup>2</sup> Henry v. State, 26 Ark. 523.

<sup>3</sup> Burch v. May, etc., 42 Ga. 598; Bolder v. Schneider, 49 Ga. 195; People v. Thurber, 13 Ill. 554; East St. Louis v. Trustees, etc., 102 Ill. 489; Keller v. State, 11 Md. 525; Cahen v. Jarrett, 42

Md. 571; Culver v. People, 11 Mich. 43; City of Winona v. Whipple, 24 Minn. 61; State v. Hudson, 78 Mo. 302.

<sup>4</sup> City of Rochester v. Upham, 19 Minn. 78.

to regulate it and to fix the price of the license fee at such sum as that body may deem best calculated to restrain the dangerous consequences of the traffic to the public peace and morals.<sup>5</sup> In determining what such a fee shall be, it is proper and reasonable for the Legislature to consider, not only the expense merely of direct regulation, but of the incidental consequences that may be likely to subject the public to cost in consequence of the business licensed. The business is one that affects the public interest in many ways and leads to many disorders. It has a powerful tendency to increase pauperism and crime. It renders a large force of officers essential and it adds to the expense of the courts and nearly all of the branches of civil administration. It cannot be questioned, therefore, if it is to be licensed by the public authorities, that it is legitimate and proper to take into consideration the question of the probable consequences, or that the payment to be exacted should be sufficient to cover all the incidental expenses to which the public are likely to be put on account of the business being carried on. All reasonable intendments must favor the fairness and justice of the fee thus fixed. It will not be held excessive unless it is manifestly something more than a mere fee for regulation.<sup>6</sup> We have already said that such a fee was not in any sense a tax for revenue. It is, however, an indirect tax which may be made effectual as a police regulation. A license upon the traffic in intoxicating liquors is an

<sup>5</sup> *Straub v. Gordon*, 27 Ark. 625; *Burch v. Savannah*, 42 Ga. 596; *Home Ins. Co. v. Augusta*, 50 Ga. 530; *People v. Thurber*, 13 Ill. 554; *St. Louis v. Wehring*, 46 Ill. 393; *Lovington v. Board*, etc., 99 Ill. 564; *Thomasson v. State*, 15 Ind. 449; *Mitchell v. Williams*, 27 Ind. 62; *State v. Doe*, 79 Ind. 9; *Falmouth v. Watson*, 5 Bush. (Ky.) 560; *Levi v. Louisville*, 97 Ky. 394; 30 S. W. 973; 28 L. R. A. 480; *Ash v. People*, 11 Mich. 347; *Chivers v. People*, 11 Mich. 43; *State v. Hud-*

*son*, 78 Mo. 302; *State v. Hardy*, 7 Neb. 377; *Pleuler v. State*, 11 Neb. 547; 11 N. W. 481; *Adler v. Whitbeck*, 44 O. St. 539; 9 N. E. 672; *Aulanier v. Governor*, 1 Tex. 653; *Commonwealth v. Byrnnne*, 20 Grat. (Va.) 165; *State v. French*, 17 Mont. 54; 14 Pac. 1078; 30 L. R. A. 415; *Territory v. Farnsworth*, 5 Mont. 303; 5 Pac. 869.

<sup>6</sup> *Cooley on Taxation*, p. 409; *Claussen v. Luverne*, 103 Minn. 491; 115 N. W. 643.

excise, and an excise is an indirect tax. Indirect taxation by way of tariffs, etc., has ever been regarded as a legitimate exercise of the taxing power. Such a fee or tax is imposed in the exercise of the rightful police power of the State and is an incident of legitimate police regulation.<sup>7</sup> Hence, it is not within a constitutional prohibition against "local and special taxation for State purposes." Such a constitutional provision refers mainly to the general tax levied by the State. It is a restraint upon the otherwise discretionary powers of the Legislature and prescribes a rule for its enforcement in authorizing the levy of taxes. It must be governed by that rule whether the levy is for the State at large or for a municipal subdivision. Indirect taxation imposed not merely for the purpose of revenue but in the restraint of a particular business or calling, or as a license upon particular pursuits, or as mere police regulations, does not come within the spirit and meaning of such constitutional provisions.<sup>8</sup> A license fee does not lose its character as such because it is called a "tax" in the statute authorizing its exaction.<sup>9</sup> But if it be imposed merely for revenue then it becomes a tax.<sup>10</sup>

<sup>7</sup> *Anderson v. Kenns, etc., Co.*, 14 Ind. 199.

<sup>8</sup> *Bright v. McCullough*, 27 Ind. 223; *Pleuler v. State*, 11 Neb. 547; 11 N. W. 481.

<sup>9</sup> *Levy v. State*, 161 Ind. 251; 68 N. E. 172.

<sup>10</sup> *Ward v. Maryland*, 12 Wall. 418; 20 L. Ed. 449; *Glasgow v. Rowse*, 43 Mo. 479; *St. Louis v. Spiegel*, 75 Mo. 145; *State v. Bengschs*, 170 Mo. 81; 70 S. W. 710; *Hancock v. Singer Mfg. Co.*, 62 N. J. L. 289; 41 Atl. 846; 42 L. R. A. 852; *Rohr v. Gray*, 80 Md. 274; 30 Atl. 632; see *Overby v. State*, 18 Fla. 178; *Ex parte Pfirrmann*, 134 Cal. 143; 66 Pac. 205; *St. Louis v. Western U. T. Co.*, 148 U. S. 92; 37 L. Ed. 380; 13 Sup. Ct. Rep. 485.

"The power to license, as the means of regulating business, means the power to charge a fee therefor sufficient to defray the expense of issuing the license." *Laundry License Case*, 22 Fed. 201; *Uterminova v. Zekind*, 95 Iowa, 622; 64 N. W. 646; 29 L. R. A. 734; 58 Am. St. 447.

The Missouri law exacting a fee for inspection of beer imposes a tax, no right of sale being given under it. *State v. Bixman*, 162 Mo. 1; 62 S. W. 828; *Parsons v. People*, 32 Colo. 221; 76 Pac. 666; *Ex parte Braun*, 141 Cal. 204; 74 Pac. 780.

The "mulet" tax of Iowa is a tax, and not a license; and it is collectible by summary proceedings. *Newton v. McKay* (Iowa),



### Sec. 487. Uniformity of taxation.

It is within the power of a State Legislature to tax the liquor traffic,<sup>11</sup> wholesale as well as retail;<sup>12</sup> and a law providing for the taxing of such traffic is not one to raise revenue, but simply one enacted in the exercise of the police power.<sup>13</sup> The power to impose such a tax exists independently and concurrently in the State and Federal Government, subject to constitutional restrictions; in the State government, subject to the exclusive right conferred on Congress to regulate interstate commerce;<sup>14</sup> and in the Federal Government, subject to the prohibition of any interference with the internal regulations of the States.<sup>15</sup> Such a tax is not a tax upon property

102 N. W. 827; *Bolton v. McKay* (Iowa), 102 N.W. 1131.

It is presumed a liquor tax was properly levied, and levied at the time the law requires it to be levied. *Hubbell v. Polk Co.*, 106 Iowa, 618; 76 N. W. 854.

Whisky refined by age into drinkable and marketable whisky is not "raw material" within the meaning of the Dow Liquor Law of Ohio exempting "raw material" of a distiller from taxation thereunder. *Wash v. Lewis*, 5 Ohio N. P. 391.

Under the Bates Law of Ohio a brewing company selling liquors away from its brewery is engaged in trafficking in liquor, and liable to the tax imposed by that law, the law defining trafficking as "buying or procuring and selling of intoxicating liquors." *Jung Brewing Co. v. Talbot*, 59 Ohio St. 511; 53 N. E. 51.

In Georgia State dispensary agents are not taxable; for they are governmental agents. *Dispensary Com'rs v. Thornton*, 106 Ga. 106; 31 S. E. 733.

<sup>11</sup> *Ex parte Marshall*, 64 Ala. 266; *Thomasson v. State*, 15 Ind. 449; *Westinghausen v. People*, 44 Mich. 265; 6 N. W. 641; *Reithmiller v. People*, 4 Mich. 280; 6 N. W. 667; *Portwood v. Baskett*, 64 Miss. 213; 1 South. 105; *Adler v. Whitbeck*, 44 Ohio St. 539; 9 N. E. 59; *Durach's Appeal*, 62 Pa. St. 491; *Kurth v. State*, 86 Tenn. 134; 5 S. W. 593; *Albrecht v. State*, 8 Tex. App. 216.

<sup>12</sup> *Senior v. Ratterman*, 44 Ohio St. 661; 11 N. E. 321.

<sup>13</sup> *Thomasson v. State*, 15 Ind. 449; *State v. Wright*, 14 Ore. 365; 12 Pac. 708.

<sup>14</sup> *Providence Bank v. Billings*, 4 Pet. (U. S.) 514; *Dobbins v. Erie County*, 16 Pet. (U. S.) 435; *License Tax Cases*, 5 How. (U. S.) 504; *Nathan v. Louisiana*, 8 How. (U. S.) 73; *Pervear v. Massachusetts*, 5 Wall. (U. S.) 475; *Ward v. Maryland*, 12 Wall. (U. S.) 418.

<sup>15</sup> *Brown v. Maryland*, 12 Wheat. (U. S.) 419; *Nathan v. Louisiana*, 8 How. (U. S.) 182; *Woodruff v. Parham*, 8 Wall. (U. S.) 123.

but an indirect or excise tax, imposed not merely for the purpose of revenue, but in restraint of a particular business or calling, or as a license on a particular pursuit, or as a mere police regulation, and, consequently, is not subject to constitutional restrictions upon the power to tax property; such, for example, as that taxes shall be uniform and equal.<sup>16</sup> Accordingly, it has been held that a statute imposing a special tax on a dealer in intoxicating liquors was not in violation of a constitutional provision that "taxation on property shall be *ad valorem* only, and uniform in all species of property taxed," the court holding that the tax was on the business of selling such liquor and not on the liquors sold.<sup>17</sup> It has also been held that a tax upon an occupation is not a tax upon property, although the amount and value of the stock in trade of the dealer is adopted as a standard;<sup>18</sup> or upon the value of the property;<sup>19</sup> or in any case when the tax is measured by the amount of the net earnings or income.<sup>20</sup> Such taxes, however, must be uniform and not discriminating in their operation. While this is true, it must be remembered that perfect accuracy cannot be had in apportioning such taxes. It has been said, and rightfully, that "perfectly equal and uniform taxation will remain an unattainable good as long as laws and governments and men are imperfect." Approximation to uniformity is all that can be had and this must be left to the judgment of the lawmaking power.<sup>21</sup> Whether such a tax is

<sup>16</sup> Henry v. State, 26 Ark. 523; Straub v. Gordon, 27 Ark. 625; *Ex parte* Hurl, 49 Cal. 557; Rome v. McWilliam, 52 Ga. 251; Walker v. Springfield, 94 Ill. 364; Thomasson v. State, 15 Ind. 449; Leavenworth v. Booth, 15 Kan. 628; New Orleans v. Kaufman, 29 La. Ann. 283; 29 Am. Rep. 283; Wintz v. Girardy, 31 La. Ann. 381; St. Louis v. Green, 7 Mo. App. 468; *Ex parte* Robinson, 12 Neb. 263; State v. U. S., etc., Ex. Co., 60 N. H. 219; Standard, etc., Co. v. Attorney General, 46 N. J. Eq. 270; West-

ern U. T. Co. v. Mayer, 28 Ohio St. 521; Texas Banking Co. v. State, 42 Tex. 636.

<sup>17</sup> Burch v. Savannah, 42 Ga. 596.

<sup>18</sup> Corson v. State, 57 Md. 251.

<sup>19</sup> State v. Western U. T. Co., 73 Me. 518.

<sup>20</sup> Philadelphia Contributorship v. Commonwealth, 98 Pa. St. 48.

<sup>21</sup> Cooley on Taxation, p. 127; Commonwealth v. Savings Bank, 5 Allen (Mass.) 428; Lowell v. Oliver, 8 Allen (Mass.) 247; Allen v. Drew, 44 Vt. 174; Ould v. Richmond, 23 Gratt. (Va.) 464.

just and equal or not is not a question of law for the courts.<sup>22</sup> If it were, the courts, by adopting a standard of rigid construction, might altogether put a stop to such taxation. The uniformity required in the operation of such a law is that which simply requires that the law shall bear equally in its burdens upon all persons standing in the same category. A law is uniform in its operation where every person who is brought within the regulation provided for is alike affected by the law. It must have uniform operation upon all of those included within the class upon which it purports to operate.<sup>23</sup> Therefore, a law which declares that all who sell liquors within five miles of a town or city shall pay one tax, and the keeper of a wayside inn or station another, is a uniform law within this meaning. Such a law is uniform as to each class and the classification is a reasonable one and within the power of a Legislature to make.<sup>24</sup> Nor is a statute unconstitutional because it levies a tax of eighty-five dollars on persons dealing in intoxicating liquors on lands, while fifty dollars is levied on persons following a like occupation on steamboats, although they may ply within the limits of the same jurisdiction;<sup>25</sup> nor a law which makes a distinction between breweries and distilleries on the one hand, and saloons on the other;<sup>26</sup> nor a law that distinguishes between malt liquors and those which, in their effect, are more intoxicating;<sup>27</sup> nor a law which requires retail liquor dealers to pay a tax a year in advance, but permits the tax on other occupations to be paid quarterly and requires a license to pursue such occupations but permits others to be pursued without license;<sup>28</sup> nor is such a law unconstitutional because of the fact that other subjects or occu-

<sup>22</sup> Cooley on Taxation, p. 126.

<sup>23</sup> Territory v. Connell, 2 Ariz. 339; Hack v. State, 44 Ohio St. 536; 9 N. E. 305; Senior v. Rattermann, 44 Ohio St. 661; 11 N. E. 321; Cleveland v. Tripp, 13 R. I. 50; Bishop v. Tripp, 15 R. I. 466; 8 Atl. 692.

<sup>24</sup> Territory v. Connell, 2 Ariz. 339; 16 Pac. 209.

<sup>25</sup> Kaliska v. Grady, 25 La. Ann. 576; State v. Rolle, 30 La. Ann. 991.

<sup>26</sup> Anderson v. Brewster, 44 O. St. 576; 9 N. E. 682.

<sup>27</sup> Timm v. Harrison, 109 Ill. 593.

<sup>28</sup> Faher v. State, 27 Tex. App. 146; 11 S. W. 108.

pations are not taxed.<sup>29</sup> "An excise tax on one kind of business only is not illegal for the discrimination; it is always to be conclusively presumed that the Legislature found good and controlling reasons impelling the action it has taken and that in view of all the circumstances which were known to its members, the tax which has been provided for is reasonable."<sup>30</sup>

### Sec. 488. Liability for fee or tax.

A license fee or tax cannot be collected from a person engaging in the liquor traffic without a license, where a license is necessary in order to engage in such traffic or sell intoxicating liquors, although he may be liable to punishment because of having violated the statute.<sup>31</sup> A statute authorizing a city to collect a tax on all kinds of "business" not prohibited by law, followed by an ordinance levying a tax on all persons who "sell" intoxicating liquors and declaring the tax a debt payable from anyone who may engage in any "business" on which the tax is imposed, does not require the payment of a tax merely for the sale of liquor, but does require it for a person engaging in the "business" of selling liquors.<sup>32</sup> In

<sup>29</sup> *Singer Mfg. Co. v. Wright*, 33 Fed. Rep. 121; *Henry v. State*, 26 Ark. 523; *Straub v. Gordon*, 27 Ark. 625; *Goodwin v. Savannah*, 53 Ga. 414; *Savannah v. Weed*, 84 Ga. 683; 11 S. E. 235; *Weaver v. State*, 89 Ga. 639; 15 S. E. 840; *Bright v. McCullough*, 27 Ind. 223; *Fretwell v. Troy*, 18 Kan. 271; *State v. Valkmar*, 20 La. Ann. 585; *Youngblood v. Sexton*, 37 Mich. 406; *Holberg v. Macon*, 55 Miss. 112; *Pleuler v. State*, 11 Neb. 547; 10 N. W. 481; *Gattin v. Tarboro*, 78 N. Car. 119; *Darrach's Appeal*, 62 Pa. St. 491; *State v. Columbia*, 6 S. C. 8; *Pullman, etc., Co. v. State*, 64 Tex. 274; *Slaughter v. Commonwealth*, 13 Gratt. (Va.) 776.

<sup>30</sup> *Cooley on Taxation*, p. 125; *Northern Ind. R. Co. v. Connelly*, 10 O. S. 159; *People v. Brooklyn*, 4 N. Y. 419; *Decamp v. Eveland*, 19 Barn. 81; *Lusher v. Seites*, 4 W. Va. 11.

<sup>31</sup> *Chicago v. Enright*, 27 Ill. App. 559; *O'Harra v. Cox*, 42 Miss. 496; *State v. Adler*, 68 Miss. 487; 9 So. 645; *State v. Piezzo*, 66 Miss. 426; 6 So. 316; *Druggist Cases*, 89 Tenn. 449; 3 S. W. 490; *Commonwealth v. Taylor (Ky.)*; 116 S. W. 682.

But in Idaho a sale of liquors renders the vendor liable to the county for the tax. *Bingham County v. Fidelity & Deposit Co.*, 13 Idaho, 34; 88 Pac. 829.

<sup>32</sup> *Mereed Co. v. Helm*, 102 Cal. 159; 36 Pac. 399.



order to exact a liquor tax some law must be in force authorizing its exaction.<sup>33</sup> A statute may levy a tax for the State and authorize a county to levy a tax on the same business or person for the county.<sup>34</sup> The license fee or tax cannot be exacted for a period of time before the statute providing for it went into force.<sup>35</sup> A social club, selling only to its members, that takes out a United States revenue license, is liable to a liquor tax under a law imposing a privilege tax on a social club, incorporated or otherwise, selling intoxicating liquors and making the procurement of such revenue license *prima facie* evidence of liability to the tax.<sup>36</sup>

<sup>33</sup> McCowan v. Davidson, 43 Ga. 480; Miller v. Minney, 31 Kan. 522; 3 Pac. 427; Parker v. Wayne Co., 104 N. C. 166; 10 S. E. 137.

<sup>34</sup> Baker v. Panola Co., 30 Tex. 86; Parker v. Wayne Co., 104 N. C. 166; 10 S. E. 137. In Texas it has been held that a person selling liquor under the local option law is not liable for an occupation tax imposed by the statute on liquor dealers. Rathburn v. State, 88 Tex. 281; 31 S. W. 189 (Texas Civ. App.); 32 S. W. 45.

Exemption in North Carolina under Acts 1877, c. 156, § 12. Albertson v. Wallace, 81 N. C. 479.

<sup>35</sup> Thibodeaux v. State, 69 Miss. 683; 13 So. 352.

But it is permissible for a statute to provide that licenses shall be annual ones and all bear a certain date, and require an applicant to pay a full yearly license fee; thereby requiring him to pay for a period of time antedating the actual issuance of his license.

<sup>36</sup> Nashville Hermitage Club v. Shelton, 104 Tenn. 101; 56 S. W. 838.

A solicitor of sales for the per-

son owning the liquors is not liable for license fees or taxes, though he might be fined for selling liquor without his employer being licensed. Swords v. Le Blanc, 111 La. 416; 35 So. 622; Owensboro v. Fuld (Ky.); 102 S. W. 1184; 31 Ky. L. Rep. 627.

Under U. S. Rev. St. § 3244 (U. S. Comp., 1901, p. 2098), any person who "sells or offers for sale" malt liquors is subject to the special tax imposed on dealers, regardless of the fact of ownership. Western Express Co. v. United States, 141 Fed. 28; 76 C. C. A. 516.

Under Ohio Rev. St., §§ 4364-9, the assessment of the tax should be made on the traffic, although carried on in violation of a city ordinance. Conwell v. Sears, 65 Ohio St. 49; 61 N. E. 155; and omitted taxes may be put on the tax duplicate. Markle v. Newton, 64 Ohio St. 493; 60 N. E. 619. So in Iowa under Code § 1374. *In re* Des Moines Union Ry. Co., 137 Iowa, 730; 115 N. W. 740, 743; National, etc., Co. v. Board, 138 Iowa, 11; 115 N. W. 480; National, etc., Co. v. Board, 134 Iowa, 527; 111 N. W. 1009.

**Sec. 489. Amount of fee or tax.**

Usually the statute fixes the amount of the fee or tax, and when that is done a city cannot by ordinance increase the amount;<sup>37</sup> but where a statute provided that after a certain date in the future the amount of the fee should not be less than a certain amount, it was held that the city might by ordinance provide for the issuance of a license before that date for less amount, and that it could not be successfully contended that it was the intent of the city to evade the law, and for that reason the ordinance was void.<sup>38</sup> If the amount be not fixed which a city may charge, it is said that it must be reasonable;<sup>39</sup> and whether the rate fixed amounts to prohibition is a question of fact<sup>40</sup> to be determined by the court upon the face of the ordinance, and evidence on the question is not admissible.<sup>41</sup> In one instance it was said that the court could not, as a matter of law, adjudge it prohibitive or unreasonable, for the common council is the better judge of that fact, and the court will not revise its action by a mere examination of the ordinance.<sup>42</sup> If the amount is within the limits allowed by the statute no question can be raised as to its validity on that point.<sup>43</sup> Where statutes did not restrict the amount of fees or taxes a city might impose or exact it has been held that the court would not assume that \$50 per month was oppressive or unreasonable;<sup>44</sup> nor \$30, but if a female be employed in the saloon \$150;<sup>45</sup> nor \$500 per year;<sup>46</sup>

Assessing a cold storage company storing beer. *In re Des Moines Union Ry.*, 137 Iowa, 730; 115 N. W. 740, 743.

<sup>37</sup> *Drew Co. v. Bennett*, 43 Ark. 364; *In re Pittston*, 7 Kulp. 527; *Crestin v. Viroqua*, 67 Wis. 314; 30 N. W. 515; see *Jones v. Grady*, 25 La. Ann. 586.

<sup>38</sup> *Swarth v. People*, 109 Ill. 621.

<sup>39</sup> *Cherry v. Shelbyville*, 19 Ind. 84. A fee of \$1,000 to sell "near-beer" was held reasonable. *State v. Donnenberg* (N. C.), 66 S. E. 301.

<sup>40</sup> *Sweet v. Wabash*, 41 Ind. 7.

<sup>41</sup> *Merced Co. v. Fleming*, 111 Cal. 46; 43 Pac. 392; *Berry v. Cramer*, 58 N. J. L. 278; 39 Atl. 201.

<sup>42</sup> *Wiley v. Owens*, 39 Ind. 429; *Ex parte Hurl*, 49 Cal. 557.

<sup>43</sup> *Dennehy v. Chicago*, 120 Ill. 627; 12 N. W. 227.

<sup>44</sup> *Ex parte Guerrero*, 69 Cal. 88; 10 Pac. 261; *Queen v. Saterio*, 1 Terr. L. R. 301 (\$100 per annum).

<sup>45</sup> *Ex parte Felchin*, 96 Cal. 360; 31 Pac. 224; 31 Am. St. 223. Nor \$700. *Gambill v. Erdrich*, 143 Ala. 506; 39 So. 297.

<sup>46</sup> *Wiley v. Owens*, 39 Ind. 429.

nor \$2,500 per annum where theatrical performances are attached;<sup>47</sup> nor \$1,000 per annum for a brewery's agency;<sup>48</sup> nor \$1,000 per annum for a small city;<sup>49</sup> nor \$20,000 when the amount was fixed by statute.<sup>50</sup> The amount may be graded by statute according to the population of the city wherein the license is issued.<sup>51</sup> A city charter fixing the amount that may be exacted within its boundaries is not changed by a general law fixing another amount for the State generally.<sup>52</sup> The addition of a small fee for the actual manual issuance of the license does not render the ordinance providing for it void.<sup>53</sup> Wholesalers or brewers cannot be charged retail license fees;<sup>54</sup> but whether or not the individual or corporation sought to be

<sup>47</sup> *Goldsmith v. New Orleans*, 31 La. Ann. 646.

<sup>48</sup> *Indianapolis v. Bieler*, 138 Ind. 30; 36 N. E. 857; *Schmidt v. Indianapolis*, 168 Ind. 631; 80 N. E. 632.

<sup>49</sup> *Ex parte Hinkle*, 104 Mo. App. 104; 78 S. A. 317; *State v. Dannenberg (N. C.)*, 66 S. E. 301 (for near-beer).

<sup>50</sup> *Glover v. State*, 126 Ga. 594; 55 S. E. 592.

<sup>51</sup> *Foster v. Burt*, 76 Ala. 229; *People v. Medberry*, 17 N. Y. Misc. Rep. 8; 39 N. Y. Supp. 207; *Commonwealth v. Smoulter*, 126 Pa. 137; 17 Atl. 532; 24 W. N. C. 48; *Commonwealth v. Miller*, 126 Pa. 157; 17 Atl. 623; *Commonwealth v. Shoup*, 9 Pa. Co. Ct. Rep. 289; *State v. Keaough*, 68 Wis. 135; 31 N. W. 723; *People v. Hilliard*, 40 N. Y. Misc. Rep. 589; 83 N. Y. Supp. 21; affirmed 85 N. Y. App. Div. 507; 83 N. Y. Supp. 204; *Hilliard v. Giese*, 25 N. Y. App. Div. 222; 49 N. Y. Supp. 286; *Lyman v. McGreivey*, 159 N. Y. 561; 54 N. E. 1093; affirming 25 N. Y. App. Div. 68; 48 N. Y. Supp. 1035; *People v. Lyman*, 48 N. Y. App.

Div. 484; 62 N. Y. Supp. 902; *People v. Hilliard*, 176 N. Y. 604; 68 N. E. 1122; *Lyman v. McGreivey*, 25 N. Y. App. Div. 68; 48 N. Y. Supp. 1035; 37 N. Y. App. Div. 66; 55 N. Y. Supp. 599; *In re McGreivey*, 161 N. Y. 645; 57 N. E. 1116; 37 N. Y. App. Div. 66; 55 N. Y. Supp. 599; *Baker v. Bucklin*, 22 N. Y. Misc. Rep. 560; 50 N. Y. Supp. 739; *In re Sleenburgh*, 24 N. Y. Misc. Rep. 1; 53 N. Y. Supp. 197; *Lyman v. Bradsted*, 26 N. Y. Misc. Rep. 629; 57 N. Y. Supp. 869; *Commonwealth v. Robinson*, 9 Pa. Super. Ct. 569; *Petitfils v. Jeanerette*, 52 La. Ann. 1005; 27 So. 358.

<sup>52</sup> *State v. Howe*, 95 Wis. 530; 70 N. W. 670; *Territory v. McPherson*, 6 Dak. 27; 50 N. W. 351; *In re Pittson*, 7 Kulp. 527; *Spann v. Lowndes Co.*, 141 Ala. 314; 34 So. 369. But see *Fulton v. Blythe (Ky.)*, 30 S. W. 1018.

<sup>53</sup> *Moore v. Indianapolis*, 120 Ind. 483; 22 N. E. 424.

<sup>54</sup> *Bohler v. Schneider*, 49 Ga. 195; *State v. Wecklering*, 38 La. Ann. 36; *New Orleans v. Clark*, 42 La. Ann. 9; 7 So. 58.

subjected to the fee or tax is a wholesale or retail dealer is a question of fact.<sup>55</sup> A statute may provide a certain fee for a license to sell malt liquors, and provide that if the licensee sell alcoholic liquors he must pay a larger fee, and where such is the case "a single sale" of alcoholic liquor renders him liable to pay the larger fee.<sup>56</sup> The annual license may be reduced for a part of a year, if a statute so provides; but if not it is the same for a part of a year as for the entire year where all licenses expire on a fixed date.<sup>57</sup> If other business be combined with the sale of liquors, a larger fee may be charged.<sup>58</sup> One amount may be charged by a town and another by a city.<sup>59</sup> A tax may be imposed upon distillers operating a rectifying plant in addition to the tax on distillers generally not operating such a plant.<sup>60</sup> Statutes sometimes permit the amount of the fee to be fixed by a popular vote;<sup>61</sup> but under them the fee cannot be fixed so high as to prohibit the issuance of a license.<sup>62</sup> In case of a brewery, the amount of the tax may be made to depend upon the amount of beer brewed.<sup>63</sup>

<sup>55</sup> *Bohler v. Schneider*, 49 Ga. 195.

<sup>56</sup> *Simpson v. Seuriss*, 2 Ohio C. D. 246; *Gambill v. Erdrich*, 143 Ala. 506; 39 So. 297.

<sup>57</sup> *Foster v. Burt*, 76 Ala. 229; *Kusta v. Kimberly*, 10 Ohio Dec. 789; 2 Wkly. L. Bull., 379; *Shiflett v. Grimsley*, 104 Va. 424; 51 S. E. 838; *Engelthaler v. Linn Co.*, 104 Iowa, 293; 73 N. W. 578; *O'Brien Co. v. Mahon*, 126 Iowa, 539; 102 N. W. 446; *David v. Hardin Co.*, 104 Iowa, 204; 73 N. W. 576.

<sup>58</sup> *New Orleans v. Clark*, 42 La. Ann. 9; 7 So. 58; *Goldsmith v. New Orleans*, 31 La. Ann. 646.

<sup>59</sup> *Commonwealth v. McGroerty*, 148 Pa. 606; 24 Atl. 91.

<sup>60</sup> *Arey v. Rowan Co.*, 138 N. C. 500; 51 S. E. 41.

<sup>61</sup> *McGingan v. Belmont*, 89 Wis. 637; 62 N. W. 421; *State*

*v. Janesville*, 90 Wis. 157; 62 N. W. 933; *State v. Robbins*, 54 N. J. L. 566; 25 Atl. 471; reversing *Middleton v. Robbins*, 53 N. J. L. 555; 22 Atl. 481; *Sargent v. Little*, 72 N. H. 555; 58 Atl. 44; *Normoyle v. Latah Co.*, 5 Idaho, 19; 46 Pac. 831.

<sup>62</sup> *Berry v. Cramer*, 58 N. J. L. 278; 33 Atl. 201.

A levy of "a tax of one-half of the State occupation tax, as levied by the laws of the State," is a sufficiently definite levy by a board authorized to make the levy. *Wade v. State*, 22 Tex. App. 629; 3 S. W. 786; *Parker v. Wayne Co.*, 104 N. C. 166; 10 S. E. 137.

<sup>63</sup> *In re Pittsburg Brewing Co.*, 16 Pa. Super. Ct. 215.

As to rental value of a house as fixing the amount of the liquor fee, see *Foster v. Lambe*, 3 Que-



**Sec. 490. Payable in money.**

A license fee or tax is payable in money; it cannot be otherwise paid, as by taking the note of the licensee;<sup>64</sup> but a city may provide that the note of the applicant may be taken instead of money.<sup>65</sup> Unless payment by note be authorized by statute, one taken for the fee is void;<sup>66</sup> and the officer

bee, S. C. 328, and *Marcotte v. Lambe*, 4 Quebec, S. C. 2.

A tax may be based upon the total amount of the dealer's purchase; and for that amount there cannot be deducted the United States Internal Revenue tax. *Williams v. Iredell Co.*, 132 N. C. 300; 43 S. E. 896.

In Georgia under Laws 1905, p. 30, sec. 2, par. 28, a brewery company paying the special tax imposed by that statute is not liable to pay an additional tax for an agency for storing beer located in another county. *Whittlesey v. Acme Brewing Co.*, 127 Ga. 208; 56 S. E. 299.

Where a statute provides that the amount of tax shall be ascertained by the amount of liquors sold, the amount of sales of other articles at the same time cannot be considered. *State v. New Orleans, etc., Club*, 116 La. 46; 40 So. 526.

A statute fixing a State license at one-half of the yearly amount for six months or less does not require a municipality to pursue the same rule in fixing the amount to be paid for a city license. *Fuselier v. St. Laundry Parish*, 107 La. 221; 31 So. 678.

The amount of licensee fees does not have to be fixed annually by a municipality, although only one annual license can be issued.

*People v. Mount*, 186 Ill. 560; 58 N. E. 360; affirming 87 Ill. App. 194.

The South Carolina Dispensary Law of 1907 imposed a license fee on a manufacturer or bottler of beer of \$3,000 where he made or bottled from twenty to forty barrels per day; if he made over forty barrels a day, then \$5,000. A brewery paid a fee of \$3,000, but one day in the year it exceeded forty barrels. It was held liable for \$5,000, though its daily average was less than forty barrels. *German Brewing Co. v. Rutledge (S. C.)*, 65 S. E. 230.

<sup>64</sup> *Zielke v. State*, 42 Neb. 750; 60 N. W. 1010; *Richards v. Stogs-dell*, 21 Ind. 74; *Doran v. Phillips*, 47 Mich. 228; 10 N. W. 350; *Dickson v. Gamble*, 16 Fla. 687; *Lee v. Roberts*, 3 Okla. 106; 41 Pac. 595; *McLanahan v. Syracuse*, 18 Hun. 259. *Contra*, *App-ling v. McWilliams*, 69 Ga. 840; *Staley v. Columbus*, 36 Mich. 38; *Hencke v. Standiford*, 66 Ark. 535; 52 S. A. 1; *Newson v. Tahigahen*, 30 Miss. 414.

<sup>65</sup> *Powers v. Decatur*, 54 Ala. 214; *Fulton v. Blythe*, 17 Ky. 341; 30 S. W. 1018; *Searcy v. Lawrenceburg*, 20 Ky. L. Rep. 1920; 50 S. W. 534.

<sup>66</sup> *Doran v. Phillips*, 47 Mich. 228; 10 N. W. 350; *Ristine v. Clements*, 31 Ind. App. 338; 66

taking it and issuing the license is liable for the fee.<sup>67</sup> But in Alabama and Georgia such a note has been held valid and collectible.<sup>68</sup> A statute providing that taxes may be paid with city orders does not authorize their use in payment of license fees, for license fees are not taxes.<sup>69</sup>

### Sec. 491. Payment in advance.

Where a statute requires the fee for a license to be paid before it is issued, it must be paid for the entire period of the license and be paid in advance, or the license will be void.<sup>70</sup> No officer can waive such a provision of the statute.<sup>71</sup> Payment in part is not sufficient, even *pro tanto*.<sup>72</sup> Not infrequently statutes require a license fee to be tendered with the application, and when that is the case a license may be denied unless the fee for it accompanies the application.<sup>73</sup> If, for reason of defects in the proceedings, a license be not issued, but the money retained by the State, on perfecting the proceedings the applicant is entitled to a license for the remainder of the term without further payment.<sup>74</sup> The mere fact that

N. E. 924; *McWilliams v. Phillips*, 51 Miss. 196; *Craig v. Smith*, 31 Mo. App. 286.

<sup>67</sup> *McWilliams v. Phillips*, 51 Miss. 196.

<sup>68</sup> *Appling v. McWilliams*, 69 Ga. 840; *Powers v. Decatur*, 54 Ala. 214.

<sup>69</sup> *East St. Louis v. Wehring*, 46 Ill. 392.

<sup>70</sup> *Handy v. People*, 29 Ill. App. 99; *Bingham Co. v. Fidelity, etc., Co.*, 13 Idaho, 34; 88 Pac. 829; *Fry v. Kaessner*, 48 Neb. 133; 66 N. W. 1126; *Backhaus v. People*, 87 Ill. App. 173; *Munsel v. Temple*, 3 Gil. (Ill.) 93; *Hencke v. Standiford*, 66 Ark. 535; 52 S. W. 1; *Regina v. Stechan*, 20 C. P. (Can.) 182; *In re Phillips*, 82 Neb. 45; 116 N. W. 681; *Doran v. Phillips*, 47 Mich. 228; 10 N.

W. 350; *Alexander v. State*, 77 Ark. 294; 91 S. W. 181; *State v. Lincoln*, 6 Neb. 12.

<sup>71</sup> *McWilliams v. Phillips*, 51 Miss. 196; *Zielke v. State*, 42 Neb. 750; 60 N. W. 1010; *Ristine v. Clements*, 31 Ind. App. 338; 66 N. E. 924.

<sup>72</sup> *Spake v. People*, 89 Ill. 617.

In a case of a city violating its own ordinance by its officers issuing the license when a part only of the fee was paid, it was held estopped to seize the stock of the licensee in the hands of a purchaser for the remainder due. *Wicker v. Siesel*, 80 Ga. 724; 6 S. E. 817.

<sup>73</sup> *Evans v. Commonwealth*, 95 Ky. 231; 24 S. W. 632.

<sup>74</sup> *State v. Cornwell*, 12 Neb. 470; 11 N. W. 729.

a license fee is paid does not authorize the issuance of a license where the law forbids its issuance, nor does the license issued protect the holder.<sup>75</sup> Where a statute provided that the fee should be paid within fifteen days after the license was granted, a failure to pay it within that time was held to be a revocation of the grant.<sup>76</sup> If a statute does not prohibit the granting of a license before the fee is paid, the licensing board may grant it and provide that it shall not be issued until such fee be paid.<sup>77</sup> It is no excuse in the licensee that he had arranged with another to pay, when he is on trial for a sale without a license or having made a sale without having first paid the fee.<sup>78</sup>

### **Sec. 492. To what officer payable.**

Fees and taxes must be paid to the officer designated by law to receive them.<sup>79</sup> A municipality may provide, in the absence of a statute on the subject, to whom the fee shall be paid.<sup>80</sup> Where a statute expressly authorized the sheriff of

<sup>75</sup> *Hodges v. Metcalfe Co.*, 117 Ky. 619; 78 S. W. 177, 460; 25 Ky. Law Rep. 1706.

<sup>76</sup> *In re Umholtz*, 9 Pa. Super. Ct. 450; 43 W. N. C. 495.

<sup>77</sup> *In re Phelps*, 82 Neb. 45; 116 N. W. 681.

If an officer by mistake accepts a license fee he may notify the person paying it of that fact; and the payment confers no right to a license. *Chicago v. O'Hare*, 124 Ill. App. 290.

<sup>78</sup> *Meroney v. State* (Tex. Civ. App.), 92 S. W. 844.

A community cannot determine for itself whether a liquor tax shall be collected. *Doran v. Phillips*, 47 Mich. 228; 10 N. W. 350.

Where a license fee must be paid within fifteen days after the application has been granted or the grant will be revoked and no

license issued, the court has no power to relieve him from his default to pay by extending the time beyond that fixed by the statute. *In re Umholtz's License*, 9 Pa. Super. Ct. 450; 43 W. N. C. 495.

<sup>79</sup> *Williams v. Commonwealth*, 13 Bush. 304; *Youngblood v. Sexton*, 32 Mich. 406; 20 Am. Rep. 654; *Hight v. Fleming*, 74 Ga. 592; *Severance v. Kelly*, 86 Ky. 522; 6 S. W. 386; *Thibodeaux v. State*, 69 Miss. 683; 13 So. 352; *Doran v. Phillips*, 47 Mich. 228; 10 N. W. 350; *Stevenson v. Deal*, 2 Pars. Eq. Cas. 212.

<sup>80</sup> *Amador Co. v. Kennedy*, 70 Cal. 458; 11 Pac. 757; *Amador Co. v. Isaacs*, 11 Pac. 758; *In re Lawrence*, 69 Cal. 608; 11 Pac. 217.

the county to collect the tax, and another one provided for a revenue agent to collect delinquent revenues of the State, it was held that the latter could not, in the first instance, collect the tax and could not proceed against the tax debtor for violation of the law until the sheriff negligently failed or refused to collect it.<sup>81</sup> A statute requiring a saloon keeper to procure a license "from the county treasurer of the proper city or county" and to pay a tax "to the treasurer of the proper county for the use of the Commonwealth" requires the payment to be made to the county treasurer and not to the city treasurer, and he must also issue the license.<sup>82</sup>

<sup>81</sup> *State v. Thibodeaux*, 69 Miss. 92; 10 So. 58.

<sup>82</sup> *Stevenson v. Deal*, 2 Pars. Eq. Cas. 212.

Under an authority given a court of chancery to enjoin the collector of an illegal tax, it may enjoin the collection of an illegal license tax. *Portwood v. Basket*, 64 Miss. 213; 1 So. 105.

Mere failure of an officer to collect the license fee does not release the surety on the licensee's bond of his liability to pay the fee. *O'Brien Co. v. Mahon*, 126 Iowa, 539; 102 N. W. 446.

The officer collecting the fee is liable on his bond for it. *Bingham Co. v. Fidelity, etc., Co.*, 13 Idaho, 34; 88 Pac. 829.

Liability of city for fees of county treasurer under Iowa "mulet" law. *Waverly Bremer Co. (Iowa)*, 101 N. W. 874.

Unless the law provides that the collecting officer shall receive fees for collecting liquor license fees, he is entitled to none. *Pittsburgh v. Anderson*, 7 Pa. Dist. Rep. 714; *Sandoval v. Meyers*, 8 N. M. 636; 45 Pac. 1128.

The court cannot impose upon

a collecting officer the duty of holding a fee pending litigation over it. *Davis v. Patterson*, 12 Pa. Super. Ct. 479.

If a collecting officer have the power to arrest a licensee for failure to pay his license tax; and he levy on property to satisfy such tax, but a United States revenue officer likewise seizes such property for taxes due the United States, the collecting officer may then arrest the licensee for his failure to pay the tax, if he can find no other property. *Commonwealth v. Byrne*, 20 Gratt. 165.

A community cannot direct the tax officer not to collect the tax. *Doran v. Phillips*, 47 Mich. 228; 10 N. W. 350.

Some times there is no penalty for sales without a license, but merely one for sales without having paid the tax. *Gorman v. State*, 38 Tex. 165.

A power given to trustees to issue a license by implication gives them power to receive the tax, and it may be paid to the clerk of the board. *Williams v. Commonwealth*, 13 Bush. 304; *Love-*



**Sec. 493. Suit to collect.**

In the case of a city a suit may be maintained by it to collect a license fee due it according to the provisions of an ordinance.<sup>83</sup> But it cannot impose by ordinance an attorney's fee for its collection unless expressly authorized so to do by statute.<sup>84</sup> If it is made the duty of an officer to collect a license tax, he cannot maintain an action to recover the amount due unless some statute authorizes it.<sup>85</sup> If the fee is due the State it is said that the State may sue for it.<sup>86</sup> In all instances if the tax impose a personal liability, suit may be maintained to collect it.<sup>87</sup>

**Sec. 494. Tax      lien—Landlord's      property—Prospective statute.**

What was known as the "Dow Law" provided for the assessment of an annual tax upon the liquor traffic, and that the assessment, together with any increase thereof, should attach as a lien upon the real property on which the business was conducted and should be paid at the times for the pay-

joy v. Commonwealth, 13 Ky. L. Rep. (abstract) 976; Caldwell v. Grimes, 7 Ky. L. Rep. (abstract) 601.

<sup>83</sup> Hall v. Bastrop, 11 La. Ann. 603; Sacramento v. Dillman, 102 Cal. 107; 36 Pac. 385. (However, in this case the statute expressly authorized the suit.) *Ex parte* Benjamin, 65 Cal. 310; 40 Pac. 23; Amite City v. Clements, 24 La. Ann. 27; State v. Fleming, 112 Ala. 179; 20 So. 846. *Contra*, Chicago v. Enright, 27 Ill. App. 559; State v. Adler, 68 Miss. 487; 9 So. 645; State v. Piazza, 66 Miss. 426; 6 So. 316.

Under the Georgia Code (in 1885), § 886, a tax collector could issue an execution for a liquor tax that was unpaid. *High v. Fleming*, 74 Ga. 592; *Brewer*

v. Nutt, 118 Ga. 257; 45 S. E. 269.

So in Michigan, *Wood v. Thomas*, 38 Mich. 686; and in Virginia *Commonwealth v. Byrne*, 20 Gratt. 165.

<sup>84</sup> *Hunter v. Lisso*, 35 La. Ann. 230.

<sup>85</sup> *State v. Frasiercomo*, 70 Miss. 799; 14 So. 21; *O'Brien Co. v. Mahon*, 126 Iowa, 539; 102 N. W. 446; *Hencke v. Standiford*, 66 Ark. 535; 52 S. W. 1; *Bingham Co. v. Fidelity, etc., Co.*, 13 Idaho, 34; 88 Pac. 829; see *Thibodeaux v. State*, 69 Miss. 683; 13 So. 352.

<sup>86</sup> *Auglanier v. Governor*, 1 Tex. 653; *Carroll Co. v. Lee*, 127 Iowa, 230; 103 N. W. 101; *State v. White*, 115 La. 779; 40 So. 44.

<sup>87</sup> *Marshall Co. v. Knoll* (Iowa), 69 N. W. 1146.

ment of other taxes. The act made no provision as to when it should become operative. The Supreme Court of Ohio held that the statute was prospective. In so deciding the court said: "It is presumed that the Legislature designed these sections to be prospective in their operation so as not to impair existing rights. The settled rule is that whenever an act of the Legislature can be so construed and applied as to avoid conflict with the Constitution, and give it the force of law, such construction will be adopted by the courts. In determining whether the assessment in question would operate as a valid lien upon the owner's premises, it is material to inquire as to the conditions under which the tenant is in possession. If the real property on or in which the business is conducted is held by the tenant under a lease for a term made prior to the passage of the statute, the provisions for a lien in the second section would not operate. It might well be considered an unauthorized interference with private property, and contrary to the legislative intent, to subject the freehold of a lessor for assessments against the business of a lessee, over which the lessor could exercise no control, during the term granted under a pre-existing lease. But, in the case at bar, the occupant had no written lease and occupied the premises only as a monthly tenant. After the passage of the statute and before the commencement of the original action, his term had expired, and he had become a tenant at sufferance. At common law he had only a naked possession, and no estate which he could transfer or transmit, or which was capable of enlargement by release, nor was he entitled to notice to quit. He held by the laches of the landlord, who might enter and put an end to the tenancy when he pleased. Holding over, as the tenant did, after the month of May, the plaintiff in error could have resorted, at her option, to the statutory remedy of forcible entry and detainer. She was not, therefore, in the position of a lessor whose premises are placed beyond his control by a lease executed before the passage of the statute, but she had it in her power to terminate the tenancy and thus prevent the assessment from becoming a charge upon her property. If she elected to allow her tenant to hold over after

his interest was determined, and to permit the relation of landlord and tenant to be renewed, and the premises were thereafter used by the tenant in the business of trafficking in intoxicating liquors, it would be presumed that she so acted in full view of the statutory lien that would thereby be fastened upon the premises.”<sup>88</sup> A like construction was placed by the Supreme Court of Michigan upon an act of the Legislature postponing all liens, mortgages, conveyances and incumbrances to the lien of a liquor tax, created by the act, and in so deciding the court said: “It is true the language is general, but it is still subject to the rule of interpretation which imputes an intention against retrospective action unless the terms clearly indicate an intention in favor of it. And surely, before venturing to assume the existence of any such purpose, it would be necessary to find the will of the Legislature very distinctly expressed in favor of making new tax levies have preference over lawful securities given before the statute. The provision, then, giving superiority to the tax process over ‘liens, mortgages, conveyances and incumbrances’ cannot be held to apply to ‘liens, mortgages, conveyances or incumbrances’ created before the act was passed.”<sup>89</sup> Under the Ohio Dow Law if the lessee sell any other intoxicating liquor than malt liquor he is liable to an increased amount of taxes, and these increased taxes become a lien on the premises;<sup>90</sup> and this is true of sales made in violation of the terms of the lease forbidding all sales, even though the sales be made without the knowledge of the lessor or owner of the premises.<sup>91</sup> Where an ordinance provided payment of the fee in advance, but the mayor and council issued the license on part payment in advance, it was held that the city could not subject the licensee’s stock in trade to the payment of the remainder of the fee after it had passed into the hands of a *bona fide* purchaser without notice of such unpaid remainder.<sup>92</sup> Liens

<sup>88</sup> Anderson v. Brewster, 44 O. St. 576; 9 N. E. 683.

<sup>89</sup> Finn v. Haynes, 37 Mich. 63.

<sup>90</sup> Simpson v. Serviss, 2 Ohio C. D. 246.

<sup>91</sup> Simpson v. Serviss, 2 Ohio C. D. 246.

<sup>92</sup> Wicker v. Siesel, 80 Ga. 724;

6 S. E. 817.

created by a sale of liquor by a lessee does not affect the rights of a prior lessee.<sup>93</sup> If the premises are liable to a tax lien and by an unlawful sale the lessee has forfeited his lease, and he is insolvent, the lessor may bring an action to enjoin him from continuing the saloon and to have the lease declared forfeited.<sup>94</sup> A statute may make a liquor tax a prior lien, though subsequent in date, to the lien of a mortgage previously executed thereon, and it will be so even though the premises, at the time the mortgage was executed, had never been used for the sale of liquor, were not adapted to that end, and the mortgagee did not know it was the intention of the owner to use or lease them for that purpose.<sup>95</sup> But it has been held that a law cannot provide for a tax lien superior to a lien on the premises placed there before its enactment.<sup>96</sup> The amount of the tax is not determined by the value of the property, and no rebate of it can be had because of its small valuation.<sup>97</sup> If a surety on the licensee's bond in Iowa cause the premises to be sold under the supposed lien, and he become the purchaser, he cannot recover back the payment when it is discovered afterwards that the lien is void, because his obligation to pay the tax is a personal one and he is liable regardless of the validity of the lien. In such an instance a statute providing that when by the wrongful act of the county treasurer

<sup>93</sup> Moser v. Stebel, 29 Ohio Cir. Ct. Rep. 487.

<sup>94</sup> Moser v. Stebel, 29 Ohio Cir. Ct. Rep. 487.

<sup>95</sup> Pioneer Trust Co. v. Stich, 71 Ohio St. 459; 73 N. E. 520. See David v. Hardin Co., 104 Iowa, 204; 73 N. W. 576.

What is sufficient "notice to the owner" that his lessee is selling liquor thereon, so as to render the leased premises liable to the liquor tax because of such unlawful sale, see David v. Hardin Co., 104 Iowa, 204; 73 N. W. 576; *In re Smith*, 104 Iowa, 199; 73 N. W. 605. (Statute applies to

premises leased before its enactment, where sales were made after such enactment.)

<sup>96</sup> Peoples, etc., Ass'n v. Hanson, 7 Ohio Dec. 179; 5 Ohio N. P. 162. See Burfiend v. Hamilton, 20 Mont. 343; 51 Pac. 161, and Ferry v. Deneen, 110 Iowa, 290; 82 N. W. 424.

<sup>97</sup> Ferry v. Deneen, 110 Iowa, 290; 82 N. W. 424.

Under the Iowa Code, §§ 2432, 2448, the liquor tax is a personal obligation of the licensee and the lien operates merely as an aid to collection. Guedert v. Emmet Co., 116 Iowa, 40; 89 N. W. 85.



land is sold on which no tax is due the county shall hold the purchaser harmless has no application.<sup>98</sup> But the lessee's tax is not the personal obligation of the lessor, though his leased property is liable to the lien.<sup>99</sup> The lien may not be foreclosed by a proceeding in equity,<sup>1</sup> unless such a remedy is given by statute.<sup>2</sup>

### **Sec. 495. Disposition of fees and taxes collected.**

The disposition of the money paid as fees or taxes for licenses is entirely controlled by local statutes, and no general principles of much value can be deduced from the cases on the subject. Sometimes statutes divide the monies received between two overlapping municipalities—as between a county and a city or town within it—or as between a city, town or county and the State. Whenever that is the case the municipality collecting the money is liable to the other municipality, or to the State, as the case may be, for its proportion of it, and suit may be maintained therefor.<sup>3</sup> Mandamus lies where there is no dispute as to the amount to compel the officer or municipality receiving money to pay over the proper share to the municipality entitled to it.<sup>4</sup> If by mistake more be paid over than should have been, the municipality thus overpaying may reimburse itself out of the next monies received which is payable over to the payee municipality.<sup>5</sup> But if a county treasurer is the agent of a city within the county to collect its license fees, and he fails to account to the city for all he collects, the city cannot withhold funds of the county coming into its hands in an amount equal to the fees it has not received. It must look to the county treasurer and his sureties for the

<sup>98</sup> *Guedert v. Emmet Co.*, 116 Iowa, 40; 89 N. W. 85.

<sup>99</sup> *Carroll Co. v. Ley*, 127 Iowa, 230; 103 N. W. 101.

<sup>1</sup> *Crawford Co. v. Laub*, 110 Iowa, 355; 81 N. W. 590.

<sup>2</sup> *People, etc., Ass'n v. Hanson*, 7 Ohio Dec. 179; 5 Ohio N. P. 162.

<sup>3</sup> *Brown v. Aberdeen*, 4 Dak. 402; 31 N. W. 735; *Fox Lake v. Village of Fox Lake*, 62 Wis. 486; 22 N. W. 584.

<sup>4</sup> *People v. Decatur Tp.*, 33 Mich. 335; *East Saginaw v. Saginaw Co.*, 44 Mich. 273; 6 N. W. 684.

<sup>5</sup> *Grosse v. Wayne Co.*, 85 Mich. 44; 48 N. W. 153.

delinquent amount.<sup>6</sup> A city is not compelled to pay over license fees it has received under void licenses, and if an officer having no authority so to do has issued the license and received the fees he cannot be compelled to account for them.<sup>7</sup> An order of the council is not necessary to authorize the city treasurer to pay over to the county or State the amount due it where a statute provides he shall pay it to the county.<sup>8</sup> Under a constitutional provision that all license monies shall be paid over to the county and be by it appropriated to the support of the schools of its respective school districts, the monies belong to the county and not to the school districts.<sup>9</sup> When it is made the duty of a county treasurer to collect all fees for licenses issued by a city or in a city, and pay over a certain portion or all of them to such city, the county has no interest in the proportion to be paid over.<sup>10</sup>

<sup>6</sup> *Marquett Co. v. Ishpeming*, 49 Mich. 244; 13 N. W. 609.

<sup>7</sup> *Hennepin Co. v. Robinson*, 16 Minn. 381.

<sup>8</sup> *Winona v. Whipple*, 24 Minn. 61; *Commonwealth v. Martin*, 170 Pa. St. 118; 32 Atl. 624.

A general law directing that all license fees collected by cities be paid over to the county has no application to a city acting under a special charter and providing that the fees it shall collect shall be devoted by it to a particular purpose. *Aberdeen v. Sanderson*, 8 S. & M. 663; unless the express language of the general law requires it, or unless the tenor of the act is such as to show that was the intent of the Legislature. *State Board v. Aberdeen*, 56 Miss. 518; *Deposit v. Devereux*, 8 Hun, 317; *State v. Spokane*, 2 Wash. St. 40; 25 Pac. 903; *People v. Williams*, 29 N. Y. Misc. Rep. 463; 61 N. Y.

*Supp.* 983; *Hunt v. New York*, 47 N. Y. App. 295; 62 N. Y. Supp. 184; *People v. Williams*, 162 N. Y. 240; 56 N. E. 625, reversing 47 N. Y. App. Div. 88; 62 N. Y. Supp. 130; *Trustees v. Lewis Co. (Ky.)*, 46 S. W. 1; 20 Ky. L. Rep. 369; *State v. Bailer*, 91 Minn. 186; 97 N. W. 670; *State v. Seattle (Wash.)*, 71 Pac. 712.  
<sup>9</sup> *State v. Fenton*, 29 Neb. 348; 45 N. W. 464.

<sup>10</sup> *Commonwealth v. Martin*, 170 Pa. St. 118; 32 Atl. 624; *South Bethlehem v. Hemingway*, 16 Pa. Co. Ct. Rep. 103.

Usually the payment over of the fees by the collecting officer will not be enjoined, being a revenue law. *Balogh v. Lyman*, 6 N. Y. App. Div. 271; 39 N. Y. Supp. 780.

As between town and township occupying the same territory, see *State v. Slack*, 52 N. J. L. 113; 18 Atl. 687.

Whether or not the officer receiving the fee should at once pay it over to the treasurer or officer entitled to receive it depends upon the statute. Thus, if the fee is payable when the application is made for a license, then it should be paid into the treasury;<sup>11</sup> but if the money remains the property of the applicant until the license is issued, then the money cannot be used until that event.<sup>12</sup> If an officer receiving the fees pay it to the wrong officer of a municipality—as to the township road supervisor when he should have paid it to the township treasurer—he may be compelled to pay it over, even though it has been applied by the officer receiving it to the actual purposes of the municipality as required by statute.<sup>13</sup> A statute requiring a division of fees collected by a county between it and the State is not invalid on the ground that the latter is at no expense incident to the enforcement of the liquor statute.<sup>14</sup> Unless some statute devotes the license fees and taxes to a particular object they fall into the general fund of the municipality or State, as the case may be, and may be used to pay its obligations generally;<sup>15</sup> and the State Legislature has absolute control over it in the absence of a constitutional prohibitive provision.<sup>16</sup> But if the Constitution devotes the fees to a particular purpose the Legislature cannot

<sup>11</sup> *Trainor v. Multnomah*, 2 Or. 214.

<sup>12</sup> *State v. Lincoln*, 6 Neb. 12.

<sup>13</sup> *Krzykewa v. Croninger*, 200 Pa. 359; 49 Atl. 979.

<sup>14</sup> *State v. Buechler* (S. D.), 72 N. W. 114.

In Iowa, under Laws 1894, c. 62, § 14, license fees are payable to the municipality in which the saloon is located, but a school-district township is not such a municipality. *District Tp. v. Frahm*, 102 Iowa, 5; 70 N. W. 721.

Money collected in a city payable to the trustees of a school district within its limits is pay-

able to a school district therein whose territory extends beyond the city limits. *School District v. Twin Falls*, 13 Idaho, 471; 90 Pac. 735.

<sup>15</sup> *Hawesville v. Board*, 99 Ky. 292; 35 S. W. 1034; *Mt. Carmel v. Wabash Co.*, 50 Ill. 69; *Trainor v. Multnomah*, 2 Or. 214; *State v. Seattle* (Wash.), 71 Pac. 712.

<sup>16</sup> *Rock Co. v. Edgerton*, 90 Wis. 288; 63 N. W. 291; *Churchill v. Herrick*, 32 Wis. 357 (used to pay expense of keeping paupers); *Flannigan v. Wilkesbarre*, 10 Kulp. 100 (keeping roads of township in repair).

divert them from it;<sup>17</sup> nor can a city divert the fund from an object designated by a statute.<sup>18</sup>

**Sec. 496. Refunding fees or taxes paid under void or illegal ordinance or statute.**

Every person is chargeable with a knowledge of what is the law and he cannot plead his ignorance of it in order to escape an engagement into which he has entered or the liability for an act he has performed. Money paid in pursuance to a void ordinance or statute is money voluntarily paid, and it cannot be recovered back. This is true of money paid under such a statute or ordinance to secure a license, and the licensee does not pay it involuntarily. "It cannot be maintained," said the Supreme Court of Indiana, "either on reason or authority, that an individual who pays a demand, with a full knowledge of all the facts, in the belief that it is a legal duty for him to do so, pays it involuntarily. Nor will an individual be heard to say that he was coerced to do that which he believed the law required of him. The law will presume that every citizen freely and voluntarily does every duty which he be-

<sup>17</sup> *Murphy v. Landron*, 76 S. C. 21; 56 S. E. 850.

<sup>18</sup> *Eminence v. Wilson*, 103 Ky. 326; 45 S. W. 81; 20 Ky. L. Rep. 29; *Trustees v. Lewis Co.* (Ky.), 46 N. W. 1; 20 Ky. L. Rep. 369; *Winnecone v. Winnecone*, 122 Wis. 348; 99 N. W. 1055.

Under a general statute providing that the county treasurer "shall collect all taxes and licenses, and shall receive four per centum of the amount collected" "remaining unpaid," it was held that he could not retain four per centum on license fees that had to be paid before the license was issued, because they did not "remain unpaid." *Sandoval v. Mey-*

*ers*, 8 N. M. 573; 45 Pac. 1128. See also *Stroutsbury v. Shick*, 24 Pa. Super. Ct. 442.

Other cases construing local statutes are *Frame v. State*, 53 Ohio St. 311; 45 N. E. 5; *Marquett County v. Ishpeming*, 49 Mich. 244; 13 N. W. 609; *Essex County v. Barber*, 2 Halst. (N. J.) 64; *Kilgore v. Commonwealth*, 94 Pa. 495; *State v. Brattleboro*, 68 Vt. 520; 35 Atl. 472; *Plainfield v. Plainfield*, 67 Wis. 526; 30 N. W. 672.

If a county treasurer illegally deduct fees for collecting a tax due a city, the county is not liable to such city. *Zoo City v. Woodbury County* (Iowa), 122 Pac. 940.



lieves it imposes upon him, and, when it is admitted that there was no fraud, no personal exaction, nothing but the passage and publication of the ordinance—which was done in good faith, and which both parties recognized as valid—then it follows, as a conclusion of law, that the payment was voluntary.” “If the appellee [the licensee] believed the ordinance valid,” continued the court, “he recognized it as imposing on him a just obligation, and concurring in the wholesome doctrine of the law, that everyone is under a moral obligation to comply with the law of the community in which he lives, he made his application, received his license, paid the price stipulated, under a conviction of legal duty, freely, and with an unconstrained will. When, therefore, the premise is admitted that the appellee believed the ordinance to be a valid enactment, the conclusion unavoidably follows that he did not pay under an apprehension of legal proceedings, but **from** a conviction of legal duty.” “It is well settled,” the court still continuing, “that the mere existence of the ordinance would not render the payment compulsory. The money must have been exacted by the appellee under a threat of prosecution, and the money must have been unwillingly paid, under protest. It is well settled that a mere apprehension of legal proceedings is not sufficient to make a payment compulsory, and that where there is a threatened prosecution the payment must be made under protest.” “If, then, after the passage of the ordinance, the parties had arrived at different conclusions as to its validity, neither one could have reached or affected the other without first appealing to the court, and whenever persons are in that situation they are on an equal footing.” “If the ordinance in question had been valid, as both the parties believed, then the money would have been lawfully paid upon a legal demand. If, however, the ordinance was invalid, as it was held to be, then the appellee, when sued for failure to comply with the provisions, could have defeated the action by showing the invalidity of the ordinance. There was no pressing and controlling necessity for prompt and immediate payment on the part of the appellee, for he could have waited the decisions of the court without

sustaining loss or suffering inconvenience.”<sup>19</sup> In a subsequent case, in the same State, it was alleged in the complaint to recover back the money paid for a license that it was paid “for the purpose of avoiding the fines, penalties and forfeitures provided in the [license] ordinance for the violation of its provisions, and to save” the plaintiff from “arrest and imprisonment for the violation of the ordinance, as provided by the statute laws of the State of Indiana [he] was compelled to pay and did pay to the treasurer of” the town, “as provided for in the ordinance, the sum of fifty dollars for a license to sell intoxicating liquors.” This allegation was held not to show an involuntary payment, and that the fee could not be recovered back.<sup>20</sup>

<sup>19</sup> *Ligonier v. Ackerman*, 46 Ind. 552; 15 Am. Rep. 323. This case has a very thorough discussion of the affect of a voluntary payment of money and the right to recover it back; and many cases are reviewed and cited, among which are the following of the many: *Cohaba v. Burnett*, 34 Ala. 400; *Richmond v. Judah*, 5 Leigh. 305; *Harvey v. Olney*, 42 Ill. 336; *Elston v. Chicago*, 40 Ill. 514; *Baltimore v. Lefferman*, 4 Gill. (Md.), 425; *Mays v. Cincinnati*, 1 Ohio St. 268; *Baker v. Cincinnati*, 11 Ohio St. 534; *Taylor v. Board*, 31 Pa. St. 73; *Allentown v. Saeger*, 20 Pa. St. 421; *Cook v. Boston*, 9 Allen, 393; *Jenks v. Lima Tp.*, 17 Ind. 326; *Morris v. Baltimore*, 5 Gill. (Md.), 244; *Robinson v. Charleston*, 2 Rich. 317; *Phillips v. Jefferson Co.*, 5 Kan. 412; *Preston v. Boston*, 12 Pick. 7; *Joyner v. Cush*, 567. The court distinguishes the case from a payment to secure a release of property: “Where one person has in his own hands the property of another, which he refuses to surrender, except upon

the condition of the payment of an illegal or exorbitant demand, it can be well said that he has an undue advantage. The possession of the property may be a matter of such moment to him that to await the law’s delay would be ruinous; but where an individual is in the possession of his property, and asserts the right to control his use of it, if that claim can only be enforced by legal proceedings, no case can be found which holds that the party may tamely surrender his right, with a full knowledge of all the facts, and without fraud or imposition, and then say that he was not on an ‘unequal footing’ with the other.”

<sup>20</sup> *Sullivan v. McCammon*, 51 Ind. 264; *Edinburg v. Hackney*, 54 Ind. 83; *Colglazier v. Salem*, 61 Ind. 445; *Kroft v. Keokuk*, 14 Iowa, 86; *Baker v. Bucklin*, 43 N. Y. App. Div. 336; 60 N. Y. Supp. 294; affirming 22 N. Y. Supp. 560; 50 N. Y. Supp. 739; *Eslow v. Albion*, 153 Mich. 729; 117 N. W. 328; 15 Detroit Leg. N. 608.

**Sec. 497. Refunding fees or taxes, continued—No statute requiring it.**

Money paid under protest to obtain a license which it is claimed is void cannot be recovered back, though paid under a threat that if not taken out the applicant would be prosecuted if he sold liquor.<sup>21</sup> If local option be adopted shortly after a license goes into force, thus at once annulling it, no part of the fee can be recovered back, if no statute authorizes a recovery;<sup>22</sup> and a licensee voluntarily paying more for his license than the law requires cannot recover back the excess;<sup>23</sup> nor can he recover back any part of the amount paid on the ground that the amount required for his license was a day or so after his application and its issuance reduced.<sup>24</sup> And money voluntarily paid to a board having no authority to issue the license cannot be recovered back.<sup>25</sup> And where a licensing board granted a license, the fee was paid and the license issued, and then an appeal was taken and the license refused because the statute was void, it was held that there could be no recovery back of the fee paid.<sup>26</sup> Where the license was granted, the fee tendered but the license not issued because not ready, and on the same day the council increased the amount of the fee, which the licensee afterwards paid under protest in order to secure his license, it was held that he could not recover back the amount of the increase.<sup>27</sup> Anyone applying for a license, paying his fee, securing its grant, and then abandoning it be-

<sup>21</sup> *Welch v. Marion*, 48 Ala. 291; *Chaba v. Burnett*, 34 Ala. 400; *Trainor v. Multnomah Co.*, 2 Or. 214; *Custin v. Viragua*, 67 Wis. 314; 30 N. W. 515; see *New Iberia v. Moss Hotel Co.*, 112 La. 525; 36 So. 552.

<sup>22</sup> *Peyton v. Hot Springs Co.*, 53 Ark. 236; 13 S. W. 764. *Contra*, *Allsman v. Oklahoma City* (Okl.), 95 Pac. 468.

<sup>23</sup> *Thomson v. Norris*, 63 Ga. 538.

<sup>24</sup> *Williams v. West Point*, 68 Ga. 816.

<sup>25</sup> *Tatum v. Trenton*, 85 Ga. 468; 11 S. E. 705.

<sup>26</sup> *Monroe Co. v. Kreuger*, 88 Ind. 231; *Toman v. Westfield*, 70 N. J. L. 610; 57 Atl. 125. *Contra*. Where order granting license is reversed. *People v. Sackett*, 15 N. Y. App. Div. 290; 44 N. Y. Supp. 593; reversing 40 N. Y. Supp. 414. But see *Thomas v. Westfield* (N. J. L.); 57 Atl. 125.

<sup>27</sup> *Emery v. Lowell*, 127 Mass. 138.

cause unwilling to furnish the bond, cannot recover back the amount paid.<sup>28</sup> If by mistake of law a licensee receives a license for a less fee than the law requires, he cannot recover back the fee on the theory that his license is void, because a proper fee had not been paid.<sup>29</sup> A fee paid under a statute which had been declared unconstitutional by the Supreme Court of the State, though paid under protest and to avoid litigation, cannot be recovered back.<sup>30</sup> A statute providing for a refunding tax generally has no application to a liquor fee or tax.<sup>31</sup> If the money paid as a fee immediately goes into the public treasury, and is not a deposit, it cannot be recovered back.<sup>32</sup> So much so is this true that if the court refuse the license the fee cannot be recovered back.<sup>33</sup> Where the money paid is a liquor tax, and the money is voluntarily paid under a mistake of law, it cannot be recovered back.<sup>34</sup> If a license fee can be recovered back, yet it cannot be recovered from the officer receiving it; it can only be recovered from the municipality receiving it; and if the State receives it, of course there must be a statute authorizing a suit for its recovery.<sup>35</sup> If the fee be paid and then on appeal the license be refused, the amount of the fee cannot be recovered back;<sup>36</sup> nor is he entitled to a refund if for any cause his license be revoked;<sup>37</sup> nor can he recover back the fee he has paid even though his license be revoked because of his failure to give the proper notice of his application for a license;<sup>38</sup> or even where his application is

<sup>28</sup> *Curry v. Tarvas Tp.*, 81 Mich. 355; 45 N. W. 831; *Johnson v. Atkins*, 44 Fla. 185; 32 So. 879.

<sup>29</sup> *Tupelo v. Beard*, 56 Miss. 532.

<sup>30</sup> *Hornberger v. Case*, 9 Ohio Dec. 434; 13 Wkly. L. Bull. 437.

— *v. Wilson*, 9 Ohio Dec. 432; 13 Wkly. L. Bull. 437.

<sup>31</sup> *State v. Rauch*, 47 Ohio 478; 25 N. E. 59.

<sup>32</sup> *Trainor v. Multnomah*, 2 Or. 214.

<sup>33</sup> *McLeod v. Scott*, 21 Or. 94; 26 Pac. 1061; *Hague v. Ashland*, 91 Wis. 629; 65 N. W. 508.

<sup>34</sup> *Ahlers v. Estherville (Iowa)*, 104 N. W. 453.

<sup>35</sup> *Sargent v. Little*, 72 N. H. 555; 58 Atl. 44.

<sup>36</sup> *Toman v. Westfield*, 70 N. J. L. 610; 57 Atl. 125. But see *People v. Sackett, supra*.

<sup>37</sup> *Anderson v. Galesburg*, 118 Ill. App. 525.

<sup>38</sup> *McGinnis v. Medway*, 170 Mass. 67; 57 N. E. 210.



refused because of a failure to file a proper application.<sup>39</sup> An attempt on the part of a city to illegally refund a license fee may be enjoined on the suit of a taxpayer or citizen of the city.<sup>40</sup> Where a fee was paid and a license granted by a city for the remainder of the year, and during such remainder the Legislature enacted a law requiring a higher license fee for the county in which the city was situated, it was held that the licensee could not discontinue his business and recover back a proportionate amount of the fee paid.<sup>41</sup> If a license be revoked because of the alleged illegal act of the holder, and then he be indicted upon the same alleged violation of the statute and acquitted, he cannot recover back the unearned part of his license fee.<sup>42</sup>

**Sec. 498. Refunding fees or taxes, continued—Cases allowing.**

It has been held, notwithstanding the almost universal rule, that if a municipality without authority collect a license fee the person paying it may recover it back,<sup>43</sup> especially if paid under threats of municipal officers of fines and imprisonment if sales be made without the license.<sup>44</sup> So it has been held if the license be granted, the fee paid, the license taken out, and then on appeal thereafter the license be canceled, the licensee is entitled to have his fee returned;<sup>45</sup> at least a ratable portion of it.<sup>46</sup> So it has been held that a tax paid under protest in

<sup>39</sup> *Scalzo v. Sackett*, 30 N. Y. Misc. Rep. 543; 63 N. Y. Supp. 820. The officer receiving the money cannot make a valid contract to return it if the license be refused. *Heinrich Bros. Brewing Co. v. Kitsap Co.*, 45 Wash. 454; 88 Pac. 838.

<sup>40</sup> *Fitzgerald v. Witchard*, 130 Ga. 552; 61 S. E. 227.

<sup>41</sup> *Fitzgerald v. Witchard*, 130 Ga. 552; 61 S. E. 227.

<sup>42</sup> *Parrent v. Little*, 72 N. H. 566; 58 Atl. 510.

<sup>43</sup> *Calloway v. Milledgeville*, 48

Ga. 309. Modified in *Thomas v. Norris*, 62 Ga. 538; *Marshall v. Snediker*, 25 Tex. 460; 78 Am. Dec. 534; see *Douglassville v. Johns*, 62 Ga. 423.

<sup>44</sup> *Princeton v. Vierling*, 40 Ind. 340. (This decision is hardly in line with the Indiana cases previously cited.)

<sup>45</sup> *Chamberlain v. Tecumseh*, 43 Neb. 221; 61 N. W. 632.

<sup>46</sup> *Lydick v. Korner*, 15 Neb. 500; 20 N. W. 26. But it was held that the treasurer could not be compelled to refund it.

accordance with an unconstitutional statute may be recovered back.<sup>47</sup> Where the applicant contended the fee should be \$150 and the treasurer contended it should be \$350 because letters patent had been issued for the incorporation as a city of the locality where the premises were located, and he paid the fee of \$350 under protest, because if he did not pay within fifteen days his license, already issued, would be revoked, and afterwards it was judicially determined that the fee should have been \$150, it was held that he was entitled to recover back the excess.<sup>48</sup> Money paid under a void license ordinance, it has been held, could be recovered back, on the ground that the applicant did not stand on an equal footing with the officers of the municipality, and for that reason was entitled to recover back his money thus involuntarily paid.<sup>49</sup> Where an applicant paid a fee for a year's license, when it should only have been one-half that amount and six month's fee, and the city council promised to return one-half the amount paid if they could only issue a six month's license, it was held that one-half of the fee could be recovered back.<sup>50</sup> So it has been held that if a municipal officer takes a fee for a license the city cannot repudiate his action, retain the money and not grant the license.<sup>51</sup> And if an application be made and the fee be paid with it, as the law requires, and a license be not granted for the time specified in the application—and the same would be true if not granted for the place specified in the application—but is post dated the application, the applicant can refuse to accept the license, even though tendered

<sup>47</sup> *Catoir v. Waterson*, 38 Ohio St. 319; *Baker v. Cincinnati*, 11 Ohio St. 534.

<sup>48</sup> *Doolittle v. Lucerne Co.*, 6 Kulp. 495; *Hazeltine v. McGroorty*, 6 Kulp. 533.

<sup>49</sup> *Marshall v. Snediker*, 25 Tex. 460; 78 Am. Dec. 534.

<sup>50</sup> *Nurnberger v. Bornwell*, 42 S. C. 158; 20 S. E. 14.

In an action to recover back taxes paid, the tax duplicate is

*prima facie* evidence of every fact necessary to make the assessment; and also includes the fact that the plaintiff was engaged in selling liquors. *Stevenson v. Hunter*, 2 Ohio N. P. 330; 5 Ohio S. & C. P. Dec. 27.

<sup>51</sup> *Martel v. East St. Louis*, 94 Ill. 67; *Owensboro v. Ellter*, 3 Ky. L. Rep. (abstract) 255; *State v. Lincoln*, 6 Neb. 12.

to him, and recover back the fee paid.<sup>52</sup> Statutes sometimes provide for a return of the money if the application for a license be denied.<sup>53</sup>

**Sec. 499. Refunding fees or taxes, continued—Payment under mistake of fact.**

Money paid under a mistake of fact may usually be recovered back, especially if there was no negligence in an attempt to ascertain the facts.<sup>54</sup> But where a person engaged in selling liquor in which all the requirements of a prior law had been complied with by him except securing the general consent of the property owners to the location of the saloon, or a finding of its sufficiency by the licensing board, as required by a subsequent law, and without resorting to the public records for information as to whether the law then in force had been complied with, he paid the tax, relying upon the fact that other saloons were being operated in the city, but his saloon was soon after closed, it was held that he had not paid the tax under a mistake of fact, and was without a remedy.<sup>55</sup> So where by an examination of the records the plaintiff could have ascertained that liquors were being illegally sold on his premises, the fact that he did not have actual knowledge until after the time when he might have applied under a statute for a remission of the tax, it was held that he could not recover them back.<sup>56</sup> And where the State commissioners of excise certified without authority that the population of a certain city was so much and that the license fee, based on the population was a certain amount, increased over the amount it was previously, and a

<sup>52</sup> *Zeglin v. Carver Co.*, 72 Minn. 17; 74 N. W. 901.

<sup>53</sup> *State v. Buechler*, 10 S. D. 156; 72 N. W. 114; *School District v. Thompson*, 51 Neb. 857; 71 N. W. 728. In this case the money was paid to the village treasurer, who paid it to the school district; and it was held that the school district was liable to return it.

Right of legal representatives

to recover where the licensee has died and the term of the license has not expired. *Wood v. School District*, 80 Neb. 722; 115 N. W. 308.

<sup>54</sup> *Ligonier v. Ackerman*, 46 Ind. 552; 15 Am. Rep. 323.

<sup>55</sup> *Ahlens v. Estherville* (Iowa), 104 N. W. 453.

<sup>56</sup> *Newton v. McKay* (Iowa), 102 N. W. 827.

licensee paid the excess over protest, it was held that he had not paid it under a mistake of fact, and could not recover back the excess.<sup>57</sup> Where a fee was paid to a city of the fifth class, and the fee was less for a city of the sixth class, it was held that the applicant for the license could not maintain an action for the difference between the amounts of the two fees on the ground that the act for the formation of the cities of the fifth class was invalid. Only the State could raise that question.<sup>58</sup> Money paid because of mistake of the requirements of the law cannot be treated as a payment under a mistake of fact.<sup>59</sup>

### **Sec. 500. Rebate of fees or taxes under statute.**

Statutes at times provide for rebate of part of the amount of fees or taxes where the license or permit is cancelled or surrendered before the end of the term for which it was issued; but unless some statute provides for the rebate none can be made.<sup>60</sup> Usually the statutes provide that if the licensee has obtained his license illegally or has been guilty of a violation of the liquor law he shall not be entitled to a rebate. And where a statute provided that the certificate should have one month to run after the surrender of the license it was held that if the licensee continued to do business during the month he was not entitled to have the rebate, although he held a certificate for its rebate.<sup>61</sup> If a statute

<sup>57</sup> *People v. Cullinan*, 111 N. Y. App. Div. 32; 97 N. Y. Supp. 194.

<sup>58</sup> *Providence v. Shackelford*, 106 Ky. 378; 50 S. W. 542; 20 Ky. L. Rep. 1921.

<sup>59</sup> *Baker v. Bucklin*, 43 N. Y. App. Div. 336; 60 N. Y. Supp. 294; affirming 22 N. Y. Misc. Rep. 560; 50 N. Y. Supp. 739.

<sup>60</sup> *Anderson v. Galesburg*, 118 Ill. App. 525; *Bailey v. Raleigh*, 130 N. C. 269; 41 S. E. 281. (Legislature without power to enact a statute requiring a rebate.)

Under the New York statute money paid on an application for

a license will be ordered returned where the order directing the licensing officer to issue a license is reversed. *People v. Sackett*, 15 N. Y. App. Div. 290; 44 N. Y. Supp. 593; reversing 17 N. Y. Misc. Rep. 406; 40 N. Y. Supp. 414.

<sup>61</sup> *Lyman v. Cheever*, 31 N. Y. Misc. Rep. 100; 63 N. Y. Supp. 809; *People v. Cullinan*, 168 N. Y. 258; 61 N. Y. 243; affirming 69 N. Y. Supp. 1142; *People v. Cullinan*, 173 N. Y. 604; 66 N. E. 1114; affirming 67 N. Y. App. Div. 446; 73 N. Y. Supp. 987.



provide that no rebate shall be made where the licensee obtained his license on an application containing a material false statement, such a false statement will defeat his right to a rebate.<sup>62</sup> If the licensee be indicted for a violation of the liquor law, under the New York statute no rebate can be awarded him so long as the indictment remains pending, even if indicted after the surrender.<sup>63</sup> If a licensee be arrested for a violation of the statute and be acquitted on the "merits," he is entitled to the rebate.<sup>64</sup> The New York statute provides that if the licensee be twice convicted of having violated its provisions, he shall not be entitled to any rebate of the tax paid if he cease the liquor business. Under it a rebate cannot be denied where only one conviction has been had.<sup>65</sup> Under this statute a conviction is not necessary to defeat the application for a rebate; it is sufficient that the applicant has merely violated its provisions.<sup>66</sup> But the statute does not apply to violations of the law committed before the license certificate was issued.<sup>67</sup>

<sup>62</sup> *In re* Lyman, 163 N. Y. 536; 57 N. E. 745; reversing 51 N. Y. App. Div. 52; 64 N. Y. Supp. 756; *People v. Lyman*, 33 N. Y. Misc. Rep. 243; 68 N. Y. Supp. 331; *People v. Hilliard*, 178 N. Y. 582; 70 N. E. 1106; affirming 81 N. Y. App. Div. 71; 80 N. Y. Supp. 792.

<sup>63</sup> *In re* Johnson, 78 N. Y. Misc. Rep. 498; 42 N. Y. Supp. 1074; *People v. Cullinan*, 168 N. Y. 258; 61 N. E. 243; affirmed 69 N. Y. Supp. 1142; *People v. Layman*, 59 N. Y. App. Div. 172; 69 N. Y. Supp. 111; affirming 65 N. Y. Supp. 462; *In re* Seitz, 32 N. Y. Misc. Rep. 108; 65 N. Y. Supp. 462; *People v. Clement* (N. Y.), 112 N. Y. Supp. 951; *People v. Clement* (N. Y.), 116 N. Y. Supp. 1098; *Clement v. Viscosi* (N. Y.), 118 N. Y. Supp. 613.

<sup>64</sup> *People v. Lyman*, 168 N. Y.

669; 61 N. E. 113, affirming 53 N. Y. App. Div. 470; 65 N. Y. Supp. 1062; *People v. Lyman*, 69 N. Y. App. Div. 406; 74 N. Y. Supp. 1104; *People v. Cullinan*, 173 N. Y. 604; 66 N. E. 1114; 69 N. Y. App. Div. 406; 74 N. Y. Supp. 1104.

<sup>65</sup> *People v. Cullinan*, 90 N. Y. App. Div. 606; 85 N. Y. Supp. 1142, affirming 41 N. Y. Misc. Rep. 404; 84 N. Y. Supp. 1018.

<sup>66</sup> *People v. Cullinan*, 95 N. Y. App. Div. 598; 88 N. Y. Supp. 1022.

But see *People v. Cullinan*, 90 N. Y. App. Div. 606; 85 N. Y. Supp. 1142, affirming 41 N. Y. Misc. Rep. 404; 84 N. Y. Supp. 1018.

<sup>67</sup> *People v. Leyman*, 25 N. Y. Misc. Rep. 217; 55 N. Y. Supp. 76.

In New Hampshire where the State excise board revoked a license because its holder had vio-

The assignee of the license or liquor tax certificate, where that is allowed, takes it subject to all the illegalities it carried in the hands of the licensee; and if the latter cannot secure a rebate, neither can the assignee;<sup>68</sup> and if proceedings be pending against the licensee for a violation of the law he is not entitled to the rebate until they are determined favorably to the assignor.<sup>69</sup> If the licensee has obtained his license on false statements, the assignee takes the assignment of the license affected by these statements.<sup>70</sup> *Mandamus* lies in New York against the excise commissioner to compel the payment of the rebate, but the applicant must show that he has ceased selling liquor, and he is not relieved from so doing by showing that the deputy excise commissioner had issued him receipts for the unearned portion of his license when his cessation of sales is denied, the determination of that fact by the deputy not being an adjudication of the truth of the fact of cessation.<sup>71</sup> It is no defense to such proceedings that charges had been preferred against the licensee, when he is tried and discharged by the magistrate for want of sufficient evidence to believe

lated the law, and subsequently he was indicted on the charge and acquitted, it was held that he was not entitled to a return of any of the license fee. *Parent v. Little*, 72 N. H. 566; 58 Atl. 510.

A surrender in New York of the license does not release the sureties on the licensee's bond for the licensee's illegal acts committed within a month after the surrender and before the rebate money is paid. *Lyman v. Cheever*, 31 N. Y. Misc. Rep. 100; 63 N. Y. Supp. 809.

As to surrender and grant of new licenses in Massachusetts, see *Tracy v. Ginzberg*, 189 Mass. 260; 75 N. E. 637.

The right to surrender a liquor tax certificate and have its surrender value returned is in the nature of a chose in action. *Niles*

*v. Mathusa*, 20 N. Y. App. Div. 483; 47 N. Y. Supp. 38.

<sup>68</sup> *People v. Lyman*, 33 N. Y. Misc. Rep. 243; 68 N. Y. Supp. 331; *People v. Lyman*, 27 N. Y. App. Div. 527; 50 N. Y. Supp. 527.

<sup>69</sup> *People v. Lyman*, 59 N. Y. App. Div. 172; 69 N. Y. Supp. 111, affirming 65 N. Y. Supp. 462.

<sup>70</sup> *People v. Hilliard*, 178 N. Y. 582; 70 N. E. 1106, affirming 81 N. Y. App. Div. 71; 80 N. Y. Supp. 792.

See, generally, *People v. Flynn*, 110 N. Y. App. Div. 279; 96 N. Y. Supp. 655, reversing 48 N. Y. Misc. Rep. 159; 96 N. Y. Supp. 653.

<sup>71</sup> *People v. Cullinan*, 173 N. Y. 604; 66 N. E. 1114, affirming 67 N. Y. App. Div. 446; 73 N. Y. Supp. 987; *People v. Lyman*, 67 N. Y. App. Div. 446; 73 N. Y. Supp. 987.

him guilty.<sup>72</sup> The petition must show the issuance of the rebate certificate and that it is still in force, but it need not recite any of the facts necessary to obtain the certificate when application for it had been made.<sup>73</sup> Under the New York statute, if the petitioner for a writ of mandamus has been arrested or indicted for a violation of the liquor law, he must show he had been acquitted on the merits.<sup>74</sup> The judgment should be that the State excise commissioner issue an order for the rebate and not that he pay it, for only the State treasurer can pay it.<sup>75</sup> In order to secure a writ of mandamus all the necessary steps entitling the licensee to a rebate certificate must first be taken.<sup>76</sup> If the answer to a petition for a mandamus allege that the petitioner had not voluntarily ceased to traffic in liquor, the petitioner is entitled to a trial of the issue of fact so raised, and a peremptory writ should be refused, even though no prosecution against him has been commenced on account of the violations charged in the answer.<sup>77</sup>

<sup>72</sup> *People v. Cullinan*, 173 N. Y. 604; 66 N. E. 1114, affirming 69 N. Y. App. Div. 406; 74 N. Y. Supp. 1104.

<sup>73</sup> *People v. Lyman*, 168 N. Y. 669; 61 N. E. 1133, affirming 53 N. Y. Supp. 470; 65 N. Y. Supp. 1062.

<sup>74</sup> *People v. Lyman*, 168 N. Y. 669; 61 N. E. 1133, affirmed 53 N. Y. App. Div. 470; 66 N. Y. Supp. 1062.

<sup>75</sup> *Knapp v. Scanlin*, 36 N. Y. Misc. Rep. 756; 74 N. Y. Supp. 458.

<sup>76</sup> *People v. Lyman*, 25 N. Y. Misc. Rep. 217; 55 N. Y. Supp. 76.

The law in force at the time a rebate is applied for governs, and not the law as it was when the license was issued. *Ging v. Sherry*, 32 N. Y. App. Div. 354; 52 N. Y. Supp. 1003.

<sup>77</sup> *People v. Cullinan*, 173 N. Y. 604; 66 N. E. 1114, affirming 69

N. Y. App. Div. 406; 74 N. Y. Supp. 1104.

If the agents and servants of the petitioner has violated the liquor laws in the conducting of his business, he cannot secure the rebate, for he is responsible for their acts. *Duncan v. Clement* (N. Y.), 119 N. Y. Supp. 375.

In Kentucky if the license be revoked for a violation of law, the unearned part of the fee cannot be recovered back. *Louisville v. Cain* (Ky.), 119 S. W. 763.

Where a statute validates any refunding made by officers of a city theretofore made out of public funds in good faith, it is the good faith of the officers alone who paid out the money and not of the city council which appropriated the money or ordered it paid out. *Calderwood v. Jos. Schlitz Brewing Co.* (Minn.), 121 N. W. 221.

## CHAPTER XIV.

### DRUGGISTS AND PHYSICIANS.

SEC.		SEC.	
501.	Druggists' exemption from liability.	507.	Druggists' sales in prohibition States.
502.	No druggist or other person licensed.	508.	Sales by druggists upon prescriptions.
503.	Statutes requiring druggists to have licenses.	509.	Prescriptions for Sunday and holiday sales.
504.	Sales by employe of druggist.	510.	Kind of prescriptions.
505.	Good faith in making sales.	511.	Registration and reports of sales.
506.	Druggists making unlawful sales.	512.	Sales by physicians.
		513.	Physicians illegally giving a prescription.

#### Sec. 501. Druggist's exemption from liability.

There are some cases which hold that a druggist who sells spirituous and vinous liquors upon a proper occasion *bona fide*, and with due caution, to be used for medical purposes only, is not to be regarded as having violated the laws, although he has no license to sell and although the law does not except him from its terms.<sup>1</sup> In arriving at this conclusion, the court, in one of the earliest cases said: "In construing a statute it is proper to look to its effect. Statutes certainly are not always, nor ought they to be, construed literally. The Bolog-

<sup>1</sup> United States v. Calhoun, 39 Fed. Rep. 604; Thomasson v. State, 15 Ind. 449; Jakes v. State, 43 Ind. 473; Ball v. State, 50 Ind. 595; Hooper v. State, 56 Ind. 153; Nixon v. State, 76 Ind. 524; Hottendorf v. State, 89 Ind. 282; State v. Wray, 72 N. C.

253; Hamline v. Commonwealth, 13 Bush (Ky.), 350; State v. Larrimore, 19 Mo. 391; State v. Mitchell, 28 Mo. 562; State v. Wells, 28 Mo. 565; Rhoades v. Commonwealth, 6 Atl. 245; Commonwealth v. Rhoades, 1 Pa. Co. Ct. Rep. 639.



nian Law which enacted 'that whoever drew blood in the streets should be punished with the utmost severity,' was held after long debate, not to extend to a surgeon who opened the vein of a person who fell down in the street with a fit.'"<sup>2</sup> It will be noticed that the Bolognian Law was not decided in favor of the surgeon until "after long debate." Confessedly, then, this was not a strong precedent upon which to hang the Indiana decision from which we have quoted. The North Carolina case upon this point has been limited if not overruled, by the Supreme Court of that State.<sup>3</sup> In the last case cited, it was said, "this court will not go, by construction or interpretation, beyond the ruling in *State v. Wray*. To do so would tend to impair the face of the statute, weaken its restraining power, and often to defeat the legislative will by rendering evasions and violations of the law easy." In accord with the thought last expressed are many well considered cases which hold that such a sale is a violation of the law, even though it is made upon the prescription of a physician,<sup>4</sup> and there was no one authorized to issue a druggist's license,<sup>5</sup> and this we regard as the better holding.<sup>6</sup> A leading case

<sup>2</sup> *Donnell v. State*, 2 Ind. 658; *Elrod v. State*, 72 Ind. 292; *Parker v. State*, 31 Ind. App. 650; 68 N. E. 912.

<sup>3</sup> *State v. McBryer*, 98 N. C. 619; *State v. Dalton*, 101 N. C. 680; 8 S. E. 154.

<sup>4</sup> *Carson v. State*, 69 Ala. 235; *Carl v. State*, 89 Ala. 93; *Woods v. State*, 36 Ark. 36; 38 Am. Rep. 22; *Flower v. State*, 39 Ark. 209; *Chew v. State*, 43 Ark. 361; *State v. Gray*, 61 Conn. 39; 22 Atl. 675; *Noecker v. People*, 91 Ill. 494; *State v. Knowles*, 57 Ia. 669; *State v. Bissell*, 67 Ia. 616; 25 N. W. 831; *City of Salina v. Seitz*, 16 Kan. 143; *State v. Brown*, 31 Me. 522; *State v. Hall*, 39 Mo. 107; *Commonwealth v. Ramsdell*, 130 Mass. 68; *Commonwealth v. Pierce*, 147 Mass.

161; 16 N. E. 705; *King v. State*, 66 Miss. 502; 6 So. 188; *Brown v. State*, 9 Neb. 189; 2 N. W. 214; *People v. Safford*, 5 Denio (N. Y.), 112; *Commonwealth v. Porter*, 10 Phila. 217; *State v. Cox*, 23 W. Va. 797; *Gault v. State*, 34 Ga. 533; *State v. Dalton*, 101 N. C. 680; 8 S. E. 154; *Druggists' Cases*, 85 Tenn. 449; 3 S. W. 490; *State v. Thompson*, 20 W. Va. 674.

<sup>5</sup> *Rossenhamm v. Commonwealth*, 9 Ky. L. 519.

<sup>6</sup> *Wright v. People*, 101 Ill. 126.

Under a statute authorizing druggists to keep all medicines authorized by the United States Dispensary as of recognized medicinal utility, they may keep intoxicating liquors. *Pollard v. Allen*, 96 Me. 455; 52 Atl. 524.

upon this point, to our mind, gives a good and sufficient reason for so holding. "But let it be once understood," the court said, "that the druggist or other tradesman, merely because his chief business is confined to traffic in other classes of merchandise, may retail intoxicating liquors *ad libitum*, so long as he in good faith sells for some legitimate purpose other than as a mere beverage, the chief safeguards which the law, as now understood, throws around the subject, will soon be frittered away and the doors will be thrown wide open to all manner of frauds and evasions of law which would bid defiance to the highest degree of watchfulness and diligence the officers of the law could possibly bring to the official discharge of their duties in endeavoring to enforce the law on the subject. If the druggist may sell for sickness, the family grocer may, on the same principle, sell for culinary purposes, and there is no telling where the thing would stop. The only safe course is to enforce the law as the Legislature has made it and not defeat its execution upon some hypothetical theory of public policy that finds no place or recognition in the act itself. If the legitimate business of druggists or other tradesmen necessarily involves the retail of liquors in small quantities; we see no reasons, founded upon public policies or otherwise, why they should not like other dealers pay for the privilege of doing so. This construction, moreover, compels all persons who engage in the traffic to equally contribute to the support of local municipal government. The contrary construction would be discriminating between individuals engaged in the same business, with respect to the burdens of local government, without any sufficient reason for doing so."

#### **Sec. 502. No druggist or other person licensed.**

To an indictment for selling intoxicating liquors without a license and in contravention of a statute upon that subject, it is no defense that, at the time of making such a sale there was no druggist or other person licensed to sell such liquors within the county, that the sale was made upon the order or prescription of a physician, and that the liquor thus obtained was necessary for the buyer's use, either as a medicine or for

the preservation of his health. If it were sufficient in such a case to avoid the prohibition of a statute, for the purchaser to say that the liquor was intended for medicine, it would, in effect, repeal the statute.<sup>7</sup>

### Sec. 503. Statute requiring druggists to have license.

In many of the statutes druggists are required to take out a license or permit and even to execute a licensee's bond; but a statute merely regulating their liquor traffic does not require of them a license, although dealers in general must have licenses.<sup>8</sup> Whether or not a druggist must give a liquor dealer's usual bond, of course depends upon each particular statute, and no general rule can be stated on that question.<sup>9</sup> But a statute requiring all liquor dealers not to adulterate their liquor applies not only to liquor dealers strictly so, but also to druggists or pharmacists.<sup>10</sup> In some States only registered pharmacists can sell liquors.<sup>11</sup> A statute permitting druggists to sell liquors does not require that he must manu-

<sup>7</sup> Commonwealth v. Sloan, 58 Mass. (4 Cush.) 52; Commonwealth v. Kimball, 24 Pick. 366.

<sup>8</sup> Moore v. People, 109 Ill. 499; State v. Witty, 74 Mo. App. 550; Hurdland v. Hardy, 74 Mo. App. 614.

In Tennessee a druggist holding a merchant's license must also pay liquor dealer's occupation tax. Druggists' Cases, 85 Tenn. 449; 3 S. W. 490.

<sup>9</sup> Moore v. People, 109 Ill. 499 (no bond required); State v. Ferguson, 72 Mo. 297 (a bond required); State v. Pierce, 26 Kan. 777 (bond required); People v. Beach, 93 Mich. 25; 52 N. W. 1035.

<sup>10</sup> Newman v. State, 7 Lea. 617.

<sup>11</sup> State v. Dunning, 14 S. D.

316; 85 N. W. 589; Stormes v. Commonwealth (Ky.), 47 S. W. 262; State v. Randall, 73 Mo. App. 463, 465; Watson v. State, 42 Tex. Cr. App. 13; 57 S. W. 101.

This is so in Nova Scotia. Gardner v. Parr, 2 R. & G. 255; S. C. 1 Can. L. T. 710; and in Manitoba. Cathcart v. Hardy, 2 M. & S. 534; Regina v. Harrell, 12 Manitoba, 198, 522; Commonwealth v. Powell (Ky.), 62 S. W. 19; 22 Ky. L. Rep. 1932; State v. Collins, 28 R. I. 439; 67 Atl. 796; Liggett v. People, 26 Colo. 364; 58 Pac. 144.

The license is a defense. State v. Morgan, 96 Mo. App. 343; 70 S. W. 267.

facture or compound medicines to be such a person, or to be an apothecary;<sup>12</sup> and a statute requiring druggists to have a license to sell intoxicating liquor does not require him to have a license to compound and sell a medicine containing alcohol on a physician's prescription, or even on his own formula.<sup>13</sup> But under a right to sell proprietary medicines he cannot sell alcoholic bitters that are composed chiefly of alcohol.<sup>14</sup> If only a druggist can make a sale of liquor, then on proper proof that he holds a druggist's license the burden is cast upon the prosecution to show that in fact he is not a druggist,

<sup>12</sup> Haimline v. Commonwealth, 13 Bush, 350.

The Iowa statute of 1886, c. 83, on permits for druggists to sell liquors was complete within itself so far as druggists were concerned. State v. Courtney, 73 Iowa, 619; 35 N. W. 685; see also State v. Mercer, 58 Iowa, 182; 12 N. W. 269; State v. Aulman, 76 Iowa, 624; 41 N. W. 379.

The act of Colorado Laws 1889, p. 228, regulating the licensing of "tippling houses" did not repeal the statute of that State. (Mills Ann. St., § 4403, subdiv. 18), empowering cities and towns to grant permits to druggists to sell liquors for "medicinal, mechanical, sacramental and chemical purposes only." Canfield v. Leadville, 7 Colo. App. 453; 43 Pac. 910.

The meaning of the word "druggist" cannot be so stretched as to cover sales by commission merchants dealing principally in alcohol. Mills v. Perkins, 120 Mass. 41.

<sup>13</sup> Commonwealth v. Fowler, 98 Ky. 648; 34 S. W. 21; Parker v. State, 31 Ind. App. 650; 68 N.

E. 912; DeTarr v. State, 37 Ind. App. 323; 76 N. E. 897; Pearce v. State (Tex. Civ. App.), 88 S. W. 234; State v. Roller, 77 Mo. 120; Haimline v. Commonwealth, 13 Bush, 350.

<sup>14</sup> State v. Wright, 20 Mo. App. 412.

In Missouri it was held that the proprietor of a drug store could not escape liability by the employment of a non-resident pharmacist who was present only two or three times a week. State v. Jordan, 87 Mo. App. 420; State v. Workman, 75 Mo. App. 454; State v. Chipp, 121 Mo. App. 556; 97 S. W. 236.

Although he have a permit, yet a druggist may be convicted of maintaining a liquor nuisance. State v. Engborg, 63 Kan. 853; 66 P. 1007.

It is not error to allow a defendant to testify that he is a druggist before producing his license. His license is *prima facie* evidence that he is in fact a licensee. Commonwealth v. Byers (Ky.), 109 S. W. 895; 33 Ky. L. Rep. 252.



and, therefore, does not come within the provisions of the statute allowing druggists to sell liquors.<sup>15</sup>

### Sec. 504. Sales by employe of druggist.

As in all other instances of sales by an agent, the employe or clerk of a druggist or pharmacist is not subject to prosecu-

<sup>15</sup> Commonwealth v. Byers (Ky.), 109 S. W. 895; Ky. L. Rep. See State v. Shanke, 98 Mo. App. 138; 71 S. W. 1065.

Under a Canadian statute forbidding a licensed chemist to sell liquors to be drunk on the premises, a sale by an unlicensed chemist for that purpose is also an offense. Regina v. McCoy, 23 Ont. Rep. 442.

It has been held that if a druggist has in good faith offered to pay for his license, which offer was declined, he cannot be convicted of selling without a license. Storms v. Commonwealth, 105 Ky. 619; 49 S. W. 451; reversing 47 S. W. 262. See also Commonwealth v. McGrorty, 5 Ky. L. Rep. (abstract), 605.

Indictment of merchant selling in drugs and compounding prescriptions occasionally. State v. Shanks, 98 Mo. App. 138; 71 S. W. 1065.

Sales at wholesale by druggists when allowed. People v. Longwell, 136 Mich. 302; 99 N. W. 1; 10 Detroit L. N. 1049.

Under a power to license, regulate and prohibit the sale of intoxicating liquors, a city may adopt a licensing ordinance and exempt a druggist from its provisions. Carthage v. Carlton, 99 Ill. App. 338.

So it may prohibit the sale. Jacobs Pharmacy Co. v. Atlanta, 89 Fed. 244.

If a druggist desires to sell liquor in any other way than that prescribed for druggists, he must take out a license to sell liquors; and if he sells liquors without he is liable the same as any other person. Luton v. Palmer, 69 Mich. 610; 37 N. W. 701; *In re Moore* (Iowa), 118 N. W. 879; *Rosenham v. Commonwealth*, 7 Ky. L. Rep. (abstract) 602; *Bagby v. Commonwealth*, 4 Ky. L. Rep. (abstract) 53 (not a merchant, within the meaning of the Kentucky statute); *Mason v. State* (Okla.), 103 Pac. 369; *Stewart v. Calhoun Co.* (Mich.), 121 N. W. 279; *State v. Moore*, 107 Mo. 78; 16 S. W. 937.

In Missouri, if a druggist be properly registered, he cannot be indicted under dramshop law for a sale he has made. *State v. McAnally*, 66 Mo. App. 329; and in that same State he must file an affidavit and give a bond not to adulterate his liquors. *State v. Summers*, 142 Mo. 586; 44 S. W. 797; *State v. Goff*, 66 Mo. App. 491.

In Michigan a druggist cannot sell liquors to be drunk on the premises as a beverage. *Stewart v. Calhoun Co.* (Mich.), 124 N. W. 39.

Qualifications for license in Iowa. *In re Smith*, 126 Iowa, 128; 101 N. W. 875.

tion if his employer could have legally made the sale.<sup>16</sup> If the druggist was not licensed or registered, when that is necessary, then his clerk in making a sale for him violates the law.<sup>17</sup> If he sells off the licensed premises he becomes thereby liable to the penalty of the statute.<sup>18</sup> If the statute authorizes a druggist to sell for medical, mechanical or sacramental purposes only, then a sale by the clerk for some other purpose renders him liable.<sup>19</sup> If the license or permit of the druggist be revoked, as it may,<sup>20</sup> of course, a sale by his clerk thereafter is an unlawful act in such clerk.

### Sec. 505. Good faith in making sales.

The element of "good faith" in making sales is always involved in sales by a druggist if he desires to escape the penalty of the statute. This is especially true where no statute provides that he may sell, but by construction of the statutes by the courts he is permitted to sell for medicinal and like purposes. If, under his right to sell, he uses his right, or even statutory permit, as a cloak to sell liquor unlawfully, he will be liable to the statute forbidding sales without license or permits, or to the statutes permitting him to sell for only certain purposes upon certain conditions.<sup>21</sup> Whether or not he acted in good faith is a question for the jury; but if the jury disregard the uncontradicted evidence showing good faith a conviction will be set aside on appeal.<sup>22</sup> This rule ex-

<sup>16</sup> *State v. Mullenhoff*, 74 Iowa, 271; 37 N. W. 329; *State v. Copp*, 34 Kan. 522; 9 Pac. 233.

<sup>17</sup> *State v. Gibson*, 61 Mo. App. 768; 1 Mo. App. Rep. 656; *Gault v. State*, 34 Ga. 533.

<sup>18</sup> *State v. Copp*, 34 Kan. 522; 9 Pac. 233; *Spake v. People*, 89 Ill. 617.

<sup>19</sup> *Provo City v. Shurtliff*, 4 Utah, 15; 5 Pac. 302.

<sup>20</sup> *Hildreth v. Crawford*, 65 Iowa, 339; 21 N. W. 667.

<sup>21</sup> *Pearson v. International Dis-*

*tillery*, 72 Iowa, 348; 34 N. W. 1.

<sup>22</sup> *Nixon v. State*, 76 Ind. 524; *Hottendorf v. State*, 89 Ind. 282; *State v. Oeder*, 80 Iowa, 72; 45 N. W. 543; *State v. Shank*, 79 Iowa, 47; 44 N. W. 241; *State v. Blair*, 72 Iowa, 591; *Haynie v. State*, 32 Miss. 400; *State v. Thompson*, 74 Iowa, 118; 37 N. W. 104; *Brooks v. State*, 65 Miss. 445; 4 So. 343; *State v. Hoagland*, 77 Iowa, 135; 41 N. W. 595; *State v. Flusche*, 79 Iowa, 765; 44 N. W. 698.

tends to sales upon physician's prescriptions; for if the druggist knows that the prescription is a mere subterfuge to evade the law he will be as liable as if he sold without it.<sup>23</sup> The defendant has the burden to show a justification for the sale; for when the prosecution has shown a sale the presumption is raised that it was an illegal transaction.<sup>24</sup> "The fact that the defendant's place of business was a drug store does not raise any presumptions in his favor, and if the State has proven to satisfaction of the jury that any single sale of spirituous liquors was made by the defendant, and the defendant has not then shown that such sale was justified under the privileges of a druggist, which he claims, they should convict. Such was an instruction given by the trial court in one case, and it was approved on appeal.<sup>25</sup> It is admissible to show, on the part of the prosecution, in rebuttal of the claim of good faith sales, that the drug store was a rendezvous for men who drank, and their personal appearances may be inquired into, as to whether they were men who apparently needed intoxicating liquors for medicinal purposes and the like.<sup>26</sup> Thus in one case the reports of the defendant, made in pursuance to a statute, showing over three thousand sales, but not in all instances specifying to whom the sale was made nor what kind of liquors had been sold, was admitted in evidence; and notwithstanding the accused had testified the sales were legal, he was convicted.<sup>27</sup> It is not a sufficient justification in the defendant that he sold the liquor upon the purchaser's statement that he desired it for medicine: for that is not that degree of caution and circumspection which the law requires.<sup>28</sup> It is not

<sup>23</sup> *Commonwealth v. Joslin*, 158 Mass. 482; 33 N. E. 653; 21 L. R. A. 449; *Commonwealth v. Gould*, 158 Mass. 499; 33 N. E. 656; *State v. Wray*, 72 N. C. 253 (sales in good faith on prescriptions are protected).

<sup>24</sup> *Commonwealth v. Perry*, 148 Mass. 160; 19 N. E. 212; *State v. Cloughly*, 73 Iowa, 626; 35 N. W. 652.

<sup>25</sup> *Baemuel v. State*, 26 Fla. 71; 7 So. 371.

<sup>26</sup> *State v. Huff*, 76 Iowa, 200; 40 N. W. 720; *State v. Thompson*, 74 Iowa, 119; 37 N. W. 104.

<sup>27</sup> *State v. Cummins*, 76 Iowa, 333; 40 N. W. 124.

<sup>28</sup> *State v. Knowles*, 57 Iowa, 669; 11 N. W. 620; *State v. Blair*, 72 Iowa, 591; 34 N. W. 432.

a sufficient showing that the liquors were purchased for medicinal purposes, by proof that they were sold at wholesale.<sup>29</sup> The reports of sales made by a druggist, under the statute, may be put in evidence by the State in a prosecution against him; and he cannot claim that the statute, by allowing their use in evidence, compelled him to incriminate himself.<sup>30</sup> It is no defense that the defendant had no intention to violate the statute, and that the sale was made in the belief that the liquor sold was not intoxicating.<sup>31</sup>

### **Sec. 506. Druggists making unlawful sales.**

Druggists can sell only for the purposes designated in their permits or in the statutes where permits are required or statutes regulate their sales. Under the guise of selling for a purpose permitted by a statute, they cannot sell for another purpose.<sup>32</sup> If he may sell for medical, mechanical or culinary purposes, he may not sell by the keg or barrel for the purpose of manufacturing other liquors to be consumed as beverages.<sup>33</sup> If he knows that the purchaser does not buy it for one of the purposes for which he may sell it, he cannot shut his eyes to the intention of the purchaser, whatever he may say, and thus escape punishment, if in fact it be used for another purpose.<sup>34</sup> These permits do not extend, as a rule, so far as to enable the holders of them to sell to others to be used in compounding medicines;<sup>35</sup> nor may he compound medicine with them and sell them except as he may sell liquors in accordance with the provisions of the statute.<sup>36</sup>

<sup>29</sup> Mills v. Perkins, 120 Mass. 41.

<sup>30</sup> State v. Elliott (Kan.), 26 Pac. 55.

<sup>31</sup> King v. State, 66 Miss. 502; 6 So. 188; Snead v. State, 40 Tex. Civ. App. 262; 40 S. W. 597; Bradley v. State, 121 Ga. 201; 40 S. E. 981.

<sup>32</sup> State v. Salts, 77 Iowa, 193; 39 N. W. 167; State v. Cox, 23 W. Va. 797; State v. Hamil, 127 Mo. App. 661; 106 S. W. 1103.

<sup>33</sup> State v. Yager, 72 Iowa, 421; 34 N. W. 188. (In this case to make a kind of soda water.)

<sup>34</sup> McGuire v. State, 37 Miss. 369.

<sup>35</sup> State v. Brown, 60 N. H. 205.

<sup>36</sup> State v. Gray, 61 Conn. 39; 22 Atl. 675.

But the contrary of this proposition has been held in Kentucky. Commonwealth v. Fowler, 98 Ky. 648; 34 S. W. 21.



A statute permitting druggists to "keep spirituous liquors for compounding their medicines" does not authorize them to sell them un compounded.<sup>37</sup> If his violation of the liquor law has the effect to revoke or cancel his certificate or permit to sell, he may then be indicted for unlawfully keeping such liquors; and it is no defense for him that when the liquor was seized he did not have actual possession of it.<sup>38</sup> An occasional statute requires druggists to report all sales made, but his failure to make such reports does not render the sales illegal; it is his failure to make the reports that is the offense and not the sale.<sup>39</sup>

### **Sec. 507. Druggists' sales in prohibition States.**

When prohibition was first agitated in several States the question was at once presented whether or not liquors should not be sold for certain specified purposes, as for medical, scientific and mechanical purposes. To prevent the absolute use of alcohol in all instances would be so disastrous to the inhabitants of a State that it was not to be contemplated for an instant. So that, in all such States, whether the prohibition enactment is statutory or constitutional, exceptions are made as to alcohol, or other like liquids for these purposes as well as wine for sacramental use. Invariably sales of alcohol and wine for these purposes are regulated by statute, and druggists or pharmacists are the persons designated as those who may sell such liquors, and heavy penalties are provided if they violate the statutes permitting them to sell. They must, in all such States, have a "permit" to sell,<sup>40</sup> and without this they cannot sell liquor under any circumstances.<sup>41</sup> Whether he must

<sup>37</sup> State v. Shaw, 58 N. H. 72.

Upon a charge of unlawfully keeping liquors he may show that he had applied for a druggists' license; and that shortly after the time laid as to the keeping he may also show that he received a license upon such application. Commonwealth v. Wellington, 146 Mass. 566; 16 N. E. 446.

<sup>38</sup> State v. Ward, 75 Iowa, 637; 36 N. W. 765.

<sup>39</sup> State v. Von Haltzschuber, 72 Iowa, 541; 34 N. W. 323.

<sup>40</sup> The term "license" seems to be obnoxious to Legislatures in this connection.

<sup>41</sup> State v. Bissell, 67 Iowa, 616; 25 N. W. 831; State v. Courtney, 73 Iowa, 619; 35 N. W. 685; State v. Douglass, 73 Iowa, 279; 34 N. W. 856.

give a bond of course depends upon the requirements of each particular statute.<sup>42</sup> Of course, these permits do not authorize a pharmacist to sell or give away liquor for an unlawful purpose.<sup>43</sup> The amount of liquor he may keep on hand is usually regulated by statute;<sup>44</sup> but if not, then he can exercise his own desires in that respect. Usually he must be punished under the pharmacist's act, but it may be so drawn as to subject him to a penalty not only inflicted by that statute, but also under one inflicting a penalty upon any one making sales of liquor. Such a statute is constitutional.<sup>45</sup>

### Sec. 508. Sales by druggists upon prescriptions.

Sales by druggists are permitted in a number of States upon physicians' prescriptions. Not infrequently these druggists must have a permit or license even to fill such prescriptions or make sales thereon.<sup>46</sup> These statutes have a twofold

<sup>42</sup> State v. Courtney, 73 Iowa, 619; 35 N. W. 685.

<sup>43</sup> State v. Harris, 64 Iowa, 287; 20 N. W. 439.

<sup>44</sup> State v. Shank, 79 Iowa, 47; 44 N. W. 241.

<sup>45</sup> State v. Duggan, 15 R. I. 403; 6 Atl. 787. See State v. Hoagland, 77 Iowa, 135; 41 N. W. 595.

If a druggist may sell liquors, it is not unlawful for him to keep them for sale. Selma v. Brewer (Col. App.), 98 Pac. 61.

Under Kentucky local option law, see Board v. Forman, 102 Ky. 496; 43 S. W. 682; 19 Ky. L. Rep. 1553.

If there be no evidence the defendant was a registered pharmacist, he cannot escape on the plea that he should have been indicted as a pharmacist; but may be punished under the general statute for illegal sales. State v. Paul, 87 Mo. App. 47. See also State

v. Bock, 99 Mo. App. 34; 72 S. W. 466.

<sup>46</sup> As to who are and who are not druggists under these acts is a matter of purely local importance. In Massachusetts a merchant dealing principally in alcohol was not a druggist, or did not come within the druggist statute of 1869, c. 415. Mills v. Perkins, 120 Mass. 41.

The Act of Missouri of May 19, 1879, was repealed by the Act of March 26, 1881. State v. Roller, 77 Mo. 120; State v. Johnson, 17 Mo. App. 156; State v. Brown, 18 Mo. App. 620.

As to what statute a druggist making an illegal sale must be prosecuted under in Missouri, see State v. Randall, 73 Mo. App. 463; State v. Alexander, 73 Mo. App. 605; State v. Witty, 74 Mo. App. 550; State v. Davis, 76 Mo. App. 586; State v. Steele, 84 Mo. App. 316; State v. Goff, 66 Mo.

object in view: The one is to prevent the indiscriminate sale of intoxicating liquors by druggists, especially for improper purposes, and the other is to enable honest druggists to protect themselves from prosecutions where they have made honest sales.<sup>47</sup> As these statutes are for the protection of the druggist, and the statute specifically declares that he must have a prescription in order to make the sale, a sale without it cannot be in any way justified on the ground of necessity;<sup>48</sup> but if the sale is made upon the prescription in good faith, and not as a subterfuge to enable one to obtain the liquor as a beverage,<sup>49</sup> the prescription is a full protection to him and a complete justification in making it.<sup>50</sup> "There is a reason, and a solid one, for requiring a 'written prescription,' for it is evi-

App. 491; *State v. Coday*, 69 Mo. App. 70; *State v. Williams*, 69 Mo. App. 284, 286; *State v. McAnally*, 66 Mo. App. 329; *State v. Goff*, 70 Mo. App. 295. These Missouri cases hold that a licensed druggist cannot be prosecuted under the dramshop act. *Knox City v. Whiteaker*, 87 Mo. App. 468.

As to prosecutions in Michigan, see *Anderson v. Van Buren Circuit Judge*, 130 Mich. 695; 90 N. W. 692; 9 Detroit Leg. N. 222.

Only druggists are protected by these prescriptions. *State v. Shanks*, 98 Mo. App. 138; 71 S. W. 1065.

<sup>47</sup> *Kyle v. State*, 18 Ind. App. 136; 47 N. E. 647.

<sup>48</sup> *Barton v. State*, 99 Ind. 89; *State v. Searcy*, 46 Mo. 421; *State v. Hendrix*, 98 Mo. 374; 11 S. W. 728; *Tilford v. State*, 109 Ind. 359; 10 N. E. 107; *Snead v. State*, 40 Tex. Cr. App. 262; 49 S. W. 597; *Powell v. Commonwealth (Ky.)*, 66 S. W. 818; 23 Ky. L. Rep. 2167; *State v. Hens-*

*ley*, 94 Mo. App. 151; 67 S. W. 964; *Commonwealth v. Pierce*, 147 Mass. 161; 16 N. E. 705; *State v. Wright*, 20 Mo. App. 412; *Nichols v. State*, 39 Tex. Cr. App. 80; 40 S. W. 268; *Williams v. State*, 53 Tex. Cr. App. 156; 109 S. W. 189; *Watson v. State*, 42 Tex. Cr. App. 13; 57 S. W. 101.

<sup>49</sup> *Commonwealth v. Joslin*, 158 Mass. 482; 33 N. E. 653; 21 L. R. A. 449; *Commonwealth v. Reynolds*, 89 Ky. 147; 12 S. W. 132; 20 S. W. 167; *Commonwealth v. Gould*, 158 Mass. 499; 33 N. E. 656; *Snead v. State*, 40 Tex. Cr. App. 262; 49 S. W. 595; *State v. Terry*, 72 N. J. L. 375; 61 Atl. 148; *State v. May*, 33 S. C. 39; 11 S. E. 440 (one sale and three deliveries).

<sup>50</sup> *De Tarr v. State*, 37 Ind. App. 323; 76 N. E. 897; *Kyle v. State*, 18 Ind. App. 136; 47 N. E. 647; *Snead v. State*, 40 Tex. Cr. App. 262; 49 S. W. 595; *State v. Gregory*, 110 Iowa, 624; 82 N. W. 335.

dence of a tangible and lasting form, and it puts a professional man upon record as having deliberately advised a patient to buy and a druggist to sell liquor on Sunday.<sup>51</sup> It is an effective means of preventing abuse, and is quite as important in a case where the druggist is himself a physician as any other. But we need not pursue the discussion further, for the statute says there must be a 'written prescription,' and it is the duty of everybody, physicians as well as any one else, to obey the law."<sup>52</sup> It was therefore held that a physician cannot sell without a prescription, although he was a druggist.<sup>53</sup> In other States it is held that a physician cannot give a prescription for the sale of his own liquors;<sup>54</sup> while in others it is held that he may.<sup>55</sup> But a prescription is not required for the sale of medicine containing whisky, or a compound consisting of whisky and herbs so that it cannot be consumed as a beverage, and which the purchaser intends to use as a medicine, as the druggist is informed or knows.<sup>56</sup> The statute sometimes designates what physicians may give the prescription. Where it is said that it should be given by "a reputable practicing physician," the court refused to say that a physician

<sup>51</sup> The statute under review forbade sales on Sunday without a physician's prescription.

<sup>52</sup> "It is possible that there may be cases of urgent necessity demanding immediate action where a druggist would be held excused from selling without a 'written prescription,'" says the court.

<sup>53</sup> *Tilford v. State*, 109 Ind. 359; 10 N. E. 107.

<sup>54</sup> *State v. Carnahan*, 63 Mo. App. 244; 1 Mo. App. Rep. 766; *State v. Anderson*, 81 Mo. 78; *Holt v. State*, 62 Neb. 134; 86 N. W. 1073; *Commonwealth v. Matthews*, 3 Ky. L. Rep. (abstract) 473; *McCroy v. Commonwealth*, 8 Ky. L. Rep. (abstract) 437.

<sup>55</sup> *Boone v. State*, 10 Tex. App.

418; 38 S. W. 641; *State v. Pollard*, 72 Mo. App. 230; *State v. Manning*, 107 Mo. App. 51; 81 S. W. 223; *State v. Furney*, 178 Mo. 385; 77 S. W. 992; see *State v. Bailey*, 73 Mo. App. 576.

<sup>56</sup> *Parker v. State*, 31 Ind. App. 650; 68 N. E. 912; *Good v. State*, 87 Miss. 495; 40 So. 12; *De Tarr v. State*, 37 Ind. App. 323; 76 N. E. 897; *State v. Williams*, (S. D.), 104 N. W. 546; *State v. Costa*, 78 Vt. 198; 62 Atl. 38; *Queen v. Armstrong*, 13 Junta, 408; *Pearce v. State*, 48 Tex. Cr. App. 352; 88 S. W. 234; *State v. Roller*, 77 Mo. 120; *Commonwealth v. Fowler*, 98 Ky. 648; 34 S. W. 21. A dentist is not a physician. *State v. McNinn*, 118 N. C. 1259; 24 S. E. 523.



without a license to practice could give one.<sup>57</sup> But where the statute required the prescription to be given by a "regularly registered and practicing physician," to be admitted in evidence, it was held that it must be shown that the physician was such a physician as the statute required should give a prescription.<sup>58</sup> In Missouri druggists residing in local option counties may make sales upon a physician's prescription;<sup>59</sup> and so they may in a local option county in Texas<sup>60</sup> and in Kentucky.<sup>61</sup> The prescription must be issued at the request of the purchaser of the liquor or some one acting for him; and a prescription issued for a person not the purchaser is no defense for the druggist.<sup>62</sup> So the prescription must be in actual existence when the sale is made; and it cannot be issued thereafter so as to protect the seller.<sup>63</sup> Only such druggists can sell under a prescription as the statute specifies. If it specifies "registered pharmacist," then only a registered pharmacist can sell under it.<sup>64</sup> But where a statute prohibited any

<sup>57</sup> *DeTarr v. State*, 37 Ind. App. 323; 78 N. E. 897.

<sup>58</sup> *State v. Millikan*, 24 Mo. App. 462.

A statute requiring the prescription to be given by a licensed physician "or other person" prevents an unlicensed person practicing medicine to give it. *McAllister v. State* (Ala.), 47 So. 161.

The fact that the applicant obtained the prescription by an imposition upon the physician will not make the pharmacist liable to the penalty of the statute. *Walker v. State* (Tex. Cr. App.), 64 S. W. 1052.

<sup>59</sup> *State v. Russell*, 99 Mo. App. 373; 73 S. W. 297.

<sup>60</sup> *Gordon v. State* (Tex. Cr. App.), 73 S. W. 398; *Greiner-Kelley Drug Co. v. Truett* (Tex. Civ. App.), 75 S. W. 536.

<sup>61</sup> *Powell v. Commonwealth* (Ky.), 66 S. W. 818; 23 Ky. L. Rep. 2167.

<sup>62</sup> *State v. Hensley*, 94 Mo. App. 151; 67 S. W. 964; *State v. Bailey*, 73 Mo. App. 576; *Miller v. State*, 37 Tex. Cr. App. 35; 38 S. W. 772.

But this rule does not apply where the sale is to a husband for his wife (and perhaps for his child). *Commonwealth v. Byers* (Ky.), 109 S. W. 895; 33 Ky. L. Rep. 252.

<sup>63</sup> *State v. Hensley*, 94 Mo. App. 151; 67 S. W. 964; *State v. Hale*, 72 Mo. App. 78.

<sup>64</sup> *State v. Kampman*, 81 Mo. App. 205; *State v. Feagan*, 70 Mo. App. 406; *State v. Dunning*, 14 S. D. 316; 85 N. W. 589; *Woods v. State*, 36 Ark. 36; 38 Am. Rep. 22; *Chew v. State*, 43 Ark. 361; *State v. Gray*, 61 Conn. 39; 22 Atl. 675; *Gault v. State*,

person selling liquor in any quantity, except upon a physician prescribing it in good faith for his patients, it was held lawful for any druggist to fill the prescription and sell the liquor therein called for.<sup>65</sup> The fact that the statute requires the prescription to be cancelled, and provides a penalty for the druggist if he do not do so, does not render the sale invalid or an offense.<sup>66</sup> Where a druggist can sell liquors to an applicant upon his written request, which must contain certain statements, a sale upon an application not having such statements is illegal.<sup>67</sup> If the statute requires the purchaser to make an affidavit concerning the object of the purchase, a sale without the affidavit is illegal.<sup>68</sup> A statute prohibiting a druggist from allowing the liquor he sells to be consumed on his premises is valid, even as to a physician also running the drug store and prescribing for his own patients.<sup>69</sup>

34 Ga. 533; *State v. Bissell*, 67 Iowa, 416; 25 N. W. 831; *Salina v. Seitz*, 16 Kan. 163.

An ordinance requiring a license but providing that it shall not apply to sales by druggists "upon the prescription of a reputable physician and for medical purposes," does not require the druggist to have a prescription in order to sell liquor. *Prowitt v. Denver* (Colo. App.), 52 Pac. 286.

<sup>65</sup> *Parker v. Commonwealth* (Ky.), 12 S. W. 276; *Commonwealth v. Reynolds*, 89 Ky. 147; 12 S. W. 132; 20 S. W. 167. *Contra*, *Bottle v. State*, 51 Ark. 97; 10 S. W. 12.

<sup>66</sup> *Snead v. State*, 40 Tex. Cr. App. 262; 49 S. W. 595.

In New York it has been held that it must be shown that the sale was for medical purposes, even when made upon a prescription; but that was when no statute had been enacted concerning

prescriptions. *People v. Safford*, 5 Denio, 112.

<sup>67</sup> *Long v. Joder*, 139 Iowa, 471; 116 N. W. 1063; *State v. Gregory*, 110 Iowa, 624; 82 N. W. 335. See *State v. Huff*, 76 Iowa, 200; 46 N. W. 720.

<sup>68</sup> *State v. Gregory*, 74 Kan. 467; 87 Pac. 370.

<sup>69</sup> *State v. Finney*, 178 Mo. 385; 77 S. W. 992.

Where a druggist sought to restrain the collection of a liquor tax, claiming that all sales of liquors he had made were on prescriptions issued by reputable physicians, such as the statute required, it was held that he had the burden to show that fact. *Hubbell v. Ebrit*, 8 Ohio Com. Pl. 116.

A compound in half-pint bottle of rock candy, ginger, glycerine, and whisky in equal parts without a prescription is an offense under a statute requiring a prescription for a sale of intoxicat-

**Sec. 509. Prescription for Sunday and holiday sales.**

In Indiana a statute requires a prescription from a reputable practicing physician to protect the seller selling on Sundays and holidays. The purpose of this statute "is to protect the Sabbath, and the other days therein named, from the evils that might result from the sale of intoxicating liquors. The section is an absolute inhibition upon the sale of such liquors on the days named, to be drunk as a beverage. It seems to recognize the right of druggists to sell such liquors for medicinal purposes, but imposes a condition on such sales on Sunday \* \* \* that is, that the sale shall be made only to those who have procured a written prescription therefor. The intention is to prohibit the sale on those days except in case of sickness. And in order that this intention may not be thwarted by feigned sickness the prescription is required."<sup>70</sup> "There is a reason, and a solid one, for requiring a 'written prescription,' for it is evidence of a tangible and lasting form, and it puts a professional man upon record as having deliberately advised a patient to buy, and a druggist to sell, liquor on Sunday. It is an effective means of preventing abuses and is quite as important in a case where the

ing liquors. *State v. Sharpe*, 119 Mo. App. 386; 95 S. W. 298.

A statute authorizing a druggist to sell upon a physician's prescription does not authorize a distiller or grocer to sell upon it. *Commonwealth v. Day*, 95 Ky. 120; 23 S. W. 952; 15 Ky. L. Rep. 466.

Unless the statute requires it, the druggist need not have a license. *Commonwealth v. McGrorty*, 5 Ky. L. Rep. 674; *Commonwealth v. Reynolds*, 6 Ky. L. Rep. (abstract) 520.

Where a statute requires a prescription to sell liquors, it is an offense to sell it as a medicine

without one. *State v. Hendrix*, 98 Mo. 374; 11 S. W. 728; *Mays v. Commonwealth*, 3 Ky. L. Rep. (abstract) 250; *State v. Moore*, 107 Mo. 78; 16 S. W. 937; *Maupin v. Commonwealth*, 1 Ky. L. Rep. (abstract) 281.

Where a person secured of a doctor a prescription for whisky for his own use, but procured the whisky thereon for another, with such other's money, it was held that he sold the liquor to such other, and had made an illegal sale. *Hawkins v. State* (Tex. Cr. App.), 114 S. W. 813.

<sup>70</sup> *Benton v. State*, 99 Ind. 89.

druggist is himself a physician as in any other."<sup>71</sup> "It may be remarked, *prima facie*, every sale of intoxicating liquor on Sunday, and the other days named in the statute, is unlawful. The burden of showing such sale to be lawful rests upon the person making the sale, and the statute contemplates that such proof shall be in writing. To permit it to be made in any other way would throw open the door to evasions of the plain provisions of the statute. It will be observed that the prescription offered in evidence was given six days before the sale for which appellant was prosecuted. If this were a prosecution for selling without a license, on a week day, and the question involved was one of a sale in good faith for medicinal purposes, this prescription would, perhaps, be strong evidence in the appellant's favor; but, in our opinion, it was no justification of a sale made on Sunday, six days after its date."<sup>72</sup>

### Sec. 510. Kind of prescriptions.

Unless a statute requires it the prescription need not be a written one, at least where the words "requisition of a physician for medical purposes" are used in the statute.<sup>73</sup> But where the statutes used the words "written prescription" nothing else will do. There must be a separate prescription for each sale, and there cannot be a general or "continuing" prescription.<sup>74</sup> Thus, where a prescription was as follows, "John W. Edwards: Let Benj. Howard have one-half pint of whisky and glycerine for medicinal purposes. Repeat as

<sup>71</sup> *Tilford v. State*, 109 Ind. 759; 10 N. E. 107; *Edwards v. State*, 121 Ind. 450; 23 N. E. 277.

<sup>72</sup> The prescription was itself very defective in form. *Edwards v. State*, 121 Ind. 450; 23 N. E. 277; *Caldwell v. State*, 18 Ind. App. 48; 46 N. E. 697; *Walker v. State* (Tex. Cr. App.), 64 S. W. 1052.

<sup>73</sup> *Bain v. State*, 61 Ala. 75. The word prescription means a

written instrument. *Caldwell v. State*, 18 Ind. App. 48; 46 N. E. 697.

<sup>74</sup> *Carrington v. Commonwealth*, 78 Ky. 83; *Kyle v. State*, 18 Ind. App. 136; 47 N. E. 647; *Commonwealth v. Day*, 95 Ky. 120; 23 S. W. 952; 15 Ky. L. Rep. 466; *State v. Cox*, 23 W. Va. 797. See also *Edwards v. State*, 121 Ind. 450; 23 N. E. 277; *Irish v. State* (Tex. Cr. App.), 25 S. W. 634.



needed," and duly signed by a physician, it was held that it was not sufficient in form. "The prescription offered in evidence is somewhat vague and uncertain in its terms," said the court. "It prescribes whisky and glycerine, but gives no directions as to the proportions in which they are to be mixed.

\* \* \* There is no direction as to how frequently or in what quantities it shall be taken, but all is left to the judgment of the patient. But whatever else may be said of this prescription, it cannot be said that it advises the patient to buy, or the druggist to sell, on Sunday."<sup>75</sup> So a writing purporting to be signed by a physician, which read, "R, whisky, one quart, for medical use," not addressed to anyone, and not containing the name of the patient to whom the liquor was to be sold, nor the manner of its use, nor a request that the sale be made on Sunday,<sup>76</sup> was held not to be such a prescription as a statute which required one from a regularly practicing physician to render the sale a legal transaction.<sup>77</sup> So a prescription addressed to no one, and made for a "sufficient quantity" is not a compliance with the statute.<sup>78</sup> Where a statute required that the prescription should contain a statement that the liquor was "absolutely" necessary as a medicine, the omission of the word "absolutely" was held to render the prescription insufficient.<sup>79</sup> Where a statute requires the prescription to be dated, a dating with numerals only is sufficient.<sup>80</sup> A signing with the initials alone is a sufficient signature.<sup>81</sup> Where a statute requires the physician to certify

<sup>75</sup> *Edwards v. State*, 121 Ind. 450; 23 N. E. 277; *Kyle v. State*, 18 Ind. App. 136; 47 N. E. 647.

<sup>76</sup> The sale was made on Sunday in both of the last two cases above, but the statute requiring a prescription for sales on Sunday had no provision in it that the prescription should contain a request for sales on that day.

<sup>77</sup> *Caldwell v. State*, 18 Ind. App. 48; 46 N. E. 697. See *State v. Anthony*, 52 Mo. App. 507; *State v. Davis*, 129 Mo. App. 129; 108 S. W. 127.

<sup>78</sup> *Kyle v. State*, 18 Ind. App. 136; 47 N. E. 647.

<sup>79</sup> *State v. Titrich*, 34 W. Va. 137; 11 S. E. 1002; *State v. Nixford*, 46 Mo. App. 494; *State v. Davis*, 76 Mo. App. 586; *Prowitt v. Denver*, 11 Colo. App. 70; 52 Pac. 286; *State v. Manning*, 107 Mo. App. 51; 81 S. W. 223.

<sup>80</sup> In this case as follows: "12, 16, 84." *State v. Clevenger*, 25 Mo. App. 653.

<sup>81</sup> *State v. Clevenger*, 25 Mo. App. 653.

upon the honor of a physician that he has personally examined the person to whom the prescription is given, an omission of that statement avoids the prescription so far as it is a defense.<sup>82</sup> Where a statute required a prescription to name the person for whom it was issued and that the liquor prescribed is a necessary remedy, a prescription is a sufficient compliance with its provisions which states that it is prepared for a certain person, is a necessary remedy, and is for medical purposes.<sup>83</sup> But where a statute required the prescription to be dated, state the quantity of liquor to be sold, as well as the quantity prescribed, and the name of the person to whom it is prescribed, a prescription is not sufficient and is no protection to the druggist that has no date, nor the name of the person to whom it is prescribed, and on which eight ounces of whisky is sold instead of two, as prescribed, although otherwise sufficient.<sup>84</sup> The cases cited in this section show that unless the prescription is such as the statute requires, it is no protection to the druggist filling it.<sup>85</sup> Where the statute required the prescription to be a "written" one, it was held that it need not be in the form of an order on the druggist requesting him to furnish the liquor, but it was sufficient if the liquor was prescribed for the patient.<sup>86</sup> If the statute requires that the name of the person to whom the prescription is given be specified, a designation as "Mr. Gibson" is sufficient if the Gibson referred to obtained the liquor.<sup>87</sup> Designating the liquor to be sold by Latin abbreviations, as "*R. Spts. Frumenti ojj.*," which means two pints of spirits frumenti, is a compliance with a statute requiring "the kind and quantity of liquor" to be furnished.<sup>88</sup> It is a question for the court to determine whether the paper in evidence is a prescription within the meaning of the statute.<sup>89</sup> In Iowa, if the applicant for the

<sup>82</sup> McLean v. State, 43 Tex. Cr. App. 213; 64 S. W. 865.

<sup>83</sup> State v. Hammack, 93 Mo. App. 521.

<sup>84</sup> Hutson v. Commonwealth (Ky.), 105 S. W. 955; 32 Ky. L. Rep. 392.

<sup>85</sup> State v. Bowers, 65 Mo. App. 639; 2 Mo. App. Rep. 1181.

<sup>86</sup> State v. Blufield Drug Co., 43 W. Va. 144; 27 S. E. 350.

<sup>87</sup> State v. Blufield Drug Co., 43 W. Va. 144; 27 S. E. 350.

<sup>88</sup> State v. Blufield Drug Co., 43 W. Va. 144; 27 S. E. 350.

<sup>89</sup> Hubbell v. Ebrite, 8 Ohio Com. Pl. 116.

liquor lives in a city or town where the streets are named and the residences numbered, the prescription must contain the residence number of the person for whom the prescription was prepared, and if not for a person residing in such a city or town, then it must contain his address; and a prescription short of this is no protection to the druggist filling it.<sup>90</sup> Where the prescription was one-half pint of whisky with a little "gadine" cordial and about ten drops of creosote in it, given to an applicant who said he had a deep cold and wanted "some whisky or something for it," it was held to be a question for the jury whether the sale upon such a prescription (the druggist himself having written it) was made in good faith.<sup>91</sup>

### **Sec. 511. Registration and reports of sales.**

In Illinois, an ordinance requiring druggists to keep a registry of sales made, showing when and to whom made, and the amount sold, and also requiring a report of them to the clerk of the city, was held void as being unduly oppressive.<sup>92</sup> But statutes of a like import have not met such a fate. A statute requiring reports of all sales made covers a sale by prescription.<sup>93</sup> The reports are public records when made and filed with the proper official and may be used in a prosecution against the person making them, and the statute is not unconstitutional on the ground that the accused is thereby made to incriminate himself.<sup>94</sup> A statute requiring the reports to be made on a particular day of each month is satisfied if made

<sup>90</sup> *State v. Harris*, 122 Iowa, 78; 97 N. W. 1093.

<sup>91</sup> *Rowe v. Commonwealth* (Ky.), 70 S. W. 407; 24 Ky. L. Rep. 974.

<sup>92</sup> *Clinton v. Phillips*, 58 Ill. 102.

<sup>93</sup> *State v. Chamberlin*, 74 Iowa, 266; 37 N. W. 326; *Chase v. Van Buren* Circuit Judge, 148 Mich. 149; 111 N. W. 750; 14 Detroit L. N. 73; *Regina v. El-*

*borne*, 19 Ont. App. 439; reversing 21 Ont. 504; *Regina v. Denham*, 35 Up. Can. Rep. 503; *Regina v. McCoy*, 23 Ont. Rep. 442.

<sup>94</sup> *State v. Smith*, 74 Iowa, 580; 38 N. W. 492; *State v. Cummins*, 76 Iowa, 133; 40 N. W. 124; *People v. Shuler*, 136 Mich. 161; 98 N. W. 986; 10 Detroit L. N. 1004.

on any day of that month, the statute not being mandatory;<sup>95</sup> but one requiring the report to be made on a certain day of each month, "or within five days thereafter," requires the report to be made within that time, and if not so made subjects the druggist to the penalty of the statute for not having complied with its terms.<sup>96</sup> As these reports are official documents their execution need not be proven before admitting them in evidence, the question of identification being all that is necessary.<sup>97</sup> Statutes inflicting penalties for false reports cover false reports made through mistakes or inadvertence.<sup>98</sup> Of course, these statutes have no retrospective effect.<sup>99</sup> Where a statute requires the purchaser to sign a registry of the sale, if there be a conflict whether the sale was actually made, the registry may be put in evidence.<sup>1</sup> An indictment which charges that the defendant neither made a record of his sales nor a report to the proper authority, charges two separate offenses, and is bad for duplicity.<sup>2</sup> Statutes requiring registration and weekly reports of sales are constitutional.<sup>3</sup> A failure to report a sale does not make the sale illegal, but simply lays the delinquent liable for a failure to report.<sup>4</sup> The use of ditto marks indicating dates of sales and residences of purchasers does not render the reports an insufficient compliance with a statute requiring the dates of sales and resi-

<sup>95</sup> *Abbott v. Sartori*, 57 Iowa, 656; 11 N. W. 626.

<sup>96</sup> *State v. McEntee*, 68 Iowa, 381; 27 N. W. 265.

<sup>97</sup> *State v. Thompson*, 74 Iowa, 119; 37 N. W. 104.

<sup>98</sup> *State v. Chamberlin*, 74 Iowa, 266; 37 N. W. 326. This seems to be a very harsh rule, and probably owes its origin to the fact of actual necessity in order to prevent evasion of the penalty of the statute.

<sup>99</sup> *State v. Haltzschullerr*, 72 Iowa, 541; 34 N. W. 323.

In Texas a druggist not making report within the time re-

quired by statute incurs a liability to a penalty even though the prescriptions were properly filed. *Holland v. State* (Tex. Cr. App.), 103 S. W. 631.

<sup>1</sup> *State v. Shelton*, 16 Wash. 590; 48 Pac. 258.

<sup>2</sup> *Chase v. Van Buren Circuit Judge*, 148 Mich. 149; 111 N. W. 750; 14 Detroit Leg. N. 73.

<sup>3</sup> *People v. Shuler*, 136 Mich. 161; 98 N. W. 986; 10 Detroit Leg. N. 1004.

<sup>4</sup> *People v. Thompson*, 147 Mich. 444; 111 N. W. 96; 13 Detroit Leg. N. 1122.



dences of purchasers to be given.<sup>5</sup> In stating the object of the purchaser it is sufficient to use the word "medical."<sup>6</sup> But an affidavit containing nothing but the signature of the officer is not a compliance with a statute requiring the druggist making the sales to "make and swear to" his report of liquor sold.<sup>7</sup>

### Sec. 512. Sales by physicians.

The law permits a physician to administer intoxicating liquors to his patients, and the numerous statutes on the subject of intoxicating liquors have seldom attempted to prevent him from doing so, even in prohibition States.<sup>8</sup> If the physician buys the liquor for his patient and turns it over to him, in pursuance of a prescription he has given him, he commits no offense.<sup>9</sup> Yet in Kansas and Iowa it has been held that he cannot sell liquor to his patient nor put it up in prescriptions unless he has a permit to sell liquor, such as is required of druggists, the statute forbidding druggists and all other persons to sell liquor without a permit.<sup>10</sup> And in Alabama, where the statute made no exception as to physicians, it was held that a physician could not furnish liquor to his patient as a medicine, though he acted in the utmost good faith.<sup>11</sup> Where a physician may administer liquor to a patient

<sup>5</sup> *People v. Renner*, 135 Mich. 629; 98 N. W. 397; 101 N. W. 403; 10 Det. L. N. 907.

<sup>6</sup> *People v. Renner*, *supra*.

<sup>7</sup> *People v. Renner*, *supra*.

Where the purpose of the sale must be given, a failure to do so is an offense. *Barver v. Brenner* (Iowa), 119 N. W. 142.

<sup>8</sup> *State v. Wilson*, 71 Kan. 263; 80 Pac. 565; *Walker v. State* (Tex. Cr. App.), 64 S. W. 1052; *McCrary v. Commonwealth*, 8 Ky. L. Rep. (abstract) 437; *Sarris v. Commonwealth*, 83 Ky. 327; *State v. Larimore*, 19 Mo. 391; *King v. Chicoyne*, 8 Can. Cr. Cas. 507.

<sup>9</sup> *Key v. State*, 37 Tex. Cr. App. 77; 38 S. W. 773. For cases where the seller is both physician and druggist, see previous section.

<sup>10</sup> *State v. Fleming*, 32 Kan. 588; 5 Pac. 19; *State v. Bena-done*, 79 Iowa, 90; 44 N. W. 218. So in Colorado. *Braisted v. People*, 38 Colo. 49; 88 Pac. 150, 151; and in Nebraska, *Holt v. State*, 62 Neb. 134; 86 N. W. 1073.

<sup>11</sup> *Carson v. State*, 69 Ala. 235; *Thomason v. State*, 70 Ala. 20; *State v. Benadom*, 79 Iowa, 90; 44 N. W. 218.

he must act in the utmost good faith. He cannot use his professional power as a means of furnishing liquors as a beverage, or to one who does not need it. In one case where a physician gave a prescription for a quart of whisky, which was filled at a drug store owned by a partnership of which he was a member, the sale was held illegal. "The statute contemplates," said the court, "the *bona fide* administering of such liquors as a medicine in cases of necessity, not otherwise. We are all of opinion that the giving by a physician of an order for a quart of whisky, on a drug store in which he himself was a partner, without more, is not the administering of medicine within the meaning of the law, but an illegal sale of spirituous liquors, contrary to the terms of the statute."<sup>12</sup> A statute is valid that casts upon the physician the burden to show that the condition of the patient reasonably demanded the use of intoxicating liquors.<sup>13</sup> He must make the sale as a physician, and reasonably believe that the patient needs it, and not upon the suggestion of the patient that he needs it,<sup>14</sup> or that his wife or a member of his family needs it.<sup>15</sup> But where a statute permitted a druggist to sell liquor for sacramental, medicinal and mechanical purposes, and required him to keep a registry of the sale, stating the time it was made, the amount and kind of liquor sold, and the name of the purchaser, it was held that if the purchaser stated to him that the liquor was for one of the three objects named, and he believed him and acted in good faith in making the sale, he was not required to investigate the truthfulness of the purchaser's statement; but if that statement was a mere pretense and the druggist knew it, or did not act in good faith in making the sale, he violated the statute.<sup>16</sup>

<sup>12</sup> Brinson v. State, 89 Ala 105; 8 So. 527.

<sup>13</sup> Commonwealth v. Minor, 88 Ky. 422; 11 S. W. 472.

<sup>14</sup> State v. Cloughly, 73 Iowa, 626; 35 N. W. 652.

<sup>15</sup> Thomason v. State, 70 Ala. 20.

<sup>16</sup> People v. Hinchman, 75 Mich. 587; 42 N. W. 1006; 4 L. R. A. 707.

In Iowa it has been held that a physician must have a permit or license to furnish liquor to his patients upon prescriptions. State v. Benadom, 79 Iowa, 90; 44 N.

### Sec. 513. Physicians illegally giving a prescription.

In an occasional State statutes forbid a physician giving a prescription for liquor when the person to whom it is given does not actually need the liquor. If the physician believes in good faith that the patient needs the liquor he may prescribe it for him,<sup>17</sup> though it turn out he was purposely deceived by the patient in order to obtain the liquor.<sup>18</sup> To show that he did not act in good faith, evidence of the number of prescriptions he has given to other persons within a reasonably limited period of time when the particular prescription was illegally given may be introduced for the purpose of showing an intent on his part to violate the law.<sup>19</sup> A statute casting upon the physician the burden to show that the patient actually needed the liquor is constitutional.<sup>20</sup> A statute prohibiting a physician giving a prescription in a prohibition county to one not actually ill has no reference to a physician writing a prescription for himself.<sup>21</sup> It has been

W. 218. So in Arkansas. *Battle v. State*, 51 Ark. 97; 10 S. W. 12. But in Canada if he acts in good faith he need not have it. *King v. Chicoyne*, 8 Can. Cr. Cas. 507.

Under a power to license, regulate and prohibit the sale of intoxicating liquors, a city may adopt an ordinance requiring all persons selling them to have a license, and may exempt physicians from its provisions. *Carthage v. Carlton*, 99 Ill. App. 338.

The administering of medicine by a physician to his patient is not a sale. *Schaffner v. State*, 8 Ohio St. 642.

Where accused sold straight whisky and a physician thereafter put medicine in it for the prosecuting witness, it was held that an offense had been committed. *Cotton v. State* (Tex.), 120 S. W. 432.

<sup>17</sup> *Commonwealth v. Minor*, 88

Ky. 422; 11 S. W. 472. As to indictment, see *West v. State*, 40 Tex. Cr. App. 575; 51 S. W. 247. See also *State v. Drug Co.*, 43 W. Va. 144; 27 S. E. 350; *Mullins v. State* (Tex. Cr. App.), 68 S. W. 272; *State v. Breaux* (La.), 47 So. 876.

There is no such an offense at common law as that of "unlawfully prescribing." *Commonwealth v. Neal*, 11 Ky. L. Rep. (abstract) 678.

<sup>18</sup> *Walker v. State* (Tex. Cr. App.), 64 S. W. 1052; *People v. Hinchman*, 75 Mich. 587; 42 N. W. 1006; 4 L. R. A. 707; *Commonwealth v. Williams*, 120 Ky. 314; 86 S. W. 553; 27 Ky. L. Rep. 695.

<sup>19</sup> *State v. Atkinson*, 33 S. C. 100; 11 S. E. 93.

<sup>20</sup> *Commonwealth v. Minor*, 88 Ky. 422; 11 S. W. 472.

<sup>21</sup> *Hawk v. People*, 44 Tex. Cr. App. 560; 72 S. W. 842.

held that an ordinance forbidding a physician to give a patient a prescription for liquor when he really did not need it was authorized, and neither unreasonable, oppressive nor an unjust discrimination against the physicians as a class.<sup>22</sup> Of course, a sale is not illegal merely because the druggist does not keep a record of nor report it.<sup>23</sup> A physician illegally giving a prescription need not be licensed or registered in order to commit an offense against a statute prohibiting the giving of a prescription contrary to its terms.<sup>24</sup> A physician who gives a prescription to a person so he can obtain the liquor for another violates the statute,<sup>25</sup> and may be convicted of making an illegal sale, for he is an accomplice or assistant to the seller;<sup>26</sup> but it must be shown that he knew when he gave the prescription that the patient was not sick, or gave it without making a personal examination of him, where the statute requires a personal examination before giving it.<sup>27</sup> The mere giving of the prescription in an improper instance is no offense unless there is a sale upon it.<sup>28</sup> Where a statute required a physician to file an affidavit to enable him to prescribe, it was held that this did not prevent the State from showing that the sale, to the knowledge of the physician, was an improper one.<sup>29</sup> Whether or not a prescription was given in good faith is a question for the jury.<sup>30</sup>

<sup>22</sup> Carthage v. Buckner, 4 Ill. App. 317.

<sup>23</sup> Snead v. State, 40 Tex. Cr. App. 262; 49 S. W. 595.

<sup>24</sup> State v. Anthony, 52 Mo. App. 507.

<sup>25</sup> State v. Berkeley, 41 W. Va. 455; 23 S. E. 608.

<sup>26</sup> McLain v. State, 43 Tex. Cr. App. 213; 64 S. W. 865.

<sup>27</sup> Williams v. State (Tex. Cr. App.), 81 S. W. 1209; Stovall v. State, 37 Tex. Cr. App. 337; 39 S. W. 934; McQuerry v. State (Tex. Cr. App.), 40 S. W. 990.

<sup>28</sup> Williams v. State (Tex. Cr. App.), 77 S. W. 783; Stephens v.

State, 7 Tex. Cr. Rep. 970; 73 S. W. 1056.

<sup>29</sup> Blakeley v. State, 73 Ark. 218; 83 S. W. 948. Sufficiency of affidavit, People v. Renner, 135 Mich. 629; 98 N. W. 397; 100 N. W. 403; 10 Detroit L. N. 907.

<sup>30</sup> Rowe v. Commonwealth (Ky.), 70 S. W. 407; 24 Ky. L. Rep. 974.

Statutes go so far as to require a physician giving a prescription to personally examine the applicant for it before giving it; and makes him liable if it is not given in good faith. Mullins v. State (Tex. Cr. App.), 68 S. W. 272.



## CHAPTER XV.

### LOCAL OPTION.

ART. I. ADOPTION OF LOCAL OPTION.

ART. II. VIOLATION OF LOCAL OPTION LAW.

#### SECTION.

- 514. Distinctive feature of local option statutes.
- 515. Sufficiency of petition for an election.
- 516. Attorney in fact under Indiana statute.
- 517. Separate petitions and remonstrances.
- 518. Withdrawal of name from petition or remonstrance.
- 519. Qualifications of petitioners.
- 520. Territory embraced in petition—Description of territory.
- 521. Including "dry" territory in petition or order.
- 522. To whom and the manner in which the petition must be presented—Filing.
- 523. Notice of hearing.
- 524. Order for election.
- 525. Board of Supervisors in Michigan.
- 526. Signing record.
- 527. Appeal from order for election.
- 528. Petition and order for re-submission.
- 529. Time and place of holding an election.

#### SECTION.

- 530. Notice of time and place of holding an election.
- 531. Time of holding an election.
- 532. Conduct of the election.
- 533. Qualifications of election officers.
- 534. Ballots.
- 535. Who may vote.
- 536. Canvass of ballots and return of result.
- 537. Majority vote, what is—When not defeated.
- 538. Vote necessary to adopt local option.
- 539. Declaration of the result of the election.
- 540. The order of prohibition.
- 541. Order for publications concerning prohibition order.
- 542. Publishing notices of order and result of election.
- 543. When local option takes effect.
- 544. Contesting validity of election.
- 545. Mandamus, when not a local option remedy.
- 546. Prior laws, how affected by local option.

## SECTION.

547. Former laws, when not repealed.  
 548. Changing boundary of district.  
 549. Repeal of local option by vote.  
 550. Local option ordinance, when not invalid.

## SECTION.

551. Eminent domain, power of not involved.  
 552. Cost of election.  
 553. Consent of local authorities.  
 554. Juror's qualification in local option case.  
 555. Local prohibitory or local option statutes.

## ARTICLE I. ADOPTION OF LOCAL OPTION.

**Sec. 514. Distinctive features of local option statutes.**

Local option laws are familiar to all, and in the last few years have been adopted in many States of the Union. They differ from each other as suits the genius of the Legislatures enacting them; but there are two characteristics that run through nearly all of them. In the one, the sale of intoxicating liquors throughout the State is absolutely prohibited (usually sales for medicinal and mechanical purposes are excepted), unless by a majority vote of the electors of a designated political district it is decided that there may be sales under a license.<sup>1</sup> In the other, sales under a license are permitted, unless by a majority vote of the electors of a like political district it is decided that there shall be no sales made therein, usually excepting sales for medicinal and mechanical purposes. It is scarcely necessary to say that the former method meets with the approval of those who believe in the prohibition of the sales of intoxicating liquors, for at one fell sweep of the legislative pen the State is placed upon a prohibition basis. And it goes without saying that the second method is favored by those engaged in the sale of intoxicating liquors, or who desire to sell them, if there must be local option. Local option laws aim to give the people of a district power to control their own affairs with reference to the sale of intoxicating liquors. They are the most democratic of all laws. What the political unit shall be differs in the several States, but the most usual one is the county. But there are many

<sup>1</sup> See *Gallagher v. Meek*, 5 Ky. L. Rep. (abstract) 424.

laws that permit a single township, or a town, or a city, and, in rare instances, a ward in a city or town, to declare its desire for license or for prohibition. The theory is, and that is the ground upon which their constitutionality is sustained, that the local option law is universal throughout the State, but produces different results in different localities as the electors shall decide under its provisions. The results are always that in some of the political units it is a crime to sell intoxicating liquors as a beverage, while in others it is not. The same act in one county is a crime, while in another it is not if the vendor possess a license to make the sale. Usually druggists under permits, in other States under certain restrictions, are allowed to sell liquors for medicinal or even mechanical purposes, where prohibition is adopted. If the electors decided against the granting of licenses, the effect is the same, as to that political unit, as if the entire State had adopted prohibition. Concerning the benefits resulting from the adoption of local prohibition differences of opinion are entertained, but its adoption does not necessarily result in the inhabitants of the political unit adopting it becoming entirely temperate, especially when an adjoining political unit permits sales under licenses. These laws are regarded as mere makeshifts by those who believe in absolute prohibition as the salient remedy to prevent the use of intoxicating liquors. The usual method of procedure is a petition signed by a designated number of electors of the district addressed to a local board, praying that an election be ordered to determine whether sales under a license shall be permitted or whether no sales shall be allowed. If an election be ordered, then it is conducted as general elections are usually conducted and the returns made to the proper officials. Usually such elections can only be held within certain periods of time, as one a year, or one in every two or three years. Possibly the expenses of the election are occasionally borne by the petitioners, but almost, if not quite, universally the elections are held at the public expense. In some few States the right to sell liquors, or whether sales shall be permitted or prohibited, is determined by written petitions or remonstrances against the sale; and while these laws are in effect local option laws, they are

not popularly known as such. Unless there be a statute authorizing the submission of the question of license or no license to the voters of the district, there is no power to do so in any officer or board, and if it is so done the result will be of no force whatever.<sup>1\*</sup>

### Sec. 515. Sufficiency of petition for an election

Proceedings under a local option law are strictly statutory, and the records must affirmatively show every fact necessary to sustain them; no presumptions can be indulged in their favor. Therefore, a petition by which such a proceeding is instituted, must contain all of the averments necessary to give jurisdiction to the court or board before whom it is instituted: and where a statute provides that the petition shall

<sup>1\*</sup>Galindo v. Walter, 8 Cal. App. 234; 96 Pac. 505.

A statute cannot be objected to which provides that if a county as a unit shall vote for prohibition, liquors cannot be sold in cities therein; but if it votes for license yet the cities give majorities for prohibition, prohibition shall prevail in them, on the ground that more force is given in favor of a vote for prohibition than one against it. Board v. Scott, 125 Ky. 545; 101 S. W. 944; 30 Ky. L. Rep. 894.

A constitutional provision that the General Assembly shall pass a law to take the sense of any city, town, district or precinct of the State whether liquors shall be sold therein or the sale regulated requires a statute giving to these local units the power to declare for prohibition and that each should have the privilege of saying conclusively that no liquors should be sold in it, but not conclusively that prohibition should not prevent it. Board v. Scott

(Ky.), 101 S. W. 944; 30 Ky. L. Rep. 894. See Reusch v. Lincoln, 78 Neb. 828; 112 N. W. 377; Wilber v. Ress, 78 Neb. 835; 112 N. W. 379; Griffin v. Tucker, (Tex.) 118 S. W. 635.

A change in the law imposing on druggists the duty to report sales of liquor within prohibitory territory does not require an election to adopt its provisions. People v. Henwood, 123 Mich. 317; 82 N. W. 70.

A city cannot adopt by indirection a measure required to be submitted to the electors. *In re Barclay*, 12 Up. Can. 86.

When a sale actually took place, the fact that it was made to test the validity of the local option law is immaterial; for the suit is not a fictitious one. Lambert v. State, 37 Tex. Cr. App. 232; 39 S. W. 299.

A statute giving the right of local option to "towns and incorporated villages" has no application to cities. Kleppe v. Gard (Minn.), 123 N. W. 665.



aver that in the opinion of the petitioners the public good will be promoted by a prohibition of the sale or giving away of intoxicating liquors within the limits described, a failure to make such averment in the petition will render the entire proceedings void;<sup>2</sup> and if a statute requires that a certain number of qualified voters shall sign it, it will not be sufficient to confer jurisdiction upon a court, where the order of the court issued under it shows that a designated person and "many other citizens of the county" signed it,<sup>3</sup> or that the "election was ordered upon the petition of C and twenty-nine others."<sup>4</sup> But in later cases by the same court it was held that where the petition stated that "the undersigned citizens of said county" prayed for the holding of such an election, it was sufficient, the court holding that the commonly accepted meaning of the word "citizen" conveys the idea of a qualified voter, and that, therefore, the petition was sufficient.<sup>5</sup> And in other cases it has been held that it is not essential to the sufficiency of such a petition that it should show the qualification of the petitioners by direct or indirect averment. Such holding was upon the reasonable theory that the qualification of such petitioners was a jurisdictional fact to be ascertained by the court independent of any allegation in the petition.<sup>6</sup> In other words, such a petition will not be defective for want of an allegation in it that it is signed by the requisite number of qualified petitioners, if in fact it was signed by such number, and the official body with whom it was filed ascertains that fact.<sup>7</sup> If the statute providing for such a petition does not stipulate what particular allegations or statements shall be made in it, it will be sufficient if it expresses in an

<sup>2</sup> Tally v. Grider, 66 Ala. 119; Aiken v. State, 14 Tex. App. 142; Bartel v. Hobson, 107 Iowa, 644; 78 N. W. 689; People v. Board, 32 N. Y. Misc. Rep. 123; 66 N. Y. Supp. 199; Wyatt v. Ryan, 113 Ky. 306; 68 S. W. 134; 24 Ky. L. Rep. 228.

<sup>3</sup> Prather v. State, 12 Tex. App. 401.

<sup>4</sup> Aiken v. State, 14 Tex. App. 142.

<sup>5</sup> *Ex parte* Lynn, 19 Tex. App. 293; Steele v. State, 19 Tex. App. 425.

<sup>6</sup> Steele v. State, 19 Tex. App. 425.

<sup>7</sup> State v. Weeks, 38 Mo. App. 566; State v. Smith, 38 Mo. App. 618.

intelligible manner the desire of the petitioners that an election under the provisions of the statute shall be held within the limits defined in the petition.<sup>8</sup> While it is better that such a petition should, at least, substantially follow the words of the statute, if it, nevertheless, appears from its face that it could mean and have for its object but one thing, that of voting on the question whether an order for such an election should be made—for instance, an order of “elections to take the sense of the voters upon what is known as the Wood’s Local Option Law”—the petition will be regarded as sufficient.<sup>9</sup> It is not essential, however, that a petition should refer to and designate the statute under which the election must be ordered, and if it does so incorrectly the erroneous reference may be disregarded as surplusage.<sup>10</sup> And the same construction has been placed upon a petition under a statute which made no mention of wine or beer, but where it appeared from other provisions of the statute that the words “intoxicating liquors” were used therein as including wine and beer and the petition prayed for an election “to determine whether or not spirituous and intoxicating liquors, including wine and beer, should be sold.”<sup>11</sup> Statutes sometimes require the petition to be accompanied by written proof concerning the signatures of the petitioners being genuine. Thus, in Michigan, a statute required the petition to be accompanied by a copy of the poll list of the last preceding general election, and by an affidavit of one of the resident electors to the effect that he personally knew the petitioners and that they resided within the district; or, if the poll list could not be procured, then that the petitioners were qualified electors, and accompany the affidavit by the returns or canvass of the last election.

<sup>8</sup> State v. Weeks, 38 Mo. App. 566; State v. Smith, 38 Mo. App. 618; *Ex parte* Lynn, 19 Tex. App. 293; Dillard v. State, 31 Tex. Cr. Rep. 470; 20 S. W. 1106; State v. McCord, 207 Mo. 519; 106 S. W. 27; Ezzell v. State, 29 Tex. App. 521; 16 S. W. 782.

<sup>9</sup> State v. Smith, 38 Mo. App. 618.

<sup>10</sup> State v. Schmitz, 36 Mo. App. 550; Steele v. State, 19 Tex. App. 425.

<sup>11</sup> State v. Schmitz, 36 Mo. App. 550.

Under such a statute it was only necessary to allege the residence of the petitioners when a copy of the poll list was filed.<sup>12</sup> If the petition purports to be signed by the requisite number of petitioners, and the order is based thereon, the election cannot be regarded as void if in fact it did not have sufficient genuine signatures.<sup>13</sup> The metes and bounds of the district need not be set out in the petition, it being sufficient to designate a political division of the State, unless the district is a subdivision of some political division.<sup>14</sup> Where a statute requires a petition to be signed by a certain per cent. of the voters of a city, it is not necessary that that per cent. of the voters in each ward should sign it.<sup>15</sup> Where a statute required ten per cent. of the voters casting a ballot at the last preceding election to sign the petition, and their acknowledgments of signing the petition to be taken by a notary public, and fifty-five electors signed it, but only seventeen acknowledged their signatures, and there was no proof that such signers constituted ten per cent. of those who had so voted, the proceedings based thereon were held void.<sup>16</sup> Where a statute required four questions to be submitted to the voters it was held that all of them must be submitted and not a

<sup>12</sup> *Friesner v. Common Council*, 91 Mich. 504; 52 N. W. 18.

<sup>13</sup> *Ezzell v. State*, 29 Tex. App. 521; 16 S. W. 782; *Ex parte Segars*, 32 Tex. Cr. Rep. 553; 25 S. W. 26; *People v. Hamilton*, 143 Mich. 1; 106 N. W. 275; 12 Detroit Leg. N. 897.

<sup>14</sup> *Ex parte Perkins*, 34 Tex. Cr. Rep. 429; 31 S. W. 175.

Those who sign both petitions for and remonstrances against an election cannot be counted on either petition. *Raubenheimer v. Parsons*, 12 Juta, 326.

<sup>15</sup> *Mahan v. Commonwealth (Ky.)*, 56 S. W. 529; 21 Ky. L. Rep. 1807; *Brantly v. State*, 42 Tex. Cr. App. 293; 59 S. W. 892; *Nall v. Tinsley*, 107 Ky. 441; 54 S. W. 187; 21 Ky. L. Rep. 1167.

<sup>16</sup> *People v. Board*, 32 N. Y. Misc. Rep. 123; 66 N. Y. Supp. 199; *Wyatt v. Ryan*, 113 Ky. 306; 68 N. W. 134; 24 Ky. L. Rep. 228.

Members of the board ordering the electors who sign the petition may be counted. *Hunter v. Senn*, 61 S. C. 44; 39 S. E. 235.

If there be a full expression of the will of the voters, an irregularity in the petition will not avoid the election. *In re Clement*, 29 N. Y. Misc. Rep. 29; 60 N. Y. Supp. 328.

The signatures may be on several pages or papers. *In re Ciperley*, 50 N. Y. Misc. Rep. 266; 100 N. Y. Supp. 473; *Richter v. State (Ala.)*, 47 So. 163.

part of them, and that a petition attempting to submit less than four was insufficient.<sup>17</sup> Where a statute requires the signers of the petition to acknowledge their signatures before a notary public, the certificate of the officer that "the above named persons" appeared before him and signed the petition in his presence is not a sufficient compliance with the statute;<sup>18</sup> nor is it sufficient for the officer to certify that they subscribed and were sworn to the petition before him.<sup>19</sup> If several political petitions be combined, then the requisite percentage of voters in each division must sign the petition, and it is not sufficient that the requisite percentage of voters of the combined districts signed it.<sup>20</sup> A statute which requires a majority of the voters at the last general election to sign it does not require a majority of the voters to sign it in the district at the time it is presented, even if there then be many more voters than there were at the last general election.<sup>21</sup> In Michigan, if the court accepts the petition, regular in form and having a sufficient number of signatures to it, its action is conclusive so far as the genuineness of such signatures is concerned.<sup>22</sup>

<sup>17</sup> *Kennedy v. Warner*, 51 N. Y. Misc. Rep. 362; 100 N. Y. Supp. 616; *In re Getman*, 28 N. Y. Misc. Rep. 451; 59 N. S. Supp. 1013.

<sup>18</sup> *Jackson v. Seeber*, 50 N. Y. Misc. Rep. 479; 100 N. Y. Supp. 563; *In re Livingston*, 115 N. Y. Supp. 269.

<sup>19</sup> *Kennedy v. Warner*, 51 N. Y. Misc. Rep. 362; 100 N. Y. Supp. 616. Under this statute there must be both a signing and acknowledgment to constitute the petition valid.

<sup>20</sup> *Davis v. Henderson*, 127 Ky. 13; 104 S. W. 1009; 31 Ky. L. Rep. 1252; *Smith v. Patton*, 103 Ky. 444; 45 S. W. 459; 20 Ky. L. Rep. 165.

<sup>21</sup> *Otte v. State*, 29 Cir. Ct. Rep. 203.

The petition is a part of the

record in the proceedings for an election. *State v. McCord*, 207 Mo. 519; 106 S. W. 27.

The term last "general election" means the last general election at which State or county officers were elected, and not the last Congressional election. *Davis v. Henderson*, 127 Ky. 13; 104 N. W. 1009; 31 Ky. L. Rep. 1252.

The petition need not fix a date for the election. *Puckett v. Snider*, 110 Ky. 261; 61 S. W. 277; 22 Ky. L. Rep. 1718.

<sup>22</sup> *Attorney General v. Van Buren Circuit Court*, 143 Mich. 366; 106 N. W. 1113; 12 Detroit Leg. N. 1016.

In New York a statute provided that, except for a failure to file a petition, if certain questions concerning the sale of liquors had been improperly submit-



**Sec. 516. Attorney in fact under Indiana statute.**

Under the Indiana statute regulating the sale of intoxicating liquors it has been held that the proceeding before the board of commissioners of the county, that being the designated body to grant licenses for that purpose, is a judicial one,<sup>23</sup> in the nature of a civil action, and that the proceeding may be prosecuted or defended by a party in person or by an agent, an attorney, or an attorney in fact.<sup>24</sup> The fact that the statute permits a remonstrance to be signed by an attorney in fact does not render it obnoxious to the Constitution of

ted to a vote at a regular town meeting, they should be submitted at a special town meeting. A petition for an election was not signed and acknowledged by the requisite number of electors; and it was held that there was no authority for a resubmission, the statute not providing for it in that contingency. *In re Rogers*, 4 N. Y. Misc. Rep. 389; 84 N. Y. Supp. 1024. In this State a petition praying for the submission to vote "the several questions relating to the sale of liquors, as provided by section 16 of the liquor tax law," sufficiently states the questions for submission. *In re Rice*, 95 N. Y. App. Div. 28; 88 N. Y. Supp. 512.

Where the board has the power to order an election independent of a petition, it is immaterial that the petition is insufficient. *Lambert v. State*, 37 Tex. Cr. App. 232; 39 S. W. 299; *Williams v. Davidson* (Tex. Civ. App.), 70 S. W. 987.

In Alabama a failure of the petition to state that "in the opinion of the petitioner the public good will be promoted by a prohibition of the sale or giving

away of vinous or spirituous liquor within" the limits of the territory described therein was held so limited as to confer no jurisdiction on the board. *Tally v. Grider*, 66 Ala. 119.

Unless a board or court has the inherent power to order an election without a petition, an order without it is void. *Aikin v. State*, 14 Tex. App. 142.

In Ohio the petition is not *prima facie* evidence of its sufficiency, except upon failure of the electors to contest it. The burden of proof lies upon the petitioner to prove the facts stated in it. But if an elector seeks to withdraw his signature he must show it was procured by fraud or misrepresentation. *In re James Law Petition*, 30 Ohio Cir. Ct. Rep. 697.

When can be filed in Arkansas. *Wilmons v. Bordwell*, 73 Ark. 418; 84 S. W. 474.

<sup>23</sup> *Halloran v. McCullough*, 68 Ind. 179; *List v. Padgett*, 96 Ind. 126.

<sup>24</sup> *Castle v. Bell*, 145 Ind. 8; 14 N. E. 2; *Fried v. Nelson*, 30 App. 1; 65 N. E. 216.

Indiana on the ground that an applicant for a license who is confronted by a remonstrance signed by an omnibus power of attorney has not an equal chance with an applicant confronted by a personally signed remonstrance.<sup>25</sup> Under such statute, however, the legal voters of a township or city have no authority, by a power of attorney, to authorize an attorney in fact to sign their names to "any remonstrance against the granting of a license to any person he may see fit to remonstrate against." This is so because the regulation and restraint of the sale of intoxicating liquors is an exercise of the police power of the State, and that power, as an original power, is lodged in the Legislature. The Legislature having delegated a portion of the power to the voters of the townships and city wards, and having made no provision by which they may redelegate it to an agent or attorney in fact, they are without power to do so. It is an elementary principle that a delegated right cannot be redelegated in the absence of express authority to that end from the principal.<sup>26</sup> But a power of attorney to remonstrate against the granting of a license to "any applicant" is not invalid as conferring a discretion on the attorney as to what applicants to remonstrate against. In such case the word "any" is the equivalent of the word "all" or "every."<sup>27</sup> The word "any" is frequently and appropriately used to express the same meaning as "all" or "every."<sup>28</sup> Such a power of attorney is not invalid because it does not contain any applicant, but is general and directed against all applicants.<sup>29</sup> If it is executed by a majority of the voters of the township or of a ward in a city, it will not be revoked by the death of one or more persons executing it, provided it still contains a majority of

<sup>25</sup> *Hoop v. Affleck*, 162 Ind. 564; 70 N. E. 978.

<sup>26</sup> *Cochell v. Reynolds*, 156 Ind. 14; 58 N. E. 1029.

<sup>27</sup> *Ludwig v. Cory*, 158 Ind. 582; 64 N. E. 14; *Boomershine v. Uline*, 159 Ind. 500; 65 N. E.

513; *White v. Fargeson*, 29 App. 145; 64 N. E. 409.

<sup>28</sup> 2 Am. and Eng. Ency. of Law (2d Ed.), 414 and cases there cited.

<sup>29</sup> *Ragle v. Mattox*, 159 Ind. 594; 65 N. E. 743.

such voters. This is so because such a power of attorney is not joint but several as to each person who executed it.<sup>30</sup>

### **Sec. 517. Separate petitions and remonstrances.**

Under a statute which provides that when a majority of the adult inhabitants residing within three miles of any schoolhouse or church shall petition the county court for an order prohibiting the sale of liquors within that area, an order to that effect may be made, a petition which designates two points within three miles of a given area cannot be sustained. Such a statutory proceeding cannot be extended beyond its prescribed limits. Two points, as centers of circular areas, cannot be designated in the same petition, signed without distinction, by a majority of the adult inhabitants living within three miles of both points, or of either one or the other point. In the first case the area would be less than one with a radius of two miles, and on the second it would be greater. Such a statute confers no authority to make such an order as would prohibit in either case. Every adult inhabitant residing within three miles of any particular schoolhouse or church should be counted in determining the majority, that is, in theory, and as nearly practically as possible, and no one living more than three miles from that particular house. This cannot be effected by designating two or more distinct buildings more or less widely separated, without any indication of one as the center of all. The only way to meet such a condition is to present a separate petition for each separate building or point.<sup>31</sup> On the other hand, separate petitions may be sub-

<sup>30</sup> Shaffer v. Stern, 160 Ind. 375; 66 N. E. 1004.

Where a statute provided that "in all cases where the signature of any person is required by law, it shall always be in the proper handwriting of such person, or, in case he be unable to write, his proper mark," and under another statute the applicant had to pre-

sent a written petition, containing one-third of the names of the electors, "signed by themselves," it was held that names of petitioners not signed by themselves but signed by their authority, could not be considered. Ferguson v. Monroe County, 71 Miss. 524; 14 So. 81.

<sup>31</sup> Williams v. Citizens, 40 Ark. 230.

mitted as one petition for the adoption of a local option law. In Missouri it was contended that this could not be done where the petition to the county court asking that an election be ordered was not on one paper, but consisted of several papers or petitions, which, after being signed by petitioners residing in different parts of the county, were tacked together and presented to the county court as the petition for an order of election. In passing upon this contention the Court of Appeals of that State said: "When proceedings under the local option statute of the State are drawn in question as for sufficiency we are not disposed to invoke the application of the strict rules of construction by which are usually tested proceedings for the condemnation of private property for public use. We are disposed to think the petitions should be considered as 'the petition,' and when thus taken the requirements of the statute are sufficiently complied with to justify the making of the order for the election."<sup>32</sup> In Indiana local option is provided for by means of a remonstrance by a majority of the legal voters of any township or ward situated in a county. In construing the statute making provision for such a remonstrance it has been held that several copies of a remonstrance to the granting of a license to sell intoxicating liquor, each of which is signed by different voters and filed as a remonstrance, must be considered as only one remonstrance. The court said: "If each voter signed a separate remonstrance \* \* \* against granting a license to any applicant, and they were all filed within the time required, they would constitute one remonstrance under the statute, and if signed by a majority of the township or ward the board of commissioners would have no jurisdiction to act in said case or grant a license to such applicant."<sup>33</sup>

<sup>32</sup> State v. Weeks, 38 Mo. App. 566; State v. Smith, 38 Mo. App. 618; Irish v. State (Tex.), 25 S. W. 633; *In re* Carswell, 15 Manitoba, 620; State v. Hitchcock, 124 Mo. App. 101; 101 S. W. 117; Neal v. State, 51 Tex. Cr. App. 513; 102 S. W. 1139; Huff v.

State, 51 Tex. Cr. App. 441; 102 S. W. 1144.

<sup>33</sup> Flynn v. Taylor, 145 Ind. 533; 44 N. E. 546; Sutherland v. McKinney, 146 Ind. 613; 45 N. E. 1048; Head v. Doehlman, 148 Ind. 145; 46 N. E. 585.

Where petitions for separate



**Sec. 518. Withdrawal of name from petition or remonstrance.**

A proceeding contemplated by a local option or for a license to retail intoxicating liquors is not in the nature of a suit between parties. In each instance it is a police proceeding for the better regulation of the internal affairs of counties for the preservation of morals and protection of the peace of the citizens. The petition in the one instance and the remonstrance in the other relate only to the jurisdictional conditions upon which the court acts, and when the petition in the one instance and the remonstrance in the other contains the required number of names the court acquires jurisdiction and may proceed with the matter in hand, and grant the prayer of the petition in the one instance or refuse to grant it in the other. If the signatures are genuine or properly authorized (which facts are to be taken as true, *prima facie*), then, unless the court shall for good reason permit them to be withdrawn, the only thing left for the court is to satisfy itself that the petition or remonstrance has attached to it the required number of names. This it must do by the best modes fairly practical. It is not expected of the court to order a local census. Much, in the nature of things, must be left to the discretion and judgment of the court. If the original signatures were obtained intelligently and without fraud, and have not been erased before presentation, or afterwards as provided by law, they fulfill the requirements of the statute and confer jurisdiction in the one instance and defeat it in the other.<sup>34</sup> Where such a petition or remonstrance has been acted upon by a county court or board of commissioners, and an appeal

voting precincts prayed for an election, each having the requisite number of signers, it was held not error for the court to combine the petitions and order an election in all of the precincts as one district; and the election having carried in favor of prohibition, the election was valid. *Tousey v. DeHuy* (Ky.), 62 S. W. 1118; 23 Ky. L. Rep. 458.

Where a pending petition was dismissed, a new one filed and also a part of the old one refiled, this was held proper. *State v. Kellogg*, 133 Mo. App. 431; 113 S. W. 660.

<sup>34</sup> *Williams v. Citizens*, 40 Ark. 290; *State v. Gerhardt*, 145 Ind. 439; 44 N. E. 469.

from its judgment has been taken, a petitioner in the one instance or a remonstrator in the other will not be allowed to withdraw his name in the Appellate Court except for cause. The presentation of the petition or remonstrance in such case is in the nature of an election. When the county court or board of commissioners has acted, the votes have been cast and the election returns made, an appeal does not invest the petitioner or remonstrator with the power to change his vote or withdraw it except for good cause shown,<sup>35</sup> such a case is not at all like that of an ordinary civil action, for, in such a proceeding as is here being considered the public and many persons have a common interest, and he who sets on foot such a petition or a remonstrance will not be permitted to defeat the proceeding to the injury of the public or others by withdrawing from the petition or remonstrance.<sup>36</sup>

<sup>35</sup> *McCullough v. Blackwell*, 51 Ark. 159; 10 So. 259; *Oreutt v. Renigardt*, 46 N. J. L. 337; *State v. Webb*, 49 Mo. App. 407; *Colvin v. Finch*, 75 Ark. 154; 87 S. W. 443.

<sup>36</sup> *State v. Gerhardt*, 145 Ind. 439; 44 N. E. 469; *White v. Priggle*, 146 Ind. 64; 44 N. E. 926; *Ludwig v. Cory*, 158 Ind. 594; 64 N. E. 14.

Those signing the petition for a local option election may withdraw their names before it is acted upon. *Davis v. Henderson*, 127 Ky. 13; 104 S. W. 1009; 31 Ky. L. Rep. 1252; *O'Neal v. Minary*, 101 S. W. 951; 30 Ky. L. Rep. 888; 125 Ky. 571; *Green v. Smith*, 111 Iowa, 183; 82 N. W. 448.

Signers of a petition to have a district declared "dry" cannot withdraw their names on the ground that boys and old men would buy whisky in the adjoining State. *Clark v. Daniel*, 77

Ark. 122; 91 S. W. 9. But applications to withdraw filed two days after the petition was filed and five days before the date of hearing was held to be in time. In this case the reasons assigned for withdrawing was that "after mature deliberation" they desired to take their names off the petition; that they had been "misled," that "unjust means were used to secure signers," and that they were "inclined to the belief that the matter was not fairly presented" to them. It was held that these were not sufficient reasons for a withdrawal, no specific reasons nor proof of facts being presented. *Colvin v. Finch*, 75 Ark. 154; 87 S. W. 443.

In Arkansas it is held that a petitioner cannot withdraw his name without the consent of the court. *Bordwell v. Dills*, 70 Ark. 175; 66 S. W. 646; (citing *Williams v. Citizens*, 40 Ark. 290; *McCullough v. Blackwell*, 51 Ark.

### Sec. 519. Qualifications of petitioners.

With respect to a petition for an election under a local option law it is only necessary that the requisite number of qualified persons shall, by a petition in writing, indicate to the proper court or board their desire that such an election shall be held in a particular locality for the purpose of determining whether or not the sale of intoxicating liquors shall be prohibited in that locality.<sup>37</sup> In such case the qualification of the petitioner is a fact to be inquired into and determined by the court or board before acting upon the petition. It is an inquiry as to a jurisdictional fact which is not dependent upon or affected by any allegation, or the absence of any allegation, in the petition.<sup>38</sup> And a petition which states that, "the undersigned, citizens of said county," sufficiently shows that the petitioners are qualified voters of the county, where the local option law under which it is filed provides that they shall be such. One of the meanings of the word "citizen" as given by Webster, is "a person, native or naturalized, who has the privilege of voting for public officers, and who is qualified to fill offices in the gift of the people."<sup>39</sup> But in the determining whether a petition for a local option election is signed by the requisite qualified electors in the county, the registration book of the county is not conclusive or even *prima facie* evidence that the persons registered are qualified

164; 10 S. W. 261; Wilson v. Thompson, 56 Ark. 110; 19 S. W. 321; State v. Gerhardt (Ind. Sup.), 44 N. E. 469; 33 L. R. A. 325; Carr v. Boone, 108 Ind. 241; 9 N. E. 110; Sutherland v. McKinney, 146 Ind. 611; 15 N. E. 1048; Orcutt v. Reingardt, 46 N. J. L. 337; Grinnell v. Adams, 34 Ohio St. 44).

In Iowa the written withdrawal of a consent for sale of liquors need not show the voting precinct of the signer, as in case of signatures to the statement. Dyer v. Augur (Iowa), 110 N. W. 323.

The petitioners may dismiss their petition and combine it with a new petition. State v. Kellogg, 133 Mo. App. 431; 113 S. W. 660.

If an elector seeks to withdraw his name from a petition he has the burden to show a sufficient cause for the withdrawal. *In re Jones Law Petition*, 30 Ohio Cir. Ct. Rep. 697.

<sup>37</sup> Steele v. State, 19 Tex. 425.

<sup>38</sup> *Ex parte* Lynn, 19 Tex. App. 294.

<sup>39</sup> *Ex parte* Lynn, 19 Tex. App. 294; Steele v. State, 19 Tex. App. 425.

voters. Such a registration is evidence of nothing except of the list of persons registered and who have complied with that requisite to vote. It is that without which one cannot be a qualified elector, an essential prerequisite, and yet not conferring the right. In such case there cannot be any qualified elector not registered, but there may be many registered and not qualified electors. It may be determined from the registration book that the number of qualified electors does not exceed those shown by it. It may be seen by an inspection of it that certain persons are not qualified electors because not registered; but it cannot be determined from a registration book that there is a single qualified elector in the county. The right to register, and being registered, and the right to vote are distinct and different things. One may be registered and not be entitled to vote.<sup>40</sup> A statute which authorizes an

<sup>40</sup> *Bew v. State*, 71 Miss. 1; 13 So. 868; *Ferguson v. State*, 71 Miss. 524; 14 So. 81; *Roesch v. Henry (Or.)*, 103 Pac. 439.

Where a statute provided that a statement of general consent to the sale of liquors should be signed by sixty-five per cent. of the legal voters who voted at the last preceding election as shown by the poll lists, parol evidence was held inadmissible to identify those signing the consent with persons who voted at the election as shown by the poll lists. *Wilson v. Bohstedt*, 135 Iowa, 451; 110 N. W. 898. In this case the court refused to hold that "G. H. Meyer" was the same person as "George Meyer;" or "Henry Wagner" as "H. C. Wagner;" or "William Wall" as "W. M. Wall," or "William Border" as "W. H. Border."

A recital of the order of submission that the required number of voters had signed the petition shows that the requisite

number of *qualified* voters had signed it. *State v. Foreman*, 121 Mo. App. 502; 97 S. W. 269.

In Mississippi it is held that the supervisors should not regard the registration book of the county as even *prima facie* evidence as to who are qualified electors, because persons may be registered who are not entitled to vote, registration not conferring the right. *Ferguson v. Monroe County*, 71 Miss. 524; 14 So. 81.

Where a statute required "one-tenth of the total vote cast for governor at the last general election" in the town or city, all qualified voters residing in the town or city who voted at the last general election for governor are qualified to sign the petition. *Ex parte Perkins*, 34 Tex. Cr. Rep. 429; 31 S. W. 175.

"Registered" voters in North Carolina, *Pace v. Raleigh*, 140 N. C. 65; 52 S. E. 277.

Members of the board may sign



order for an election to be made upon the petition of a majority of the "adult residents" of a township, does not require the petitioners to be males or electors. Acting under the police power of the State, a Legislature can pass an act to prohibit the sale of intoxicating liquors, in specially designated territories, as, for instance, within three miles of an institution of learning, without any provision for a petition from any number of inhabitants, or order of a county court. This being so there is no good reason why women and girls, if adults, should not join in such petitions. They are as deeply interested in removing temptation to dissipation and vice and preserving good morals in communities as men are.<sup>41</sup> And where a statute provides "that upon application, signed by one-tenth of the voters," it shall be the duty of the board of supervisors to order an election to determine whether or not spirituous liquors shall be sold within the limits of a county, members of such board may sign such application and canvass for signers to it without disqualifying them to act upon the petition as members of the board. One does not cease to be a citizen by becoming a judge and he may vote as his judgment dictates or petition for an opportunity to vote, and does not thereby disqualify himself as a judge in the matter which may come before him. The interest which disqualifies a judge is pecuniary and not political.<sup>42</sup>

**Sec. 520. Territory embraced in petition—Description of territory.**

Usually there is little trouble or doubt in the ascertainment of the district in which the election is to be held, for the statutes almost invariably so name the districts that there is no room for construction. But one thing must always be borne in mind, and that is that the statute in this regard must be explicitly followed. Two or more political units, as designated by the statute, cannot be combined unless the statute

the petition, and are not thereby disqualified to act. *Lemon v. Peyton*, 64 Miss. 161; 8 So. 235.

<sup>41</sup> *Blackwell v. State*, 36 Ark. 178.

<sup>42</sup> *Lemon v. Peyton*, 64 Miss. 161; 8 South 235.

clearly provides for a combination. Thus, if the election is to be by townships, it must be by townships and not by counties, and each township must vote separately, unless the statute authorizes two or more to combine and hold a single joint election for their combined territory.<sup>43</sup> Where a Constitution provided that the Legislature should enact a law by which the electors in any county, justice precinct, town, city, or such subdivision of the county as may be designated by the commissioners' court may determine from "time to time" whether the sale of liquors shall be prohibited, it was held that the Legislature could not authorize the commissioners' court to combine two or more justices' precincts, but an election must be ordered separately for each precinct.<sup>44</sup> And it was further held that as election precincts were subject to annual changes they were not such political subdivisions of a county as was contemplated by the provisions of the Constitution, and, therefore, the commissioners' court could not be authorized to order an election in such precincts.<sup>45</sup> The Legislature in Canada has the power to authorize a township in another county to be included within the district voting on the question of local option.<sup>46</sup> Somewhat at variance with the Texas decisions is one in Kentucky. There the Constitution authorized the General Assembly to provide for local option elections

<sup>43</sup> *Commissioners v. Beall*, 98 Tex. 104; 81 S. W. 526; *Ex parte Mitchell* (Tex. Cr. App.), 79 S. W. 558; *Sweeney v. Webb*, 97 Tex. 250; *Ex parte Heyman* (Tex. Cr. App.), 78 S. W. 349.

<sup>44</sup> *Ex parte Heyman* (Tex. Cr. App.), 78 S. W. 349; *Ex parte Elliott*, 44 Tex. Cr. App. 575; 72 S. W. 837; *Ex parte Mills*, 46 Tex. Cr. App. 224; 79 S. W. 555; *Board v. Buchanan*, 36 Tex. Civ. App. 411; 82 S. W. 194; *Anderson v. State*, 49 Tex. Cr. App. 195; 92 S. W. 39. See *Griffin v. Tucker* (Tex. Civ. App.), 119 S. W. 338.

<sup>45</sup> *Eflrd v. State*, 46 Tex. Cr. App. 582; 80 S. W. 529; *Ex parte Pollard*, 51 Tex. Cr. App. 488; 103 S. W. 878.

<sup>46</sup> *Regina v. Shavelear*, 11 Ont. 727; *Regina v. Monteth*, 15 Ont. 290.

In Texas it is held that if the field notes contained in the petition for an election are sufficient to enable one to accurately trace the boundaries of the district, it is sufficient, variance in the call being immaterial. *Goble v. State*, 42 Tex. Cr. App. 501; 60 S. W. 966.

in "any county, city, town, district, or precinct;" but this was held not to prevent the enactment of a statute providing for such an election in a magisterial district of a county.<sup>47</sup> Where part of the district was detached after the election was ordered it was held that those electors residing in the detached portion were still entitled to vote, and the result being for prohibition, liquors could not be sold in such detached portion.<sup>48</sup>

### Sec. 521. Including "dry" territory in petition or order.

The cases are not of one result whether territory that is "dry" can be included with territory that is "wet" in the petition and order for an election. This is due largely to the provisions of the various statutes. Thus, in Louisiana wards that are already "dry" may be included in the petition with

<sup>47</sup> Eggen v. Offutt, 128 Ky. 314; 108 S. W. 333; 32 Ky. L. Rep. 1350.

<sup>48</sup> Hill v. Howth (Tex.), 111 S. W. 649.

In Texas the fact that the Legislature has authorized a city to issue a license to sell liquor does not prevent the county at large prohibiting by election the issuance of such license. *Ex parte Elliott*, 49 Tex. Cr. App. 108; 91 S. W. 570.

In Ohio it was held that a "hamlet" was one of the political divisions for holding a local option election. *Carey v. State*, 70 Ohio St. 121; 70 N. E. 955.

In Texas an election cannot be ordered in a "school district." *Ex parte Banks* (Tex. Cr. App.), 103 S. W. 1156; *Ex parte Haney*, 51 Tex. Cr. App. 634; 103 S. W. 1155.

The fact that part of the territory described lies in another

State will not make the proceeding invalid as to so much as lies in the State where the proceedings are had. *Clark v. Tower*, 104 Md. 178; 65 Atl. 3.

The court declaring the result of the election and declaring the law to be in force, cannot be compelled to except from the order a certain city within the territory which is not affected by the election, unless the statute makes it its duty to do so. *State v. Mahneer County* (Ore.), 103 Pac. 446.

A second petition overlapping a part of the territory described in the first petition is erroneous and void. *Kilcoyne v. Hitchins*, 30 Ohio Cir. Ct. Rep. 545.

See where the change of the description of the territory after petition filed and election ordered did not avoid the proceedings. *Hill v. Howth* (Tex. Civ. App.), 112 S. W. 707.

those that are "wet."<sup>49</sup> So where the Constitution authorized a commissioners' court to order an election in a justice's precinct and also in a commissioners' precinct, and a commissioners' precinct, by a previous order of such court, embraced two justices' precincts, one of which was then dry, it was held that this did not prevent the ordering of an election for the entire commissioners' precinct, which, of course, would cover the "dry" precinct.<sup>50</sup> And where the statute on local option provided for an election by a county, and also provided that the result of the election should not affect any city or town in the county where by law the sale of liquors was prohibited, either by high license or local option, or other legislation, so long as such local laws remain in force, it was held that the electors in such city or town had the right to vote at a county local option election, and necessarily the territory of such city or town must be included in the petition for an election.<sup>51</sup> Where, in Texas, a justice's precinct voted "dry," and no election could be held therein on the question until two years had expired, and within the two years an election was ordered for a commissioners' precinct, which included this justice's precinct and another justice's precinct that was "wet," it was held that the election was void.<sup>52</sup>

**Sec. 522. To whom and the manner in which the petition must be presented—Filing.**

The petition must be presented to the person, court, tribunal or board designated by law for its reception, and in the manner therein prescribed.<sup>53</sup> Thus, under a statute providing

<sup>49</sup> *Hagens v. Police Jury* (La.), 46 So. 676.

<sup>50</sup> *Cofield v. Britton* (Tex. Civ. App.), 109 S. W. 493.

A like decision was made in Kentucky. *Smith v. Patton*, 103 Ky. 444; 45 S. W. 459; 20 Ky. L. Rep. 165; *Cantwell v. State*, 47 Tex. Cr. App. 521; 85 S. W. 18.

<sup>51</sup> *Cole v. McClendler*, 109 La. 183; 34 S. E. 384.

<sup>52</sup> *Ex parte Randall*, 50 Tex. Cr. App. 519; 98 S. W. 870. See also

*Kilcoyne v. Hitchens*, 30 Ohio Cir. Ct. Rep. 545.

An election is not void because one of the precincts of the district refused or omitted to vote. *Ex parte Shilling*, 38 Tex. Cr. App. 287; 42 S. W. 553.

<sup>53</sup> *In re Huntsville*, 25 Ohio Cir. Ct. Rep. 535; *People v. Decker*, 28 N. Y. Misc. Rep. 699; 60 N. Y. Supp. 60; order affirmed, 63 N. Y. Supp. 1113.



that the county judge, at the "next regular term" of a county court, after receiving a petition for an election, must make an order therefor on some day not earlier than sixty days after the petition is lodged with him, it was held that the petition must be received in court and a record made of it, and that an election held on a petition received by the county judge out of court on one day, and the election ordered the next, which was the first day of the term, was void.<sup>54</sup> Where the statute required the judge to direct an election "at the next regular term" of his court "after receiving" the petition, an order entered on the same day the petition was noted as filed on the records of the court was held void, though such day was the first day of the term, the petition under the law not being "received" until filed.<sup>55</sup> In Texas the petition need not be filed prior to the convening of court.<sup>56</sup> Where a statute required the petition to be filed with the town clerk at least twenty days before the town election, and another statute declared the proposition relating to sales should again be submitted at the annual elections held every second year after their first submission, upon written petition of ten per cent. of the electors at the next preceding general election, "duly filed" with the officer charged with furnishing ballots for the election, it was held that the last petition must be filed at least twenty days before the town election.<sup>57</sup> In New York a statute required the county clerk to furnish the ballots for the election, and also required a certified copy of the petition to be filed within five days of its receipt by the town clerk if the question was to be submitted at a general election. The law was changed making it the duty of the town clerk to furnish the ballots. A certified copy of a petition was not filed with the county clerk within five days after its receipt by the town clerk, but was filed more than twenty days prior

<sup>54</sup> *Wilson v. Hines*, 99 Ky. 221; 35 S. W. 627.

<sup>55</sup> *Cress v. Commonwealth* (Ky.), 37 S. W. 493; *Ex parte Sublett*, 23 Tex. App. 309; 4 S. W. 894.

<sup>56</sup> *Loveless v. State* (Tex. Cr. App.), 49 S. W. 98.

<sup>57</sup> *People v. Town Clerk*, 26 N. Y. Misc. Rep. 220; 56 N. Y. Supp. 64; *McMullen v. Berean*, 29 N. Y. Mis. Rep. 443; 60 N. Y. Supp. 578.

to the date of the election, and it was held that the delay in filing the certified copy did not require a resubmission.<sup>58</sup> If the petition is filed by the electors of a town lying in two counties, it must be filed in the court of that county in which the greater part of the town lies.<sup>59</sup> The clerk of the court cannot order the election where it is the duty of the court to do so; and if he do, the election will be invalid.<sup>60</sup> A petition once filed cannot be withdrawn in order to include other territory in it and then refile it.<sup>61</sup> As the court must determine whether the petition is sufficient, whether it has the requisite number of signatures and whether such signatures are genuine, this calls for the exercise of judicial power, and the statute, therefore, cannot be held unconstitutional on the ground that it imposes upon the court administrative duties.<sup>62</sup> In Ohio where the petition had to be presented to the city council, it was held that the presentation was a necessity, and could not be dispensed with—a jurisdictional fact—and its presentation could not be presumed from the fact that an election was ordered; but if it appears in the record the presumption is that the election was properly ordered unless the proceedings are so irregular as to invalidate the order.<sup>63</sup>

<sup>58</sup> *In re Rice*, 95 N. Y. App. Div. 28; 88 N. Y. Supp. 512; *Eggleston v. Board*, 51 N. Y. App. Div. 38; 64 N. Y. Supp. 471; *In re Sullivan*, 30 N. Y. Misc. Rep. 682; 64 N. Y. Supp. 303. A petition for a resubmission need not be filed in New York. *In re Bertrand*, 40 N. Y. Misc. Rep. 536; 82 N. Y. Supp. 940.

For computing the five days, see *In re Sullivan*, 30 N. Y. Misc. Rep. 682; 64 N. Y. Supp. 303.

<sup>59</sup> *Early v. Rains* (Ky.), 89 S. W. 289; 28 Ky. L. Rep. 415.

<sup>60</sup> *Marsden v. Harlocker*, 48 Ore. 90; 85 Pac. 328; *Ex parte Haney*, 48 Ore. 621; 85 Pac. 332.

<sup>61</sup> *State v. Webb*, 48 Mo. App.

407. See *State v. Kellogg* (Mo. App.), 113 S. W. 660.

<sup>62</sup> *State v. Circuit Court*, 50 N. J. L. 585; 15 Atl. 272; *State v. McElrath*, 49 Ore. 294; 89 Pac. 803; *Champion v. Board*, 5 Dak. 416; 41 N. W. 379.

<sup>63</sup> *In re Huntsville*, 25 Ohio Cir. Ct. Rep. 535.

A petition once presented cannot be withdrawn and presented again. *State v. Webb*, 49 Mo. App. 407. But *State v. Kellogg* (Mo. App.), 113 S. W. 660.

No board or court can order the election except the board or court to which the petition must be addressed or with which it must be filed. *Olmstead v.*

### Sec. 523. Notice of hearing.

If the statute requires a hearing on the petition and that notice be given of such hearing, then such notice of the hearing must be given as the statute requires; and if the notice fails to make mention of the subject matter of the petition or proceedings, an order for the election will be invalid.<sup>64</sup>

### Sec. 524. Order for an election.

If a proper petition be presented to the local board or court having jurisdiction over its subject matter it must act and grant the prayer of the petition by ordering an election.<sup>65</sup> If the court or board refuses to act, or to act within time, it may be compelled to do so by mandamus.<sup>66</sup> So if the court fails to make the order at the first term after receipt of the petition, it may do so at the next term; and if it makes a mistake in its order it may enter a new order, even at the next term.<sup>67</sup> If several petitions be presented at the same time for separate precincts, or before the order is made, each sufficient in itself, and the court combine them and order one election for the entire district covered by them, the election will be valid if it be carried with the requisite vote in each

Croach, 89 Ala. 228; 7 So. 776; State v. Circuit Court, 50 N. J. L. 585; 15 Atl. 272.

A petition for local option may be marked "filed" at any time of the proceedings, and need not be so marked when presented for filing. O'Connor v. Board (Idaho), 105 Pac. 560.

<sup>64</sup> Middleton v. Robbins, 54 N. J. L. 566; 25 Atl. 471.

<sup>65</sup> State v. Richardson (Ore.), 85 Pac. 225; Attorney General v. Van Buren Circuit Judge, 143 Mich. 366; 106 N. W. 1113; 12 Detroit Leg. N. 1006.

It is a preliminary and not a final order. Haynes v. Cass County (Mo.), 115 S. W. 1084.

The ordering of an election is county business. Chapman v. State, 37 Tex. Cr. App. 137; 39 S. W. 113; Champion v. Board, 5 Dak. 416; 41 N. W. 739.

<sup>66</sup> Attorney General v. Van Buren Circuit Judge, 143 Mich. 366; 106 N. W. 1113; 12 Detroit Leg. N. 1006; State v. Richardson, (Ore.), 85 Pac. 225; Keefer v. Hillsdale County, 109 Mich. 645; 67 N. W. 981.

<sup>67</sup> Tousey v. De Huy (Ky.), 62 S. W. 1118; 23 Ky. L. Rep. 458. See Commonwealth v. McCarty (Ky.), 76 S. W. 173; 25 Ky. L. Rep. 585.

precinct.<sup>68</sup> The order should fix the day for the election,<sup>69</sup> unless the law fixes the date<sup>69\*</sup> and designate the district within which it is to be held.<sup>70</sup> If the board have the power to order an election whenever it deems it expedient, then it is immaterial that the petition is not sufficient.<sup>71</sup> The petition must be recorded in the records of the court or board;<sup>72</sup> but if the statute does not specify when it shall be recorded, the recording may be made at any time after the order is made, and it will be presumed in the absence of a contrary showing that it was duly recorded.<sup>73</sup> In some States it is held that the order must show affirmatively that the requisite number of persons signed the petition,<sup>74</sup> and in others it need not,<sup>75</sup> while in some of the States it is held that, in a prosecution for the violation of the local option law, the proceedings cannot be collaterally attacked.<sup>76</sup> In Canada it is held not necessary for the order to name the polling places

<sup>68</sup> *Tousey v. De Huy* (Ky.), 62 S. W. 1118; 23 Ky. L. Rep. 458; *Nall v. Tinsley*, 107 Ky. 441; 54 S. W. 187; 21 Ky. L. Rep. 1167.

<sup>69</sup> *Puckett v. Snider*, 22 Ky. 1718; 61 S. W. 277; 22 Ky. L. Rep. 1718.

<sup>69\*</sup> *Attorney General v. Van Buren Circuit Judge*, 143 Mich. 366; 106 N. W. 1113; 12 Detroit Leg. N. 1006.

<sup>70</sup> *Kelly v. State*, 37 Tex. Cr. App. 220; 38 S. W. 779; 39 S. W. 111; *Jordan v. State*, 37 Tex. Cr. App. 224; 38 S. W. 780; 39 S. W. 110.

In two of these cases the district was definitely described, but referred to as school districts for which no election could be held; yet the description was held valid.

An election held without an order for it is void. *Marsden v. Harlocker*, 48 Ore. 90; 85 Pac. 328; *Ex parte Hussey*, 48 Ore. 621; 85 Pac. 332.

<sup>71</sup> *Lambert v. State*, 37 Tex. Cr. App. 232; 39 S. W. 299.

<sup>72</sup> *Covert v. Munson*, 93 Mich. 603; 53 N. W. 733.

<sup>73</sup> *Pitner v. State*, 37 Tex. Cr. App. 268; 39 S. W. 662. But see *Ex parte Williams*, 35 Tex. Cr. Rep. 75; 31 S. W. 653.

If the order bears a date the court will take judicial knowledge whether it was made at a regular term. *Loveless v. State* (Tex. Cr. App.), 49 S. W. 601.

<sup>74</sup> *Lester v. Miller*, 76 Miss. 309; 24 So. 193.

<sup>75</sup> *In re Rice*, 95 N. Y. App. Div. 28; 88 N. Y. Supp. 512; *Dalrymple v. State*, 26 Ohio Cir. Ct. Rep. 562.

<sup>76</sup> *People v. Hamilton*, 27 N. Y. Misc. Rep. 360; 58 N. Y. Supp. 959; *Anderson v. State*, 39 Tex. Cr. App. 34; 44 S. W. 824; *State v. Mackin*, 51 Mo. App. 299.



in small villages.<sup>77</sup> Where a statute required the question of local option to be submitted whenever it "has been prayed for by the requisite number of electors" "by resolution" declaring that fact, an order is sufficient in which it is recited that the petition was signed by a certain number of electors, the number stated being sufficient to require the holding of an election, without a distinct previous resolution determining that the submission had been requested by the requisite number of electors.<sup>78</sup> And where there were several petitions for elections in as many election precincts, but which constituted one magisterial district, an order on all these petitions reciting that a sufficient number of voters of the district had signed the petitions and directing an election be called, was held sufficient without a recital that a sufficient number in each precinct had signed the petitions.<sup>79</sup> The order may be amended by a *nunc pro tunc* entry if there be sufficient data from which to amend it, as where the clerk wrongly copied the order into the records and the original order was still in existence.<sup>80</sup> But where it was the duty of the court to designate the newspapers in which notice of the election should be published, it was held that the omission in this respect could not be supplied, even though notices had actually been published in the requisite number of newspapers.<sup>81</sup> Where a statute provided for calling an election to determine

<sup>77</sup> *In re Salter* [1902], 4 Ont. L. R. —; *In re Mace*, 42 Up. Can. p. 76; *In re Huson*, 19 Ont. App. 343. So also held in Texas, where electors not misled. *Ex parte Mayer*, 39 Tex. Cr. App. 36; 44 S. W. 831.

<sup>78</sup> *People v. Hamilton*, 143 Mich. 1; 106 N. W. 275; 12 Detroit Leg. N. 897; Attorney General v. Van Buren Circuit Judge, 143 Mich. 366; 106 N. W. 1113; 12 Detroit Leg. N. 1006; *Commonwealth v. Jones* (Ky.), 84 S. W. 305; 27 Ky. L. Rep. 16; *In re Rice*, 95 N. Y. App. Div. 28; 88 N. Y. Supp. 512.

*Contra*, *State v. Bird*, 108 Mo. App. 163; 83 S. W. 284.

<sup>79</sup> *Commonwealth v. Jones* (Ky.), 84 S. W. 305; 27 Ky. L. Rep. 16; *In re Rice*, 95 N. Y. App. Div. 28; 88 N. Y. Supp. 512.

<sup>80</sup> *State v. Bird*, 108 Mo. App. 163; 82 S. W. 284. See later Missouri decisions cited below.

Where the clerk used the word "same" instead of "sale," in a criminal prosecution he was allowed to correct the record. *Cantwell v. State*, 47 Tex. Cr. App. 521; 85 S. W. 19.

<sup>81</sup> *State v. Baldwin*, 109 Mo. App. 573; 83 S. W. 266.

whether sales of liquor should be prohibited "except for medicinal and sacramental purposes," and the order calling an election concluded with the words "except for the purposes and under the regulations prescribed by law," and provided that those who favored prohibition should vote a printed ticket with the words "for prohibition" on it, and those who opposed it one with the words "against prohibition" on it, it was held that the order was not defective because of the words quoted, it being apparent from the remainder of the order that these words referred to the local option law.<sup>82</sup> It is not necessary that the order show who were appointed to hold the election where the presiding officers of the general election theretofore acted in the premises.<sup>83</sup> The order may be recorded at a subsequent term of the court ordering the election.<sup>84</sup> The order for an election need not contain the statutory exceptions in favor of wines for medicinal and

<sup>82</sup> *Sweeney v. Webb*, 33 Tex. Civ. App. 324; 76 S. W. 166 (Tex.), 77 S. W. 135.

See also *Racer v. State* (Tex. Cr. App.), 73 S. W. 968.

<sup>83</sup> *Nelson v. State*, 44 Tex. Cr. App. 595; 75 S. W. 502.

<sup>84</sup> *Ex parte Walton*, 45 Tex. Cr. App. 74; 74 S. W. 314.

In Texas it is held that a local option election is not invalid because the county judge was not present at the opening day of the term, there being a quorum of the judges present. *Racer v. State* (Tex. Cr. App.), 73 S. W. 968. If a statute or the Constitution provide that if the judge of the county be not present, the judge of an adjoining county shall have jurisdiction, and on the opening of the court the judge of a county be not present, whereupon the petitioners present it to the judge of an adjoining county, they waive their right to present to

the judge of their own county. *In re Munson*, 95 N. Y. App. Div. 23; 88 N. Y. Supp. 509.

The original minutes of the court containing the order of submission may be used to prove the law is in force. *Holley v. State*, 46 Tex. Cr. App. 324; 81 S. W. 957.

In Kentucky a statute authorizing the entrance of the order at the next term after a petition is filed, one entered at the same term it was filed is invalid. *Commonwealth v. McCarty* (Ky.), 76 S. W. 173; 25 Ky. L. Rep. 585; *Ex parte Sublett*, 23 Tex. App. 309; 4 S. W. 894.

Where the order for an election was made, to be held on a certain day, and nothing more was entered, the president of the board, it was held, could not provide the machinery of the election by a proclamation for he had no more authority in the premises than an

sacramental purposes,<sup>85</sup> but it must provide for the submission of the propositions prayed for in the petition. Thus,

individual. The election was void. *Police jury v. Ponchatoula*, 118 La. 138; 42 So. 725.

If the board of its own accord can order an election, it need not record the petition. *McGovern v. State* (Tex. Civ. App.), 90 S. W. 502.

A recital in an order that a "petition had been signed" shows that it was a "written petition." *Nall v. Tinsley*, 107 Ky. 441; 54 S. W. 187; 21 Ky. L. Rep. 1167; *In re Huntsville*, 25 Ohio Cr. Ct. Rep. 535.

A petition was addressed to "Robert I. Burke, judge of the probate court," etc. The order for the election was headed "State of Alabama, Cullman County, Probate Court." It recited the filing of the petition, and that it was therefore "ordered, adjudged and decreed by his court that the 9th day of December, 1907, be set as the day for holding said election." The order was signed by "Robert I. Burke, judge of probate." This was held to be an order of the probate court and not of the probate judge, and was valid. *Richter v. State* (Ala.), 47 So. 163; *Olmstead v. Crook*, 89 Ala. 228; 7 S. E. 776.

To render an election void because there is a variance in the description of the territory in the order for the election and the one declaring its result, it must be a material variance, and mere discrepancies in the field notes in the petition and two orders is immaterial, if the exact boundaries at-

tempted to be designated can be ascertained with legal certainty. *Goble v. State*, 42 Tex. Cr. App. 501; 60 S. W. 966.

If the election covers the whole of a political division of a State, it need not be described by metes and bounds. *Nichols v. State*, 37 Tex. Cr. App. 546; 40 S. W. 268; *Fitze v. State* (Tex. Cr. App.), 85 S. W. 1156. See *Bowman v. State*, 38 Tex. Cr. App. 14; 40 S. W. 796; 41 S. W. 635.

A statute requiring an order to be made at the "next regular term" after a petition is filed, does not prevent the filing at a special term of the court called for the reception and filing of such petitions; and the election may be ordered at the next regular term. *Smith v. Patton*, 103 Ky. 444; 45 S. W. 459; 20 Ky. L. Rep. 165; on the ordering of an election at a special session, see *Ex parte Sublett*, 23 Tex. App. 309; 4 S. W. 894.

<sup>85</sup> *Shields v. State*, 38 Tex. Cr. App. 252; 42 S. W. 398; *Frickie v. State*, 39 Tex. Cr. App. 254; 45 S. W. 810.

An order for an election carries a presumption that a proper petition was filed, and that it was signed by the requisite number of electors. *Dalrymple v. State*, 26 Ohio Cir. Ct. Rep. 562.

The order need not show the name of the presiding officer. *Fitze v. State* (Tex. Cr. App.), 85 S. W. 1156.

The order may be made at a special term of the board of com-

where the petition prayed that the question whether druggists should be allowed to sell liquors should be submitted to a vote in addition to the submission of the general question of sales, it was held that the order must submit both questions for the consideration of the electors; the petition must be submitted as a whole, and so adopted or rejected.<sup>86</sup> Unless

missioners. *Hanna v. State*, 48 Tex. Cr. App. 269; 87 S. W. 702; *Koch v. State*, 48 Tex. Cr. App. 346; 88 S. W. 809.

Where a board of its own motion may order an election, after ordering one on petition, it may on its own motion order one. *Hanna v. State*, *supra*.

An order for resubmission containing a recital that it was made at a special term of court shows it is the order of the court and not of the judge. *In re Munson*, 95 N. Y. App. Div. 23; 88 N. Y. Supp. 509.

If the statute requires four propositions to be submitted to the voters, and one is omitted, the order of submission is improper. *In re Munson*, 95 N. Y. App. Div. 23; 88 N. Y. Supp. 509.

When the statute required the question to be submitted "whether" local option should be adopted, an order submitting the question "whether or not" it should be adopted, is valid. *Thurmond v. State*, 46 Tex. Cr. App. 162; 79 S. W. 316; *Wade v. State*, 53 Tex. Cr. App. 184; 109 S. W. 191; nor is it necessary to recite that it is submitted at an election to be held by the "qualified voters" of the district. *Thurmond v. State*, *supra*. Nor is it objectionable that it designate a day different from that named in the

petition. *Thurmond v. State*, *supra*.

<sup>86</sup> *Erwin v. Benton*, 120 Ky. 536; 87 S. W. 291; 27 Ky. L. Rep. 909. In this case the submission was "whether or not spirituous," etc., "liquors shall be sold," etc., "within the town of," etc., "and that the provisions of this law and prohibition shall apply to druggists," and it was held properly worded, neither misleading nor contradictory. See *In re Rice*, 95 N. Y. App. Div. 28; 88 N. Y. Supp. 512.

Where a statute requires the local board to determine that a petition was signed by the requisite number of voters, it will be presumed, in a prosecution for selling liquor illegally that the law was complied with in that respect. *People v. Hamilton*, 143 Mich. 1; 106 N. W. 275; 12 Detroit Leg. N. 897.

If the description of the boundaries of the district be uncertain as set out in the order, the election is invalid. *Ex parte Waits* (Tex. Cr. App.). 64 S. W. 254.

In Texas the commissioners' court may name any person to hold the election. *Kelly v. State*, 37 Tex. Cr. App. 220; 38 S. W. 779; 39 S. W. 111. So in Kentucky. *Puckett v. Snider*, 110 Ky. 261; 61 S. W. 277; 22 Ky. L. Rep. 1718.



a statute provide for it, no appeal lies from an order for an election.<sup>87</sup> Where the statute required the local board to order notice of the election to be published for four "consecutive" weeks, and the order was for four "successive" weeks, it was held that the variance was not fatal.<sup>88</sup> The fact that the board ordered notices not provided for in the statute to be given does not vitiate the election.<sup>89</sup> A provision that the election be held at "boxes" instead of "places" as the statute provides is not so misleading as to prevent a fair vote, and the election is not void for that reason.<sup>90</sup> Where a statute requires notices to be posted at five public places in a county, an order requiring them to be posted in five places, not saying these places should be public places, and not designating how long they should be posted, is a sufficient compliance with its provisions.<sup>91</sup> If the statute provides for an election to determine whether liquor shall be "sold," the court cannot

<sup>87</sup> O'Neal v. Minary, 125 Ky. 571; 101 S. W. 951; 30 Ky. L. Rep. 888.

In Missouri the statute requires the local board to specifically set forth that the requisite petition had been filed, and this is jurisdictional. *State v. McCord*, 124 Mo. App. 63; 100 S. W. 1129. (In this case the order recited that one-tenth of the voters and taxpayers of the district signed the petition, when the statute required one-tenth of the voters, and the election was held void. *State v. McCord*, 207 Mo. 519; 106 S. W. 27. But if the proper recitals are in the order, it is conclusive on the question of jurisdiction. *State v. Hitchcock*, 124 Mo. App. 101; 101 S. W. 117. See *State v. McCord*, *supra*.)

<sup>88</sup> *State v. Hitchcock*, 124 Mo. App. 101; 101 S. W. 117.

<sup>89</sup> *Neal v. State* (Tex. Cr. App.), 101 S. W. 1139; *Huff v. State* (Tex. Cr. App.), 101 S. W. 1144.

<sup>90</sup> *Neal v. State*, *supra*; *Huff v. State*, *supra*.

<sup>91</sup> *Magill v. State*, 51 Tex. Cr. App. 357; 103 S. W. 397.

Where new territory was added to the voting district on election day, and it appeared that the result would have been the same if it had not been added, the election was held valid as to the previous district. *Ex parte Curlee*, 51 Tex. Cr. App. 614; 103 S. W. 896.

In Michigan it is held that where the law fixes the time when the different proceedings under it shall be made matter of record, and signed by the proper official, it is mandatory, and a failure to comply with the law will vitiate the proceedings. *Covert v. Munson*, 93 Mich. 603; 53 N. W. 783.

extend the terms of the statute by enlarging the question whether it should be "bartered or exchanged."<sup>92</sup> The order of election must be addressed to the officer authorized to hold elections. Where the local option law provided that the order for election should be addressed "to the sheriff or other officer of said county who may be appointed to hold said election," and another section of the same act provided that all elections should "be held by such officers as would be qualified to hold elections for county officers," it was held that an order for a city local option election was properly addressed to the sheriff of the county, and not to the city officers.<sup>93</sup> Where the order recited that the election "should be conducted, the returns thereof made, and the result ascertained and determined, in accordance in all respects with the laws and ordinances governing municipalities in the city," and that was a literal copy of the words of the statute, it was held sufficient.<sup>94</sup> If the statute makes it the duty of the clerk

<sup>92</sup> *Ex parte* Beaty, 21 Tex. App. 426; 1 S. W. 451; *Hubbard v. Commonwealth*, 10 Ky. L. Rep. (abstract) 683.

A statute required an affidavit of some reputable person showing that he personally witnessed the signing of each name appearing on the petition. On a trial of the contest of an election it was stipulated that a sufficient number of signatures was attached to the petition, and that they were genuine signatures of qualified persons. It was held that evidence that the persons making the affidavits were not reputable persons was inadmissible. *In re Canvass* (Iowa), 95 N. W. 194.

If objections be made that the signatures to a petition are not genuine, the board hearing the application or contest must give opportunity, by adjournment if necessary, for the production of

evidence concerning them. *Madison Co. v. Powell*, 75 Miss. 762; 23 So. 425.

Number of signatures for county petition when a city within the county is excluded. *Roper v. Seurlock*, 29 Tex. Civ. App. 464; 69 S. W. 456.

Members of the board signing the petition are not disqualified thereby to act thereon. *Lemon v. Peyton*, 64 Miss. 161; 8 So. 235.

<sup>93</sup> *Commonwealth v. Green*, 98 Ky. 21; 32 S. W. 169.

<sup>94</sup> *State v. Dugan*, 110 Mo. 138; 19 S. W. 195.

A statute required the question submitted to be whether or not the sale of "intoxicating liquors and medicated liquors producing intoxication" should be prohibited, and the statute was changed so the question was whether the sale only of "intoxicating liquors" should be pro-

to post election notices, the order need not direct him to do so.<sup>95</sup>

**Sec. 525. Board of supervisors in Michigan—Conclusiveness of orders.**

The Legislature of Michigan in 1889 enacted a "local-option law," which among other things provided that a board of supervisors might by resolution determine and declare whether the necessary preliminaries had been taken to warrant them in issuing an order directing that an election should be held for the purpose of ascertaining whether the local option law should be applied and enforced in a given locality. The Supreme Court of that State held that where a board of supervisors had obtained jurisdiction of the subject matter in such case by the call of the county clerk, and by petitions the validity of which appeared signed by a sufficient number to authorize the county clerk to act, the determination of the board was final, and that the statute wisely made it so, and that the power of the Legislature to confer upon the boards of supervisors to so determine was amply provided for by the Constitution of the State which declares that the Legislature may confer upon organized townships, incorporated cities and villages, and upon the board of supervisors of the several counties such powers of a local legislative and administrative

hibited; but the order was for an election to determine whether or not the sale of "intoxicating liquors and medicated liquors producing intoxication" should be prohibited. It was held that the order was not so misleading as to invalidate the election. *Dillard v. State*, 31 Tex. Cr. Rep. 470; 20 S. W. 1106.

If the statute requires a copy of the order to be posted as a notice, the seal of the court need not be attached; for it is not "process" within the meaning of a statute on the subject of proc-

ess. *Gilbert v. State*, 32 Tex. Cr. Rep. 596; 25 S. W. 632.

<sup>95</sup> *Aaron v. State*, 34 Tex. Cr. Rep. 103; 29 S. W. 267.

It is the duty of the court hearing the petition to compel the attendance of witnesses. *In re Jones Law Petition*, 30 Ohio Cir. Ct. Rep. 705.

The board hearing the petition may collect and collate the required statutory facts, to enable it to order the election, through a committee appointed for that purpose. *Giddings v. Wells*, 99 Mich. 221; 58 N. W. 64.

character as they may deem proper.<sup>96</sup> Under that statute it was also held that it was competent for the board of supervisors, when convened for the purpose of determining whether or not under an election under the local option law had been prayed for by the requisite number of electors, to appoint a committee to collect and collate the required statutory facts, and that the adoption of the report of such a committee, and of a resolution enacted thereunder declaring and determining that such election had been prayed for by the requisite number of electors was, in legal effect, a declaration and determination of the board of supervisors of that fact, and it could not be presumed that the fact that the report was made excluded from their inquiry as to the requisite number of signers or that the members of the board did not verify the facts set forth in the report, or did not avail themselves of any other means of information.<sup>97</sup> It has also been held in that State that it was not within the discretion of a board of supervisors to refuse to call an election for a resubmission of the question upon the presentation of a petition answering the requirements of the statutes.<sup>98</sup>

### **Sec. 526. Signing record.**

Under a local option law which provides that the board of supervisors of a county shall determine whether a sufficient number of electors have petitioned for an election, the board shall so declare and make an order calling the election and fixing the date when it shall be held, and that "such order shall be entered in full upon the journal of the proceedings of the board for that day, and the same shall be signed by the acting chairman and clerk of the board before the final adjournment," the unsigned and unauthenticated proceedings

<sup>96</sup> *Friesner v. Common Council*, 91 Mich. 504; 52 N. W. 18; *Thomas v. Abbott*, 105 Mich. 687; 63 N. W. 984; Michigan Const. art. iv, sec. 38.

<sup>97</sup> *Backus v. County Supervisors*, 99 Mich. 221; 58 N. W. 62.

<sup>98</sup> *Keefer v. Hillsdale Co. Super-*

*visors*, 109 Mich. 645; 67 N. W. 981. See also *People v. Hamilton*, 143 Mich. 1; 106 N. W. 275; 12 Detroit Leg. N. 897; *Attorney General v. Van Buren Circuit Judge*, 143 Mich. 366; 106 N. W. 1113; 12 Detroit Leg. N. 1006.



of such board of supervisors cannot be said to be such a record as the law requires to be made in order to give effect to its provisions. The statute in such cases is mandatory.<sup>99</sup> It requires a record duly authenticated, not only that the result may be evidenced in an enduring form, but that it may be seen and known whether the board has acted within the limits of the power conferred or not.<sup>1</sup> It is sufficient, however, in such cases if the proceedings are signed after the close of the session of the board. This accords with the usual practice of such boards in the signing of records, the journal of each daily session being signed after its close. In many instances such records are signed after final adjournment.<sup>2</sup> And where, in the record of a day's proceedings of such board, other matters appear besides the resolution or order of the board directing the holding of a local election, it is proper to omit such irrelevant matter from the notices served and posted and to append thereto the signatures of the clerk and chairman found at the close of the day's proceedings as recorded.<sup>3</sup> But a statute may dispense with a signing, and none is required unless the statute specifically so provides.<sup>4</sup>

### Sec. 527. Appeal from order for election.

Unless a statute provides for it, no appeal lies from an order providing for an election; but in some jurisdictions a writ of *certiorari* may be issued to revise the action of the board or lower court making the order.<sup>5</sup> But a statute providing

<sup>99</sup> *Covert v. Munson*, 93 Mich. 603; 53 N. W. 733. See *Richter v. State* (Ala.), 47 So. 163.

<sup>1</sup> *Pearsall v. Supervisors*, 71 Mich. 438; 39 N. W. 578; *Weston v. Monroe*, 84 Mich. 341; 46 N. W. 446.

<sup>2</sup> *Covert v. Munson*, 93 Mich. 603; 53 N. W. 733; *Thomas v. Abbott*, 105 Mich. 687; 63 N. W. 984.

<sup>3</sup> *Thomas v. Abbott*, 105 Mich. 687; 63 N. W. 984.

<sup>4</sup> *Davidson v. State*, 44 Tex. Cr. App. 586; 73 S. W. 808; *Roper v. Scurlock*, 29 Tex. Civ. App. 464; 69 S. W. 456, interlineations before the signing does not render the order void. *Bruce v. State* (Tex. Cr. App.), 35 S. W. 383.

<sup>5</sup> *Champion v. Board*, 5 Dak. 416; 41 N. W. 739; *Miller v. Jones*, 80 Ala. 89; *State v. Robbins*, 54 N. J. L. 566; 25 Atl. 471.

generally for appeals from orders of a board of supervisors authorizes an appeal from their order upon a petition for a local option election.<sup>6</sup> In the case just cited the statute gave the right of appeal to any citizen of the county. In New Jersey it was held that a citizen who appears before the board of supervisors, in pursuance of a notice published of the hearing on the petition, and objects to the ordering of an election, gains such a standing as entitles him to sue out a writ of *certiorari* to test the proceedings, and that an inn-keeper who held a license to sell liquors was entitled to the writ.<sup>7</sup> If the order of the board for the election is conclusive that all necessary steps have been taken, then no appeal lies from it.<sup>8</sup>

### Sec. 528. Petition and order for resubmission.

Statutes in some States provide for a resubmission of local option questions, usually after a certain period of time has expired. This may be done, where the statute authorizes it, without an additional petition.<sup>9</sup> In New York an order for resubmission will not be granted for errors of the town clerk

<sup>6</sup> *Ferguson v. Monroe Co.*, 71 Miss. 524; 14 So. 81; *Spencer v. Washington Co.* (Miss.), 45 So. 863.

<sup>7</sup> *State v. Robbins*, 54 N. J. L. 566; 25 Atl. 471, reversing *Middleton v. Robbins*, 53 N. J. L. 555; 22 Atl. 481.

<sup>8</sup> *Thomas v. Abbott*, 105 Mich. 687; 63 N. W. 984.

In Arkansas a person, four months after granting an order for prohibition, who files an affidavit for an appeal does not make himself a party to the proceedings, and cannot appeal *Holmes v. Morgan*, 52 Ark. 99; 12 S. W. 201. And persons not signing to a petition for revocation of an order of prohibition are not "aggrieved" and cannot appeal. *Phil-*

*lips v. Goe*, 85 Ark. 304; 108 S. W. 207.

A licensee has sufficient interest to entitle him to appeal from an order of prohibition. *Miller v. Jones*, 80 Ala. 89.

Where an appeal lies *certiorari* will not lie. *State v. Schmitz*, 65 Iowa 556; 22 N. W. 673.

<sup>9</sup> *In re Bertrand*, 40 N. Y. Misc. Rep. 536; 82 N. Y. Supp. 940. See *In re Krieger*, 59 N. Y. App. 346; 69 N. Y. Supp. 851.

Objectors to the ordering of a resubmission must make a formal application therefor, and usually give notice; at least this is so in New York. *In re Munson*, 95 N. Y. App. Div. 23; 88 N. Y. Supp. 509.

in printing in his notice of the election the caption of the questions only once, and in printing them on the ballot without printing the caption, the notice and ballots being in other respects sufficient.<sup>10</sup> But where the clerk added, unauthorizedly, a question to the four statutory questions, this was held to call for a resubmission.<sup>11</sup> So in that State an application for resubmission was denied where, through the laches of the applicant the result of the order would be to authorize hotel keepers to sell liquor, regardless of the result of the vote on resubmission, from the date of the order until the date the result of the election would take effect.<sup>12</sup> If the first proceedings were void, then there can be no resubmission.<sup>13</sup> Where a statute enacted in 1896 provided for a resubmission on petition of the question of prohibition every two years, and an election was held the next year, resulting in a prohibition majority, and the next year (1897) and after the annual election at which the question had been submitted, the laws were changed so as to make the annual election in November, 1898, instead of March, 1899, and in 1898, a statute was enacted providing that the questions of sale or no sale should be voted upon at the general election of that year, but might be resubmitted (without saying anything about the necessity of a petition) at the general election of 1901, and biennially thereafter, it was held that there could be no resubmission without a petition; and if there was, the election was void.<sup>14</sup> Statutes occasionally, however, require an annual submission of the local option question. Usually it is in those States where prohibition prevails throughout the

<sup>10</sup> *People v. Edwards*, 42 N. Y. Misc. Rep. 567; 87 N. Y. Supp. 618; *In re Merow*, 112 N. Y. App. Div. 562; 99 N. Y. State 9; *In re Clipperly*, 50 N. Y. Misc. Rep. 266; 100 N. Y. Supp. 473; *People v. Chandler*, 41 N. Y. App. Div. 178; 58 N. Y. Supp. 794. See *Raymond v. Clement*, 118 N. Y. App. Div. 528; 102 N. Y. Supp. 1070.

<sup>11</sup> *In re Smith*, 44 N. Y. Misc. Rep. 384; 89 N. Y. Supp. 1006.

<sup>12</sup> *In re Town of Lafayette*, 45 N. Y. Misc. 141; 91 N. Y. Supp. 970; order affirmed 93 N. Y. Supp. 534; 105 N. Y. App. Div. 25.

<sup>13</sup> *In re Getmar*, 28 N. Y. Misc. Rep. 451; 59 N. Y. Supp. 1013.

<sup>14</sup> *People v. Decker*, 28 N. Y. Misc. Rep. 699; 60 N. Y. Supp. 60; order affirmed 63 N. Y. Supp. 1113.

State unless a vote of a district permits sales. Such was the case in South Dakota. There the question of granting permits to sell at retail was submitted on petition at the annual municipal elections held in townships, towns and cities, and if in favor of sales, the corporate authorities were required to issue permits to sell "for the ensuing year," it was held that there must be an annual submission of the question of granting permits, and the power to grant such permits was limited to the ensuing year after an election favoring the granting of them, unless the granting was authorized by an election of the following year.<sup>15</sup> If a statute provides that an election may be held two years after prohibition be adopted, it cannot be held before that period has expired.<sup>16</sup>

<sup>15</sup> State v. Barber (S. D.), 101 N. W. 1078.

<sup>16</sup> Adams v. Kelley (Tex. Civ. App.), 44 S. W. 529.

In New York the board of supervisors may exercise a reasonable discretion in calling a meeting, and should not call a second election if the true result of the election has been ascertained and there be no reasonable ground for believing that any irregularity affected the result. A failure to give a voter an opportunity to vote, or error in counting the votes or in reading the returns, is no ground for resubmission, if the irregularities did not affect the result. *In re Clancy*, 58 N. Y. Misc. Rep. 258; 109 N. Y. Supp. 644.

But in Texas, where the statute provides for a resubmission where the question shall "not have been properly submitted," resubmission must be made where the counting and certifying of the vote and the declaration of the result are insufficient to ascertain the result or show a fair elec-

tion; and it is held that a submission is not completed until the vote is canvassed and the result ascertained. *In re Clancy*, 58 N. Y. Misc. Rep. 258; 109 N. Y. Supp. 644.

If the first election is void for want of notice, there can be no resubmission on the old petition. *In re Sullivan*, 34 N. Y. Misc. Rep. 598; 70 N. Y. Supp. 374; *In re Town of Lafayette*, 45 N. Y. Misc. Rep. 141; 91 N. Y. Supp. 970; affirmed 105 N. Y. App. Div. 25; 93 N. Y. Supp. 534; *In re Clipperley*, 50 N. Y. Misc. Rep. 266; 100 N. Y. Supp. 473; *In re Krieger*, 59 N. Y. App. Div. 346; 69 N. Y. Supp. 851.

In New York a statute provided that an election could be held on each even numbered year, if that year be the second succeeding the year when the question of local option was lost or might have been lawfully submitted to a vote. In 1899 an election was held on the question which was judicially declared void for irregularities. It was held that the hold-



### Sec. 529. Time and place of holding an election.

The general rule is that the time and place of holding an election and the legal qualifications of the electors, are of the substance of an election, and a failure to observe the law, in respect to such matter, will invalidate an election, and that statutes governing those matters must be construed as mandatory and not directory. The intention of a legislature to make such provisions essential may appear as well by the general scope and policy of the statute as by direct averment. In order that a ballot in any election shall have force, it must be cast at an election held at a time and place either fixed by law or by the order of some one having authority.<sup>17</sup> Accordingly, if a local option law requires that a local option election shall be ordered at a particular time, for instance at the first session of a court after the filing of the petition asking for such election, the law must be strictly complied with, and an order for the holding of such election made at any other time will be void. While the law clothes the acts of public officers with every presumption of verity and fairness, such presumption

ing of this invalid election did not preclude the holding of a special election within two years thereafter. *In re Sullivan*, 30 N. Y. Misc. Rep. 682; 64 N. Y. Supp. 303. See *People v. Mosso*, 30 N. Y. Misc. Rep. 164; 63 N. Y. Supp. 588.

The fact that the interests of the town will be injured if the question is not submitted is no ground for ordering a resubmission. *In re Clipperly*, 50 N. Y. Misc. Rep. 266; 100 N. Y. Supp. 473; nor that voters were misled as shown by affidavits by the defects in the ballots used, when an examination of the returns shows that no considerable number were misled. *In re Clipperley*, 50 N. Y. Misc. Rep. 266; 99 N. Y. Stat. 473.

Where a statute provided that the local option "election herein provided for shall not be held oftener than every two years," the question whether liquor shall be permitted sold may be submitted every two years. *Commonwealth v. Hoke & Yocum*, 14 Bush 668.

A void election cannot be counted in determining whether an election has been held within two years. *State v. Rinke* (Mo.), 121 S. W. 159.

<sup>17</sup> *McCreary on Elections* (3 ed.), secs. 192, 193; *Dickey v. Hurlburt*, 5 Cal. 343; *Jones v. State*, 1 Kan. 273; *Pradat v. Ramsay*, 47 Miss. 29; *Fullwood v. State*, 67 Miss. 554; *State v. Webb*, 49 Mo. App. 407.

will not authorize an officer to defeat the popular will or to postpone to an indefinite future its expression.<sup>18</sup> And if the law provides an election shall be held after a petition therefor has been filed, the statute is mandatory and must be complied with, and an election held beyond the period fixed by the statute will be unauthorized and void.<sup>19</sup> It has also been decided that if a statute does not fix the time for holding an election, but leaves it to be determined by an officer, who is disqualified under the Constitution from acting, that an election held, under the direction and authority of the person named, will be null and void.<sup>20</sup> It has also been held that an election held under a local option law is a special election, and only to be held at the time to be fixed by the authority designated by the statute, after the happening of the conditions precedent prescribed.<sup>21</sup> The order should fix the day for the election<sup>22</sup> unless the law fixes the date.<sup>23</sup> Whether or not the order must designate the polling places depends upon the wording of the statute; if the statute be silent, then it will be sufficient to designate them in the election notice.<sup>24</sup>

<sup>18</sup> *Ex parte* Sublett, 23 Tex. App. 309; 4 S. W. 894; *Wells v. State*, 24 Tex. App. 230; 5 S. W. 830.

<sup>19</sup> *State v. Ruark*, 34 Mo. App. 325; *State v. Webb*, 49 Mo. App. 407; *Boone v. State*, 10 Tex. App. 418; *Parker v. State*, 12 Tex. App. 401; *Aiken v. State*, 14 Tex. App. 142; *Ex parte* Sublett, 23 Tex. App. 309; 4 S. W. 894; *Carey v. State*, 28 Tex. App. 475; 13 S. W. 752; *State v. Kellogg*, 133 Mo. App. 431; 113 S. W. 660.

<sup>20</sup> *Dickey v. Hurlburt*, 5 Cal. 343.

<sup>21</sup> *State v. Tucker*, 32 Mo. App. 620; *Leonard v. Saline Co. Court*, 32 Mo. App. 633.

<sup>22</sup> *Prichett v. Snider* (Ky.), 61 S. W. 277; 22 Ky. L. Rep. 1718.

<sup>23</sup> *Attorney General v. Van Buren Circuit Judge*, 143 Mich. 396;

106 N. W. 1113; 12 Detroit Leg. N. 1006.

<sup>24</sup> In Canada it is held not necessary to designate in the order the polling places if the village be small. *In re Salter* [1902], 4 Ont. L. R. —; *In re Mace*, 42 Up. Can. p. 76; *In re Hudson*, 19 Ont. App. 343. In Texas the omission to designate the place is not fatal, if the electors be not misled. *Ex parte Meyers* (Tex. Cr. App.), 44 S. W. 831.

A statute required the question of local option to be submitted at "every town meeting to be held on the first Tuesday of March, 1903, and annually thereafter;" a subsequent statute provided that the words "annual meeting" mean the annual town meeting in March, or an adjournment thereof. Another section designated

**Sec. 530. Notice of time and place of holding an election.**

Local option laws generally provide that notice of the time and place for holding a local option election shall be given either by posting notices thereof or publishing the same in a newspaper, and the manner of doing it, and in such cases if the provisions of the statute are not complied with no valid election can be held.<sup>25</sup> If the statute provides that the notice must be made by publishing it for a given number of weeks in a newspaper, prior to a given number of days before the election, the notice must be published a number of days equal to seven days to each week, the computation to be made by excluding the first day and including the last day prior to the number of days named preceding the day of

the same date for holding the annual meeting, provided for adjournments, but a failure to hold the meeting should not prevent the election of officers at a subsequent meeting, and another section required the town officers to warn the voters as to the business to be transacted, and still another section said one of these warnings should contain the local option question. The town officers failed to warn the annual town meeting at the proper time, and a special town meeting was given for a later date which contained an article on the question of license. It was held that a vote on the question at the special meeting was not authorized, for the reason that a vote on the question could be held only at the annual meeting. *State v. Sargent* (Vt.), 69 Atl. 825. See also *People v. Sackett*, 15 N. Y. App. Div. 290; 44 N. Y. Supp. 593; reversing 40 N. Y. Supp. 414.

Where a statute provided that a local option election should not be held within sixty days of any

municipal election within the city, a local option election held on February 7th in a city whose general election must occur on April 7th following, was held in time. *Becker v. Lafayette County Ct.* (Mo.), 119 S. W. 985.

A statute providing that a local option election may be held "at any regular town, city or county election" does not refer alone to elections fixed by the Constitution, but includes statutory elections. *McCreary v. Commonwealth*, 8 Ky. L. Rep. (abstract), 437; *Commonwealth v. Brown*, 10 Ky. L. Rep. (abstract) 407.

<sup>25</sup> *Ex parte Kennedy*, 23 Tex. App. 77; 3 S. W. 114; *Haddox v. Clarke Co.*, 79 Va. 677; *In re Sullivan*, 34 N. Y. Misc. Rep. 598; 70 N. Y. Supp. 374; *In re Powers*, 334 N. Y. Misc. Rep. 636; 70 N. Y. Supp. 590; *In re O'Hara*, 63 N. Y. App. 512; 71 N. Y. Supp. 613; *In re Town of Lafayette*, 45 Misc. Rep. 141; 91 N. Y. Supp. 970; affirmed 105 N. Y. App. Div. 25; 93 N. Y. Supp. 534.

holding the election.<sup>26</sup> And if a statute provides that the clerk shall post, or cause the notices to be posted, and it appears that he did not post them, but issued them and placed them in the hands of men to be posted, the law will not be complied with, since it will not be presumed that the men did in fact post the notices.<sup>27</sup> A notice in such case need not state that the petition for the election was signed by the requisite number of voters.<sup>28</sup> The omission of a local option law to provide for giving notice of an election thereunder within an election district will not vitiate the law. In such case it will be assumed either that the obligation to direct a proper notice is implied in the authority to order an election, or that notice must be given as required in the general election law.<sup>29</sup> And if the law fails to prescribe the manner in which the giving of such notice shall be proved, oral testimony is admissible to prove that fact, or that any other plain and express provision of the statute providing for such an election, has or has not been complied with.<sup>30</sup> The notice provided

<sup>26</sup> *In re* Wooldridge, 30 Mo. App. 635; *State v. Tucker*, 32 Mo. App. 620; *Leonard v. Saline Co. Court*, 32 Mo. App. 633; *Bean v. County Court*, 33 Mo. App. 635; *State v. Kaufman*, 45 Mo. App. 656.

<sup>27</sup> *James v. State*, 21 Tex. App. 17 S. W. 422.

<sup>28</sup> *State v. Weeks*, 38 Mo. App. 566; *State v. Smith*, 32 Mo. App. 618.

<sup>29</sup> *McPike v. Penn*, 51 Mo. 63; *State v. Dugan*, 110 Mo. 138; 19 S. W. 195.

<sup>30</sup> *State v. Baker*, 36 Mo. App. 63; *State v. Hutton*, 39 Mo. App. 417; *State v. Dugan*, 110 Mo. 139; 19 S. W. 196; *Chalmers v. Fak*, 76 Va. 717; *Haddox v. County of Clark*, 79 Va. 677.

If the statute make no provisions for recording the notice of an election or the order of pub-

lication, the record of such notice and order is not admissible in evidence where it is necessary to prove them. *Toole v. State*, 88 Ala. 158; 7 So. 42; *State v. Ruark*, 34 Mo. App. 325; *State v. Tucker*, 32 Mo. App. 628; *Leonard v. Saline Co. Court*, 32 Mo. App. 633; *In re* Woodbridge, 30 Mo. App. 612; *State v. Baker*, 36 Mo. App. 38.

Proof that a less number than those provided for by law were posted within the proposed territory to be embraced in the order of prohibition will make the election and all proceedings under it invalid. But if a statute provides that an officer shall post such notices, in the absence of proof to the contrary, the presumption will obtain that such officer completely discharged the duty imposed upon him. Such



for by such a law is absolutely essential to the validity of such an election.<sup>31</sup> If a statute provides that notice of such an election shall be by publication in some newspaper published in the county for a given length of time, and such "other notice" may be given as the county court or municipal body ordering the election may think proper in order to give general publicity of the election, if the notice complies with the requirements of newspaper publication, it will be sufficient, even though the county court or municipal body ordering the election fail to give other notice, as "other notice" is by the statute in such case discretionary.<sup>32</sup> If a local option law provides that an election under it shall be held on a day within a given number of days of any municipal or State election, the word "within" must be construed as referring to elections held before and after the time of holding an election under such local option law.<sup>33</sup> Such an election, however, will not be declared null and void because of the fact that it was held within the number of days prescribed by the statute previous to a special municipal election which could not have been anticipated until after the date of the local option election. If the statute in such case provides that "notice of such election shall be given by publication in some newspaper for four consecutive weeks, and the last insertion shall be within ten days next before such election," it must be construed as meaning that there must be four weeks' notice (twenty-eight days) of the election, the computation being made by excluding the first day of the notice and including

presumption, however, will be overcome by proof that he placed the notices "in the hands of good men to be posted." Delivery of the notices to "good men" is not a posting of the same within the meaning of the law, nor will the courts presume that "good men" posted notices when they were under no legal obligation to do so. *Ex parte Kramer*, 19 Tex. App. 233; *Smith v. State*, 19 Tex. App. 444; *James v. State*, 21 Tex. App.

253; *James v. State*, 21 Tex. App. 189; *James v. State*, 21 Tex. App. 353.

<sup>31</sup> *Stephens v. People*, 89 Ill. 337; *George v. Township*, 16 Kan. 72; *McPike v. Penn*, 51 Mo. 63; *State v. Tucker*, 32 Mo. App. 620.

<sup>32</sup> *State v. Weeks*, 38 Mo. App. 566.

<sup>33</sup> *In re Woodbridge*, 30 Mo. App. 612; *State v. Bowerman*, 40 Mo. App. 576.

the day of election, and that the last insertion shall be one or more days, not exceeding ten, next before such election. Such a notice is satisfied if twenty-eight days intervenes between the first one of consecutive weekly publications and the day of election without a daily insertion of the whole.<sup>34</sup> If the statute does not provide the manner of making proof of such publication, it may be made by the oral testimony of a witness who has personal knowledge of the fact that it was made. In the absence of such a statutory requirement, it must be held that it is the *fact* of publication in the mode prescribed by the statute, and not any particular method of *proving* the fact is what puts the statute in force.<sup>35</sup> When the notice to be given consists of a copy of the order, and other matters of the board ordering the election is inserted between the order and the signatures of its members appended to the day's proceedings, such other matters need not be inserted in the notice.<sup>36</sup> It is not necessary for the notice to contain a statement that the petition had appended to it the required number of signatures.<sup>37</sup> Where the district for the election was described by metes and bounds, but in the notice it was described as a certain justice's precinct, yet the two descriptions were identical, the supposed variance was held immaterial.<sup>38</sup> So where the notice had to be published in a newspaper selected by the governor and comptroller of the State, but they had made no selection, yet it was published in all the newspapers, one of which these officials would have been compelled, under the law, to select, it was held immaterial that

<sup>34</sup> *State v. Tucker*, 32 Mo. App. 620; *Leonard v. Saline Co.*, 32 Mo. App. 633; *Bean v. Barton Co.*, 33 Mo. App. 635; *State v. Kaufman*, 45 Mo. App. 656; *State v. Dobbins*, 116 Mo. App. 29; 92 S. W. 136.

<sup>35</sup> *Toole v. State*, 88 Ala. 158; 7 So. 42; *Williams v. State* (Tex. Cr. App.), 109 S. W. 189.

<sup>36</sup> *Thomas v. Abbott*, 105 Mich. 687; 63 N. W. 984. The decision of this point is a very fair illus-

tration of the extent to which contests of the validity of local option elections have been pushed—every straw has been seized upon in order to overturn their results.

<sup>37</sup> *Church v. Weeks*, 38 Mo. App. 566; *State v. Smith*, 38 Mo. App. 618.

<sup>38</sup> *Ex parte Speogle*, 34 Tex. Cr. Rep. 465; 31 S. W. 171; *Williams v. Davidson* (Tex. Civ. App.), 70 S. W. 987.

they had failed to make the selection.<sup>39</sup> If the statute requires five notices of the election to be given and only three be posted, the election will be void, it has been held.<sup>40</sup> Where the statute required all elections to be held according to its provisions, and provided that where "any election" is ordered, at least twenty days' notice of it should be given; but the statute also provided that its provisions should apply to all elections "when not otherwise provided by law;" and the local option law required the clerk to post five notices of the election for at least twelve days prior to the day of election, and provided that an election under such law should be held in conformity with the general election law; it was held, inasmuch as the local option law was a special law and the local option election a special election, twelve days' notice was all that was required.<sup>41</sup> In Texas it is presumed, in prosecutions for violation of the local option law, that notices were posted the requisite time;<sup>42</sup> but the evidence and inference to be drawn therefrom may overcome this presumption. Thus where the evidence showed that the clerk whose duty it was to post the notices did not do so, but placed them in the hands of "good men" to be posted, there was no presumption that they were posted.<sup>43</sup> In New York where four propositions could be

<sup>39</sup> *Paul v. Gloucester Co.*, 50 N. J. L. 585; 15 Atl. 272; 1 L. R. A. 86.

<sup>40</sup> *Smith v. State*, 19 Tex. App. 444. *Contra*, *Norman v. Thompson*, 96 Tex. 250; 72 S. W. 62; affirming 30 Tex. Civ. App. 537; 72 S. W. 64.

<sup>41</sup> *Voss v. Terrell*, 12 Tex. Civ. App. 439; 34 S. W. 170; *Ex parte Keith*, 47 Tex. Cr. App. 283; 83 S. W. 683; *Ex parte Neal*, 47 Tex. Cr. App. 441; 83 S. W. 831; *Eggleston v. Board*, 51 N. Y. App. Div. 38; 64 N. Y. Supp. 471; *McHam v. Love*, 39 Tex. Civ. App. 512; 87 S. W. 875; *Byrd v. State*, 63 Tex. Cr. App. 507; 111 S. W. 149.

<sup>42</sup> *Segars v. State*, 35 Tex. Cr. Rep. 45; 31 S. W. 370. See also in Kentucky, *Bennett v. Commonwealth*, 11 Ky. L. Rep. (abstract) 370.

<sup>43</sup> *James v. State*, 21 Tex. App. 189; 17 S. W. 143; 21 Tex. App. 353; 17 S. W. 422. But see *Frickie v. State*, 39 Tex. Cr. App. 254; 45 S. W. 810.

In this State a failure to post all the notices is not a subject of contest of the election. *Norman v. Thompson*, 96 Tex. 250; 72 S. W. 62; affirming 30 Tex. Civ. App. 537; 72 S. W. 64. (In this case one of the notices was not posted the full time, but the voters had actual notice. The election was

voted upon at once, and the clerk's notice of election was under the heading, "Local option to determine whether liquors shall be sold under the provisions of section 16, c. 367, laws of 1900, known as the 'Liquor Tax Law,' " and that a vote would be taken at the next election "on said proposed questions," it was held that the notice was sufficient in its statements of the questions to be voted upon; that the notice need not state that all of the four questions would then be voted upon, nor need they be set out in full.<sup>44</sup> If the question of local option

held valid.) *Contra*, *Ex parte* Conley (Tex. Cr. App.), 75 S. W. 301.

Other cases that notice of the election must be given or the election will be void are *In re* Mace, 42 Up. Can. 70; *In re* Malone, 41 Up. Can. 159, 253; *In re* Hamilton, 41 Up. Can. 253; *In re* Lake, 26 C. P. (Can.) 173; *In re* Brophy, 26 C. P. (Can.) 290; *In re* Pickey [1907], 14 App. Ont. L. R. 587; *In re* Duncan [1909], 16 App. Ont. L. R. 132; Rowland v. Collingwood [1909], 16 Ont. L. R. 272; *In re* Saltfleet [1909], 16 App. Ont. L. R. 293; *In re* Joyce [1909], 16 App. Ont. L. R. 380; Brooks v. Ellis (Tex. Civ. App.), 98 S. W. 936; *Ex parte* Conley (Tex. Cr. App.), 75 S. W. 301.

<sup>44</sup> *In re* Woolston, 35 N. Y. Misc. Rep. 735; 72 N. Y. Supp. 406. See *In re* Foster, 57 N. Y. Misc. Rep. 676; 108 N. Y. Supp. 788.

In this State, where the election is held at a "town meeting," the election is held valid, though no notice of it be given, where the electors knew the propositions to be voted upon at the meeting, and there was a full vote. *In re* France, 36 N. Y. Misc. Rep. 693; 74 N. Y. Supp. 379; *In re* Town of Lafayette, 45 N. Y. Misc. Rep. 141; 91 N. Y. Supp. 970; order af-

firmed, 105 N. Y. App. Div. 25; 93 N. Y. Supp. 534; *In re* Smith, 44 N. Y. Misc. Rep. 384; 89 N. Y. Supp. 1006; *In re* O'Hara, 40 N. Y. Misc. Rep. 355; 82 N. Y. Supp. 293.

In South Carolina a law required twenty days' notice to be given for the location of a dispensary, and a designation of the locality where it was to be located. A failure to designate the particular locality was held fatal. Trustees v. Board, 62 Miss. 68; 39 S. E. 793.

In Alabama every local law passed by the Legislature without notice is void under a Constitution requiring it. Larkin v. Simmons (Ala.), 46 So. 451.

If a judge's certificate be otherwise regular, the fact that he states that the notice was published four weeks on the date of the fourth issue of the newspaper containing the notice, where four consecutive weeks or twenty-eight days from the day of its publication was required, will not vitiate such certificate, although the four weeks did not expire until the end of the week in which the last publication was made. Williams v. State, 53 Tex. Cr. App. 156; 109 S. W. 189.



can only be voted on at the annual "town meeting," then a notice that the question would be submitted at a special "town meeting" cannot empower it to pass upon the question.<sup>45</sup> Slight variations in the notice, stating the statutory propositions to be voted on will not vitiate it.<sup>46</sup> Where the statute requires notices to be posted it means an actual posting of the requisite number; but if they be posted and then be torn or blown down, the election, in that respect, will be valid.<sup>47</sup> If the statute requires the clerk of the board to give the notice of election, it is not necessary that such board order him to give it.<sup>48</sup>

<sup>45</sup> *State v. Sargent* (Vt.), 69 Atl. 825.

In Missouri if notice for the full time be not given the election is void. *State v. Kempman*, 75 Mo. App. 188. *Contra* in Louisiana, *Hagens v. Police Jury* (La.), 46 So. 676. In Texas notices given in each precinct by posting is sufficient. *Keller v. State*, 46 Tex. Cr. App. 588; 81 S. W. 1214.

<sup>46</sup> *In re Rice*, 95 N. Y. App. Div. 28; 88 N. Y. Supp. 512.

<sup>47</sup> *Nelson v. State*, 44 Tex. Cr. App. 595; 75 S. W. 502; *Bowman v. State*, 14 Tex. Cr. App. 38; 40 S. W. 796; 41 S. W. 625.

Where the clerk is required to record the affidavit of publication of the order of the adoption of local option, it need not immediately follow the order, it not being nullified by the insertion of several pages of other matters. *People v. Hamilton*, 143 Mich. 1; 106 N. W. 275; 12 Detroit Leg. N. 897.

Notices posted December 29th for an election January 17th are posted twelve days prior to the date of the election. *Hayes v.*

*State* (Tex. Cr. App.), 39 S. W. 106. For Texas statute, see *Roper v. Scurlock*, 29 Tex. Civ. App. 464; 69 S. W. 456.

<sup>48</sup> *Hayes v. State* (Tex. Cr. App.), 39 S. W. 106; *Eggleston v. Board*, 51 N. Y. App. Div. 38; 64 N. Y. Supp. 471.

Publication of the notice may be shown by oral evidence, even to the contradiction of the printer's affidavit. *State v. Swearingen*, 128 Mo. App. 605; 107 S. W. 1.

The certificate of publication made by the judge need not show the particular issues of the paper in which the publication was made. *Magill v. State*, 51 Tex. Cr. App. 357; 103 S. W. 397.

Where the court selected the newspaper for the notice, and publication was required for four consecutive weeks, the last insertion to be within ten days before the date of the election, insertions for four consecutive weeks in a weekly newspaper the last eight days before the election was held sufficient. *State v. Brawn*, 130 Mo. App. 214; 109 S. W. 99.

Sample ballots of an election

**Sec. 531. Time of holding an election.**

The election must be held at the time the law requires it to be held. If the statute requires the court or board hearing

were mailed to every voter in the town, stating the questions to be submitted. Several general public meetings were held, at which these questions were discussed, of which accounts were given in the newspapers, and these newspapers discussed the questions from time to time at length. More votes were cast on these questions than for any office voted for at the same time. The town clerk failed to post four notices in public places and to give notice of the election in a newspaper. The court refused to declare the election void. *In re Rowley*, 34 N. Y. Misc. Rep. 662; 70 N. Y. Supp. 208.

Any one posting the notices may testify to that fact. *Watkins v. State* (Tex. Cr. App.), 62 S. W. 911.

The notice, where it consists of a copy of the order of election, need not have the seal of the court attached to it. *Roper v. Scurlock*, 29 Tex. Civ. App. 464; 69 S. W. 456.

Where a statute provides that the clerk of the court shall post or provide to be posted the election notice, it is sufficient that they were posted with his consent. *McCarty v. Justus* (Tex.), 115 S. W. 278.

The notice must be published as the court orders it, or the election will be void; partial compliance with the order is not sufficient. *State v. Reid*, 134 Mo. App. 582; 114 S. W. 1116.

An affidavit of publication may

be substituted for a lost one. *State v. Campbell*, 214 Mo. 362; 113 S. W. 1081; 119 S. W. 494.

A notice that a petition has been filed with the clerk for the submission of local option questions under the liquor statute (designating the particular section of the statute), and that all local option questions provided for therein will be submitted to the freeholders on a specified day, is sufficient, and it is not necessary to state the questions will be voted on the day named for the election. *In re Livingston*, 62 N. Y. Misc. Rep. 334; 115 N. Y. Supp. 269.

Where a statute requires notice to be published for four consecutive weeks, the last insertion to be ten days before the election, a publication of the first notice on February 8th, the fourth on March 1st, and a fifth within ten days prior to the date of the election on March 13th, is sufficient. *State v. Campbell*, 214 Mo. 362; 113 S. W. 1081; 119 S. W. 494.

Where the first notice was published four days short of the period prescribed by the statute, and few if any of the electors did not vote, it was held that the election was valid. *Bauer v. Board* (Mich.), 122 N. W. 121.

A statute requiring the sheriff to post up notices is complied with by a posting of such notices by private persons. *Roesch v. Henry* (Ore.), 103 Pac. 439.

the application to fix the date of the election, it must do so and the election must be held on that day; but if the law fixes the date, then on the day thus fixed.<sup>49</sup> If the law requires the petitioners to fix the date in their petition, then the elec-

The printing of the clerk's name to the notice is a sufficient subscription thereto of his signature, and the seal of the court need not be attached. *Roesch v. Henry* (Ore.), 103 Pac. 439.

Where the court's order for submission found that the county contained no city or town of 2,500 inhabitants, and directed the clerk to give notice of the election, and he gave a notice reciting that it was ordered by the judge of the county court that "the qualified voters" of the county are notified that an election would be held on a specified date to determine whether liquors would be sold within the city limits of the county and the "outside limits of all cities and towns having 2,500 inhabitants or more," it was held that the notice was void, because it attempted to limit the sale of liquors to the county outside the limits of any town or 2,500 inhabitants or more, thereby being a departure from the order for an election. *State v. Rinke* (Mo.), 121 N. W. 159.

In Michigan it is sufficient to embody the order of the court for an election in the notice, without posting a certified copy of such order. *Thomas v. Abbott*, 105 Mich. 687; 63 N. W. 984.

Where five notices had to be posted in each precinct of the county twelve days before the election, and in one precinct none were

posted, in another for only eleven days, in another for only ten days and in another three for only eight days, the election was held void, and the commissioners were enjoined from entering an order prohibiting the sale of liquors in the county. *Guesnsey v. McHaley* (Ore.), 98 Pac. 158; *Hill v. Hawth* (Tex. Civ. App.), 112 S. W. 707; *Roesch v. Henry* (Ore.), 103 Pac. 439.

Where the provisions for notice inserted in the liquor statute were void, it was held that notice could be given under the general election law. *Ruhland v. Waterman* (R. I.), 71 Atl. 450.

Failure of the court to designate the paper is not fatal, if the clerk cause the notice to be published in another proper paper. *State v. Kellogg* (Tex.), 113 S. W. 660.

A failure to state when the polls would be open is not fatal, when the statute specifies the hours. *State v. Bassett*, 133 Mo. App. 366; 112 S. W. 764.

A notice that an election had been "ordered to be holden" on a certain date is not insufficient because of a failure to state specifically that on that day an election "would be held." *State v. Bassett*, 133 Mo. App. 366; 112 S. W. 764.

<sup>49</sup>*Yates v. State* (Tex. Cr. App.), 59 S. W. 275; *Paul v. Gloucester Co.*, 50 N. J. L. 585; 15 Atl. 275; 1 L. R. A. 86.

tion must be held on the date thus selected; but if the law does not require them to fix the date, and yet they do, the court may disregard the prayer of the petition in this respect and select another date.<sup>50</sup> The election must be held upon the date stated in the election notice.<sup>51</sup> Some of the statutes require the election to be held within a certain time after the date of the reception of the petition, and others within a similar date of the entry of an order for an election. When such is the case its provisions must be observed or the election will be invalid.<sup>52</sup> And where the statute prohibited the holding of a local option election "within" sixty days of a State or municipal election held in the district, it was held that this meant both before and after such State or municipal election; and if its provisions were violated the election would be void;<sup>53</sup> but not so if the election was a "special" municipal election where the date of the local option election was first set.<sup>54</sup> A statute concerning elections in general, requiring special elections to be held on "Tuesday" has no reference to a local option election;<sup>55</sup> nor has it any reference to a general school election, the term "general election" meaning the biennial State election.<sup>56</sup> Where the election is held within the prohibited zone of time, the fact that the prior election was irregular for want of a sufficient notice will not render the local option election valid.<sup>57</sup> Where a statute provides that a local option election shall be held on a day not less than fifteen nor more than thirty days from the date of the order, an election ordered on the fifteenth of a

<sup>50</sup> *O'Neal v. Minary*, 125 Ky. 571; 101 S. W. 951; 30 Ky. L. Rep. 888.

<sup>51</sup> *Richter v. State* (Ala.), 47 So. 163; *Winston v. State*, 32 Tex. Cr. Rep. 59; 22 S. W. 138; *King v. State*, 33 Tex. Cr. Rep. 547; 28 S. W. 201.

<sup>52</sup> *State v. Ruark*, 34 Mo. App. 325; *Curry v. State*, 28 Tex. App. 475; 13 S. W. 752.

<sup>53</sup> *In re Woodridge*, 30 Mo. App. 612.

<sup>54</sup> *State v. Ruark*, 34 Mo. App. 325.

<sup>55</sup> *State v. Circuit Court*, 50 N. J. L. 585; 15 Atl. 272; 1 L. R. A. 86.

<sup>56</sup> *State v. Searcy*, 39 Mo. App. 393; *State v. Watts*, 39 Mo. App. 409.

<sup>57</sup> *State v. Bowerman*, 40 Mo. App. 576.



month and held on the twenty-fifth is valid;<sup>58</sup> but one ordered November 16th and held December 17th is void.<sup>59</sup>

### Sec. 532. Conduct of the election.

If the local option statute provides how the election shall be held, then its provisions must be followed, to the exclusion of the general election law; but if its provisions are wanting in detail the general election law will supply them. Not infrequently it is provided that the election shall be held in pursuance to the general election law,<sup>60</sup> omitting all details, in which event no question can arise on the subject; and even though there was no declaration how the election should be conducted, the provisions of the general election law would be held to control, rather than there should be an entire failure to carry out the will of the Legislature as expressed in the local option law.<sup>60</sup> So the election must be held at the place fixed in the order, or substantially at the place so fixed;<sup>61</sup> but if the order does not designate the polling place, then substantially at the places designated in the notice. But a failure to fix the polling place in a small village or hamlet has been held in Canada not fatal to the election.<sup>62</sup> If the election is conducted under the general election law, and an order is

<sup>58</sup> *Winston v. State*, 32 Tex. Cr. Rep. 59; 22 S. W. 138.

<sup>59</sup> *King v. State*, 33 Tex. Cr. Rep. 547; 28 S. W. 201.

<sup>59\*</sup> The election is valid, even if it does not so provide. *Jacoby v. Dallis*, 115 Ga. 272; 41 S. E. 611. But see *Lehman v. Porter*, 73 Miss. 216; 18 So. 920.

<sup>60</sup> On these statements, see generally *People v. Pierson*, 35 N. Y. Misc. Rep. 406; 71 N. Y. Supp. 993; order affirmed, 64 N. Y. App. Div. 624; 72 N. Y. Supp. 1123; *Hagens v. Police Jury (La.)*, 46 So. 676; *Shields v. State*, 38 Tex. Cr. App. 252; 42 S. W. 398; *In re Bell* [1907], 13 App. Ont. L. R.

80; *In re Hartley*, 25 Upp. Can. 12; *In re McLean*, 25 Upp. Can. 619; *In re Mills*, 28 Upp. Can. 333; *In re Malonne*, 41 Upp. Can. 159; *In re Leake*, 26 C. P. (Can.) 173; *In re Reubottom*, 42 Upp. Can. 358; *In re Johnson*, 40 Upp. Can. 297; *Walker v. Mobley (Tex.)*, 103 S. W. 490; *Richter v. State (Ala.)*, 47 So. 163; *Winston v. State*, 32 Tex. Cr. Rep. 59; 22 S. W. 138; *King v. State*, 33 Tex. Cr. Rep. 547; 28 S. W. 201.

<sup>61</sup> *Farrington v. Turner*, 53 Mich. 27; *Dale v. Irvin*, 78 Ill. 170; *Preston v. Culbertson*, 58 Cal. 198.

<sup>62</sup> *In re Salter* [1902], 4 Ont. L. R. —.

of record in the county, or city, or town fixing a polling place under that law for holding elections, then the election should be held there. The court or board ordering the election may or may not direct who shall conduct the election, that depending on the terms of the statute. Where a general statute provided that the county board of elections should annually appoint election officers for precincts who should "hold their offices for one year, and until their successors were appointed and qualified," and the local option law provided that elections under it should be held "by such officer as would be qualified to hold elections for county officers, and they shall be selected in the same way," and all elections thereunder should "be held in accordance within the provisions of the general election laws, \* \* \* except that they shall not be held on the same day with any regular political election," but it did not require the officers appointed to hold other elections in those precincts, it was held that special election officers must be appointed to hold the local option election.<sup>63</sup> In Texas it is held that the commissioner's court may name any person to hold the local option election.<sup>64</sup> Where the spirit of the statute requires a division of the election officers between the contesting parties, it is proper for the court or board to appoint special officers.<sup>65</sup> In Texas the election officers need not be appointed when the election is ordered, it being sufficient to appoint them afterwards.<sup>66</sup> The polls must be opened at the time the law requires them to be opened and kept open for the full time required by statute, whether the election is controlled by the local option law or the general election law. Thus, where the statute required the polls to be opened at 9 A. M. and kept open until

<sup>63</sup> *Erwin v. Benton*, 120 Ky. 536; 87 S. W. 291; 27 Ky. L. Rep. 909.

<sup>64</sup> *Kelly v. State*, 36 Tex. Cr. App. 480; 38 S. W. 779.

In Kentucky it is proper to direct the order of election to the sheriff of the county, who gives notice thereof. *Puckett v. Snider*, 110 Ky. 263; 61 S. W. 277; 22 Ky. L. Rep. 1718.

*Commonwealth v. Green*, 98 Ky. 21; 32 S. W. 169; 17 Ky. L. Rep. 579.

<sup>65</sup> *Puckett v. Snider*, 110 Ky. 263; 61 S. W. 277; 22 Ky. L. Rep. 1718.

<sup>66</sup> *Jones v. State*, 21 Tex. App. 353; 17 S. W. 422.

sundown, and the election board opened them on time, closed them in thirty minutes, destroyed the ballots cast, opened them again at 10 A. M. and finally closed them at 4 P. M., the election was held void.<sup>67</sup> The fact that a full election board was not appointed to hold the election will not vitiate it if it otherwise be fair and a correct result be attained.<sup>68</sup> The failure to swear an election officer is not such an irregularity as will require the election to be set aside;<sup>69</sup> nor is a failure to have the statutory number of election officers.<sup>70</sup> Thus where two election inspectors elected one of their number clerk, instead of electing a third person clerk, the election was not void.<sup>71</sup> A substantial compliance with the election law is all that is required.<sup>72</sup> If the election be held at a general election, the use of a separate ballot box for the local option ballots, although no statute provides for it, will not avoid the otherwise valid result.<sup>73</sup>

### Sec. 533. Qualifications of election officers.

If the statute fixes the qualifications of the election officers, then persons should be chosen who meet those qualifications, but it does not follow that the election is void, or should be

<sup>67</sup> *State v. Drake*, 83 Wis. 257; 53 N. W. 496. If there is a fair expression of the will of the people, failure to open on time is not fatal. *Hoover v. Thomas*, 35 Tex. Civ. App. 535; 80 S. W. 859.

<sup>68</sup> *State v. Swearingin*, 128 Mo. App. 605; 107 S. W. 1.

<sup>69</sup> *State v. Swearingin*, *supra*; *Jassey v. Speer*, 107 Ga. 828; 33 S. E. 718.

<sup>70</sup> *Snead v. State*, 40 Tex. Cr. App. 262; 49 S. W. 601.

<sup>71</sup> *People v. Pierson*, 64 N. Y. App. Div. 624; 72 N. Y. Supp. 1123; affirming 35 N. Y. Misc. Rep. 406; 71 N. Y. Supp. 993.

<sup>72</sup> *In re Carswell*, 15 Manitoba

620; *In re Cress*, 15 Manitoba 528; *Puckett v. Snider*, 110 Ky. 263; 61 S. W. 272; 22 Ky. L. Rep. 1718.

The order for the election, it has been held, need not show the name of the presiding election officer. *Fitze v. State* (Tex. Cr. App.), 85 S. W. 1156.

An election held by *de facto*, but not *de jure* officers is valid; and the fact that one was called "manager of the election" instead of "presiding officer" is immaterial. *Ex parte Mayes*, 39 Tex. Cr. App. 36; 44 S. W. 831.

<sup>73</sup> *Donovan v. Fairfield Co.*, 60 Conn. 339; 22 Atl. 847.

set aside because they did not.<sup>74</sup> Where a statute provided that upon a petition presented for an election the question should be submitted at the next regular State, town, city or county election, a local option election for a city held by the sheriff or coroner of the county at a State election was declared to be void, because it was the intention of the Legislature that in a city or town the local option election was to be taken at a general or town election under its own municipal officers.<sup>75</sup>

### Sec. 534. Ballots.

If a local option statute provides the form of the ballots to be used in voting upon the question of the adoption of the law, that form or one substantially like it must be used, or the election will be held to be invalid. For instance, if a statute provides that the ballot shall be "for license" and "against license," a ballot marked "no whisky" will not be sufficient and cannot be counted in determining the question.<sup>76</sup> And likewise is an election void where a ballot is marked "For the sale" and "Against the sale," without the addition of any printed statement of the matter submitted to be voted on, when the statute requires that the ballot shall contain such additional matter.<sup>77</sup> If the statute simply provides that the vote shall be taken by ballot, but does not direct how the ballot shall be taken, a ballot upon the question may be cast at a town meeting when officers are being voted for at the same time, and it will not be void because not placed in a separate box. Nor will the fact that the ballot is placed in the same envelope with a ballot for such officers have any effect upon

<sup>74</sup> In Texas the chairman of a political executive committee of the county does not hold an office of profit and trust where the statute forbids anyone serving as an election officer who holds an office of profit and trust. *Ex parte Anderson*, 51 Tex. Cr. App. 239; 102 S. W. 727.

The officers need not be appoint-

ed the day the order for the election is made. *Jones v. State*, 21 Tex. App. 353; 17 S. W. 422.

<sup>75</sup> *Commonwealth v. King*, 86 Ky. 436; 6 S. W. 124.

<sup>76</sup> *Prestwood v. Borland*, 92 Ala. 599; 9 So. 223.

<sup>77</sup> *Lehman v. Porter*, 73 Miss. 216; 18 So. 920.



a ballot for or against licenses. The object of such meeting is to discover the wishes of the voters, and if such wishes can be discovered it will be made effective unless, some positive provision of law has been broken or disregarded in expressing it.<sup>78</sup> And if the statute does not provide how the vote as to the adoption of the provision of the statute shall be taken by the inhabitants of the district voting upon the question, an election will be held to be valid if the vote is taken "by hand" and not by ballot, even though the manner of holding the election was not previously determined by a formal vote.<sup>79</sup> The statute providing for the use of the "Australian ballot" at general elections does not apply to a local option election, for the reason that the ballots under that law provides for the election of officers only and not for the submission of questions to voters.<sup>80</sup> The fact that the law prescribes such a form of ballot that those voting "no" vote in favor of saloons, and those voting "yes" vote against them cannot be said to be misleading.<sup>81</sup> The statute concerning devices on the tickets of political parties has no application to local option elections; but if used the election for that reason will not be vitiated.<sup>82</sup> If the law does not prescribe the size or form of the ballot, then the size or form used is not a question of contest.<sup>83</sup> Where a statute failed to prescribe the form of the ballot, and the question to

<sup>78</sup> *Donovan v. Fairfield Co.*, Conn. 339; 22 Atl. 847; *Hubbard v. Commonwealth*, 10 Ky. L. Rep. (abstract) 683.

<sup>79</sup> *Commonwealth v. Doe*, 108 Mass. 418. In South Carolina it is held that the constitutional requirements as to ballots applies to local option ballots. *State v. State Board*, 78 S. C. 461; 59 S. E. 145, and so in Florida. *H. W. Metcalf Co. v. Orange County (Fla.)*, 47 So. 363.

<sup>80</sup> *State v. Janesville*, 90 Wis. 157; 62 N. W. 933; *In re Newburgh* (N. Y. Misc. Rep.), 89 N. Y. Supp. 1065; *Stick v.*

*State*, 23 Ohio Cir. Ct. Rep. 392; *Walker v. Mobley* (Tex. Civ. App.), 105 S. W. 61; *Ex parte Anderson* (Tex. Cr. App.), 102 S. W. 727; *Hash v. Ely*, 45 Tex. Civ. App. 259; 100 S. W. 980; *Walker v. Mobley* (Tex.), 103 S. W. 490.

<sup>81</sup> *People v. McBride*, 234 Ill. 146; 84 N. E. 865; *State v. Harris* (S. D.), 115 N. W. 533.

<sup>82</sup> *Erwin v. Benton*, 120 Ky. 536; 87 S. W. 291; 27 Ky. L. Rep. 909.

<sup>83</sup> *Hunter v. Senn*, 61 S. C. 44; 39 S. E. 235

be voted on was "prohibition" or "no prohibition," a ballot containing the words "for prohibition" and "against prohibition" sufficiently indicated the voter's wish.<sup>84</sup> Where the question submitted to the voters was, "Shall any corporation, association, copartnership or person be authorized to traffic in liquors, but only in connection with the business of keeping a hotel, if the majority of the votes cast on the question of selling liquors are in the negative?" and there was omitted from the ballot the clause, "If the majority of the votes cast on the question of selling liquors are in the negative," it was held that the ballot was sufficient, and did not tend to deceive the voters.<sup>85</sup> Admitting that the Australian law applied to local option elections, to the fact that ballots should be headed "Official Ballots," and one ticket only used with the words, "For prohibition" and "Against prohibition," it was held in Texas that the omission of the words, "Official Ballot," and the use of one ticket "For prohibition" and another "Against prohibition" did not avoid the election.<sup>86</sup> In New York there must be printed on the ballot the four questions submitted, numbered consecutively, to each of which must be prefixed a caption stating concisely the effect of the question. It was held that the failure to print on the slip placed in the voting machine this caption immediately preceding each question to be submitted did not invalidate the election.<sup>87</sup> In this same case it was held that the failure to number the ballots or slips from one to four, inclusive, as the statute required, did not affect the election.<sup>88</sup> Where the statute required the presiding election officer to write his name on the blank side of the official ballot before delivering it to the voter, and prohibited the counting of any ballot not so endorsed, it was held that a ballot not so endorsed was void and could not be

<sup>84</sup> *Police Jury v. Descant*, 105 La. 512; 29 So. 976; *Stick v. State*, 23 Ohio Cir. Ct. Rep. 392.

<sup>85</sup> *In re Arnold*, 32 N. Y. Misc. Rep. 439; 66 N. Y. Supp. 557; *Gayle v. Owen Co. Court*, 83 Ky. 61.

<sup>86</sup> *Hanna v. State*, 48 Tex. Cr. App. 269; 87 S. W. 702; *Hash v. Ely*, 45 Texas Civ. App. 259; 100 S. W. 980.

<sup>87</sup> *In re Merow*, 112 N. Y. App. 562; 99 N. Y. State 9.

<sup>88</sup> *In re Merow*, *supra*.

counted.<sup>89</sup> A statute authorized the submission of four questions to the voters, each calling for a distinct method of controlling the traffic in liquors. Number one related to liquors to be drunk on the premises and number four to the sale of liquors by hotel keepers, "but only in connection with the business of keeping a hotel in" a town if a majority of the votes cast on question number one be in the negative. Question number four was so changed as to read "as a keeper of a hotel in the town of Volney," and this change was held to invalidate the election.<sup>90</sup> Where the question ordered submitted be as to a *sale*, the ballots cannot be so drawn as to submit the question of *gift or exchange*.<sup>91</sup> The ballot must be marked in the manner the statute requires, and where the ballot is "for license" or "against license," a ballot marked "no whisky" cannot be counted.<sup>92</sup>

<sup>89</sup> *Brigance v. Horlock* (Tex. Civ. App.), 97 S. W. 1060; *Parvin v. Wimberg*, 130 Ind. 561; 30 N. E. 790. But see *Walker v. Mobley* (Tex. Civ. App.), 105 S. W. 61, and *Ex parte Anderson* (Tex. Civ. App.), 102 S. W. 727.

<sup>90</sup> *People v. Mosso*, 30 N. Y. Misc. Rep. 164; 63 N. Y. Supp. 588. See *Grubbs v. Griffin* (Miss.), 25 So. 663.

<sup>91</sup> *Steele v. State*, 19 Tex. App. 425.

<sup>92</sup> *Prestwood v. Borland*, 92 Ala. 599; 9 So. 223.

Under the New York statute, where the names of the four questions were printed on the ballots, but not the questions themselves, the election was held so invalid that a resubmission of the questions was ordered. *In re Gibson* (N. Y.), 108 N. Y. Supp. 485.

Immaterial variance between the order and the questions as voted on or submitted to the voter is not

fatal. *O'Neal v. Minary*, 125 Ky. 571; 101 S. W. 951; 30 Ky. L. Rep. 888.

If prohibition already prevails in a part of the territory voting, it is sufficient to submit the question therein whether liquor shall be sold. This is on the ground that as that a vote in favor of the sale is of necessity a vote in favor of the existing law coming into force. *Taylor v. Commonwealth* (Ky.), 59 S. W. 482; 22 Ky. L. Rep. 1003.

Where a statute requires the words "For Prohibition" and "Against Prohibition," to be used on the ballots, the words "For Local Option" and "Against Local Option" cannot be used; and if used the ballots cannot be counted. *Griffin v. Tucker* (Tex.), 119 S. W. 338.

Ballots having written or printed on one side of them either "For Selling" or "Against Selling," on separate lines, were held valid. *H.*

**Sec. 535. Who may vote.**

The statute determines who may vote. In the section on who may petition for an election is in a measure discussed the subject matter of this section, and what is there said is applicable here. If the local option law does not define who may vote, but uses the term "voters" or "electors," then the Constitution and general election laws of the State must be examined to determine who are "voters" and "electors."<sup>93</sup> The voter, of course, must be a voter of the district where the question of license or no license, of sale or prohibition is an issue, and those not residing therein may not vote. The Legislature, however, has the power to determine who shall vote, and its decision on the question is not to be questioned.<sup>94</sup> In the case of petitioners it has been seen that youths not yet of age might be petitioners, and girls over eighteen years of age might also be; and there is no reason why the Legislature could not have extended to them the right of franchise. Of course, if the right of a proposed voter is challenged, then the election board must determine his qualifications, and he must present the necessary statutory proof of his qualifications, whether the course to be pursued is provided for by the local option statute or the general law. If a statute provides that only those who voted at the last preceding election may vote, then the poll books and registration lists, if there be any, are the best evidence of their qualifications.<sup>95</sup> If the election be in a city, then those entitled to vote are those entitled to vote at city

W. Metcalf Co. v. Orange County (Fla.), 47 So. 363.

Where the printed ballots were not such as the statute required and could not be counted; but some of the electors changed theirs so as to conform to the law, yet the unchanged printed ballots were a majority of those cast, the election was declared void. Griffin v. Tucker (Tex.), 119 S. W. 338.

<sup>93</sup> Willis v. Kalmbach (Va.), 64 S. E. 342.

<sup>94</sup> Gayle v. Owen Co. Court, 83 Ky. 61.

<sup>95</sup> State v. Pressman, 103 Iowa 449; 72 N. W. 660.

A statute requiring a petitioner for a prohibition of sales upon petition by a majority of the adult inhabitants is not complied with if such majority is made out by signers having a fixed place of abode within the district for a definite time only. Wilson v. Lawrence, 70 Ark. 545; 69 S. W. 570.



elections.<sup>96</sup> If illegal votes were cast, it must be shown that they changed what would otherwise have been the result to set aside the election.<sup>97</sup>

### **Sec. 536. Canvass of ballots and return of result.**

Usually the ballots are canvassed and returns of the result made by the election officers, the same as in a general election. Mere irregularities in making the canvass, not resulting in the production of any material change in the result are immaterial. Thus where the supervisor of a town took no part in the canvass of the vote, though he was present and unauthorizedly signed the statement in relation thereto, it was held that this did not avoid the election, nor did the fact that the inspectors inclosed the void ballots in a sealed package and filed it with their returns, and did not state how many ballots were invalid.<sup>98</sup> Where a local option statute provided

<sup>96</sup> *In re Craft*, 17 Ont. App. 21.

The fact that persons residing outside the district voted will not prevent the granting of licenses in the district if authorized to do so by the result of the election. *Bardwell v. State*, 77 Ark. 161; 91 S. W. 555.

<sup>97</sup> *Hoover v. Thomas*, 35 Tex. Civ. App. 535; 80 S. W. 859; *State v. Board*, 78 S. C. 461; 59 S. E. 145; *People v. Hasbrouck*, 21 N. Y. Misc. Rep. 188; 47 N. Y. Supp. 109.

If the general election law requires a person to have paid his poll tax before he can vote at a general election, he must have paid it before he can vote at a local option election, unless the latter statute provides specifically who may vote. *McCormick v. Jester* (Tex.), 115 S. W. 278; *H. W. Metcalf Co. v. Orange County* (Fla.), 47 So. 363.

A statute requiring cities having 2,500 "inhabitants" to be ex-

cluded from participation in a county local option election does not mean 2,500 "voters." *State v. Rinke* (Mo.), 121 S. W. 159.

Where a petition must be signed by a certain number of "registered voters," a finding by the court in submitting the matter to an election that so many "legal voters" or "qualified voters" have signed it, is not a compliance with the statute, and the election is illegal. *Roesch v. Henry* (Ore.), 103 Pac. 439.

<sup>98</sup> *People v. Pierson*, 64 N. Y. App. Div. 624; 72 N. Y. Supp. 1123, affirming 35 N. Y. Misc. Rep. 406; 71 N. Y. Supp. 993.

In New York where the ballots were not properly canvassed, but a reasonable inference from the evidence was that a proper canvass would not have changed the result, a resubmission was denied. *In re Burrell*, 50 N. Y. Misc. Rep. 261; 100 N. Y. Supp. 470.

that the votes should "be counted and returned as now provided by law," and a subsequent general election statute provided that all double or marked ballots should be rejected, it was held that double or marked local option ballots could not be rejected, for the reason that the local option statute adopted the general election law as it stood when it (the local option statute) was enacted, and the subsequent general election statutes did not apply to subsequent local option elections.<sup>99</sup> Failure to subscribe the poll lists does not render the election void,<sup>1</sup> and so likewise a failure to destroy the unvoted ballots, as the law requires.<sup>2</sup> When a statute gives the right to contest an "election," it means all that took place from the act of casting and receiving the ballots to the final canvass of the votes, and if it is sought to contest it for anything outside of that, the contest must fail.<sup>3</sup> For things done prior to the day of election, under such a statute, no contest lies.<sup>4</sup> Once having adjourned, a town canvassing board cannot be compelled to reconvene and recanvass the votes and reject returns from districts unless such returns are wholly void.<sup>5</sup> If the ballot boxes be stolen a recanvass of the ballots will not be ordered.<sup>6</sup> Nor will a recount be ordered if no different result would be reached by counting the votes in the manner claimed by the contestant.<sup>7</sup>

<sup>99</sup> *Fessenden v. Bossa*, 69 Conn. 335; 37 Atl. 977.

<sup>1</sup> *People v. Pierson*, 35 N. Y. Misc. Rep. 406; 71 N. Y. Supp. 993.

<sup>2</sup> *Puckett v. Snider*, 110 Ky. 261; 61 S. W. 277; 22 Ky. L. Rep. 1718.

The action of election inspectors in rejecting a ballot is ministerial, not judicial, and therefore not reviewable on *certiorari*. *State v. Sundquist* (Wis.), 118 N. W. 836.

The canvass of the ballots may not be impeached by oral testimony of those present as to how the members of the election board performed their duty, there-

by showing a different result from that declared. *Savage v. Umphries* (Tex.), 118 S. W. 893.

<sup>3</sup> *Lowery v. Briggs* (Tex. Civ. App.), 73 S. W. 1062.

<sup>4</sup> *Norman v. Thompson*, 96 Tex. 250; 72 S. W. 62, affirming 30 Tex. Civ. App. 537; 72 S. W. 64.

<sup>5</sup> *People v. Pierson*, 35 N. Y. Misc. Rep. 406; 71 N. Y. Supp. 993; affirmed 64 N. Y. App. Div. 624; 72 N. Y. Supp. 1123.

<sup>6</sup> *In re Bertrand*, 40 N. Y. Misc. Rep. 536; 82 N. Y. Supp. 940.

<sup>7</sup> *In re Bertrand*, *supra*; *Savage v. Umphries* (Tex.), 118 S. W. 893.

The canvassing board cannot re-

**Sec. 537. Majority vote, what is—When not defeated.**

In cases where the question of local option is made to depend upon a "majority" vote, the general rule is, in the absence of any statutory regulation to the contrary, that a majority of those voting at the election on the particular question controls.<sup>8</sup> In so deciding upon a like question, the Supreme Court of Tennessee said, "How can we know how many legal voters there are in a county at any given time? We cannot judicially know it. If it were proved that the vote was much larger in the last preceding political election, or by the last census, by the official returns, or the examination of the witnesses, it would only be a circumstance, certainly not conclusive that such was the case at the time of the election. But we put our decision of the question upon a more fixed and stable ground. When a question of an election is put to the people, and is made to depend on the vote of a majority, there can be no other test of the number entitled to vote but the ballot box. If, in fact, there be some or many who do not attend and exercise the privilege of voting, it must be presumed that they concur with the majority who do attend, if indeed they can be known at all to have an existence. Certainly it would be competent for a Legislature to prescribe a different rule. But when they simply refer a question to the decision of a majority of the voters of a county, it cannot

fuse to receive the election returns on the ground that the law is unconstitutional, they holding their offices under the very law they claim to be invalid. *Franklin Co. v. State*, 24 Fla. 55; 3 So. 471; 12 Am. St. 183.

An election was ordered for a county as a whole, without any reference to an election in a city therein, and it was held that the election officers must canvass and certify to the election as to the whole county. *O'Neal v. Minary*, 125 Ky. 571; 101 S. W. 951; 30 Ky. L. Rep. 888.

<sup>8</sup> *St. Joseph Tp. v. Rogers*, 16 Wall. (U. S.) 644; *County of Cass v. Johnson*, 95 U. S. 360; *Bridgeport v. Railroad Company*, 15 Conn. 475; *People v. Warfield*, 20 Ill. 163; *People v. Gamer*, 47 Ill. 246; *People v. Wiant*, 48 Ill. 263; *Talbott v. Dent*, 9 B. Mon. (Ky.), 526, 539; *Taylor v. Taylor*, 10 Minn. 107; *State v. Mayor, etc.*, 37 Mo. 270; *State v. Binder*, 38 Mo. 450; *Reiger v. Commissioners, etc.*, 70 N. C. 319; *Norment v. Charlotte*, 85 N. C. 387; *Gillespie v. Palmer*, 20 Wis. 544.

be that they mean more than those who see fit to exercise the privilege.”<sup>9</sup> In determining the result of a county local option election, illegal returns by election officers from certain townships in the county will not defeat such election, if without such returns a majority of the votes cast in the county is in favor of the adoption of the local option law.<sup>10</sup> A failure, however, on the part of the election officer to perform the duties required of them in the furtherance of such an election will, if the election be a special one, render it nugatory and void, if thereby electors sufficient to have changed the result were deprived of the right to vote at such election.<sup>11</sup>

### **Sec. 538. Vote necessary to adopt local option.**

If a statute requires a majority vote either to accept or reject the provisions of a local option law, a tie vote will not comply with its provisions, but will leave the matter as it stood before the election.<sup>12</sup> And if a statute in substance provides that at each general election there shall be submitted to the electors of each county the question whether licenses shall or shall not be granted to sell intoxicating liquors, and that if at such an election the votes cast shall be not “for license,” then it shall be unlawful to grant such a license, but if a majority of the votes cast shall be “for license,” then it shall be lawful to grant them, and such an election is held, and the electors in a city do not vote upon the question within the city, but go without its limits and vote with the electors of the township, it will not be lawful for the county court of the county in which such election was held to grant a license to any person to keep a place where intoxicating

<sup>9</sup> Louisville, etc. R. Co. v. Davidson Co., 1 Sneed (Tenn.), 637, 692.

<sup>10</sup> Giddings v. Wells, 99 Mich. 221; 58 N. W. 64.

<sup>11</sup> *Ex parte* Kennedy, 23 Tex. App. 77; 3 S. W. 114.

If the canvassing board certify it is unable to find a majority

for or against prohibition, there is no election, and a party is not entitled to have certified any facts concerning the same. *Erwin v. Benton*, 120 Ky. 536; 87 S. W. 291; 27 Ky. L. Rep. 909.

<sup>12</sup> *Fennick v. Owings*, 70 Md. 246; 16 Atl. 719.



liquors are sold within the limits of the city until after a general election has been held at which the electors have voted upon the question within the city.<sup>13</sup> And in Alabama it has been held that, where a statute provided that licenses should not be issued unless a majority of the voters voted in favor of the granting of such licenses, that, although a majority of the votes were not cast "against license," yet that licenses could not be granted unless a majority of the votes were cast "for license." It was also held, where the returns showed that 252 votes were cast at an election and that 121 of them were "for license," one for "no license" and the remainder of them were so informal that they could not be counted, that there was no such majority as would authorize the issuing such licenses.<sup>14</sup> Whether a majority of votes had been cast in favor of granting a license, must necessarily depend upon the wording of the statute under which an election is held.<sup>15</sup> Informality in the wording of ballots cast at such an election will not make the result of the election void, if by the ballots used the voters are informed that they are voting at such election either "for the sale" or "against the sale" of intoxicating liquors.<sup>16</sup>

<sup>13</sup> *Erb v. State*, 35 Ark. 638; *Siloam Springs v. Thompson*, 41 Ark. 456.

<sup>14</sup> *Prestwood v. Borland*, 92 Ala. 599; 9 South 223.

<sup>15</sup> *Chalmers v. Funk*, 76 Va. 717.

<sup>16</sup> *Lehman v. Porter*, 73 Miss. 216; 18 So. 920.

Where a statute provides that a license may be issued if there be a majority vote for it, but no election is held, a license cannot be granted. *Siloam Springs v. Thompson*, 41 Ark. 456.

In Georgia providing that a dispensary may be established if a majority of the votes be in favor of it, means a majority of those actually cast at that election and counted. *Jacoby v. Dallis*, 115 Ga.

272; 41 S. E. 611; *Chamlee v. Davis*, 115 Ga. 266; 41 S. E. 691. So in Maryland. *Walker v. Oswald*, 68 Md. 11 Atl. 711.

A deposited but rejected ballot cannot be counted in determining whether the requisite number of votes were cast at the election. *In re Swan River*, 16 Manitoba 312.

In South Dakota the majority for license must be, not on that question alone, but a majority of the highest vote cast at the election on another proposition submitted or for candidates for office. *State v. Stakke* (S. D.), 117 N. W. 129.

In Canada it was held that local option must be adopted by a majority of all the electors on the

### Sec. 539. Declaration of the result of the election.

The determination and declaration of the board or court concerning the result of the election is final until set aside in a legally instituted contest proceedings.<sup>17</sup> Where a statute requires the board of commissioners of election to canvass the return of the inspectors of election, determine the result and make a verified report of it, they need not certify that they had canvassed the returns and the result was derived from such returns.<sup>18</sup> Nor is it necessary for them to show the election was held at the places designated by the order of election or by law; for that is presumed.<sup>19</sup> Nor is it necessary in such certificate that the officer making the canvass—a clerk in this case—called in assistants, as the law required him to do.<sup>20</sup> It is sufficient if a majority of the board certify to the result.<sup>21</sup> If the law requires the election board to spread upon their records the reports of the election supervisors, its provisions may be complied with either at a general or special meeting.<sup>22</sup> The order of the board declaring the

assessment rolls, not by a majority of those voting. *In re McAvoy*, 12 Up. Can. 99; *In re Retsbottom*, 42 Up. Can. 358; *In re Johnson*, 40 Up. Can. 297; *In re Malone*, 41 Up. Can. 159; *In re Leake*, 26 C. P. (Can.) 173; *In re Boon*, 24 Up. Can. 361.

The first election may be repealed by a majority vote. *McNeely v. Morganton*, 125 N. C. 375; 34 S. E. 510.

An election is not void because one of the precincts of the district neglected or refused to vote. *Ex parte Schilling*, 38 Tex. Cr. App. 287; 42 S. W. 553.

<sup>17</sup> *Thomas v. Abbott*, 105 Mich. 687; 63 N. W. 984.

<sup>18</sup> *Puckett v. State*, 71 Miss. 192; 14 So. 452.

<sup>19</sup> *Puckett v. State*, *supra*; nor

that notices were given; *Bence v. State* (Tex. Cr. App.), 35 S. W. 382.

<sup>20</sup> *In re Rothwell*, 44 Mo. App. 215.

In Kentucky it is held the board need not certify that it had examined the poll books unless the vote be adverse to granting licenses. *Commonwealth v. Hoke*, 14 Bush, 668.

<sup>21</sup> *Fullwood v. State*, 67 Miss. 554; 7 So. 432. See *State v. Searcy*, 46 Mo. App. 421.

A failure of the clerk of the board to certify the result to the Secretary of State, as the statute requires, will not invalidate the election. *Giddings v. Wells*, 99 Mich. 221; 58 N. W. 64.

<sup>22</sup> *Puckett v. State*, 71 Miss. 192; 14 So. 452.

result need not be in the words of the statute.<sup>23</sup> A mere clerical error in making the record is immaterial.<sup>24</sup> Thus where a part of the entry declared that less than a majority cast their votes for no license, but other parts of it showed that a majority did cast their vote for prohibition, the error was held immaterial.<sup>25</sup> It will be presumed that before entering the order the court or board passed upon all preliminary matters relating to its legality.<sup>26</sup> The order declaring the result of the election need not follow up the petition by inserting a description of the territory described in the petition, if words sufficient be used to indicate that the order is based upon such petition.<sup>27</sup> The declaration of the result of the election is not open to a collateral attack.<sup>28</sup> Nor can one prosecuted for selling liquor in violation of the local option law attack the validity of the election.<sup>29</sup> In Texas the commissioners' court may count the votes regardless of the result reached by the election officers, and so declare the result.<sup>30</sup> It

<sup>23</sup> State v. Cooper, 101 N. C. 684; 8 S. E. 134; Jones v. State, 21 Tex. App. 353; 17 S. W. 422.

<sup>24</sup> Thomas v. Commonwealth, 90 Va. 92; 17 S. E. 788.

<sup>25</sup> *Ex parte* Burrage, 26 Tex. App. 35; 9 S. W. 72.

<sup>26</sup> Irish v. State, 34 Tex. Cr. Rep. 130; 29 S. W. 778; Cooper v. State (Tex. Cr. App.), 65 S. W. 916.

<sup>27</sup> Bruce v. State (Tex. Cr. App.), 35 S. W. 383; Fitze v. State (Tex. Cr. App.), 85 S. W. 1156; Loveless v. State, 40 Tex. Cr. App., 131; 49 S. W. 98.

In Missouri those called in to assist in the canvass need not sign the declaration of the result of the canvass. State v. Searcy, 46 Mo. App. 421.

<sup>28</sup> State v. Emery, 98 N. C. 768; 3 S. E. 810. See *Ex parte* Douthitt (Tex. Cr. App.), 63 S. W. 131.

<sup>29</sup> State v. Cooper, 101 N. C. 684; 8 S. E. 134; Woodward v. State, 103 Ga. 496; 30 S. E. 522.

If by error the election board has certified a wrong result the contesting board may correct the certificate. Locke v. Garnett (Ky.), 42 S. W. 918; 19 Ky. L. Rep. 1059.

In Alabama it is not necessary to the validity of the election that a report of the result of the election be posted at the door of the court house, as the statute directs. Richter v. State (Ala.), 47 So. 163.

<sup>30</sup> Burrell v. State (Tex. Cr. App.), 65 S. W. 914.

In a proceeding to set aside a canvass of the vote, it is held in New York that the town board and its members are proper parties, they being the canvassing board. *In re* Bertrand, 40 N. Y. Misc. 536; 82 N. Y. Supp. 940.

is not necessary that the order declaring the result should set out the vote by precincts, it being sufficient to declare the total vote cast in the voting district,<sup>31</sup> nor need it show the election was held in each precinct.<sup>32</sup> This declaration is not vitiated by an erroneous reference to the year in which the local option law was passed.<sup>33</sup> A failure to enter the order declaring the result within the time fixed by statute is not fatal to the election.<sup>34</sup> In the order or certificate of the proper court declaring the result of a local option election it is only

<sup>31</sup>*Barker v. State* (Tex. Cr. App.), 47 S. W. 980; *Armstrong v. State* (Tex. Cr. App.), 47 S. W. 1006.

<sup>32</sup>*Barker v. State, supra.*

<sup>33</sup>*Barker v. State, supra.*

In Connecticut the county commissioners cannot be compelled to issue a license if the records of the county show a majority voted against the license, it not being their duty, and they have not the power to determine the validity of the vote. *Underwood v. Fairchild Co.*, 67 Conn. 411; 35 Atl. 274. See also *People v. Foster*, 27 N. Y. Misc. Rep. 576; 58 N. Y. Supp. 574.

<sup>34</sup>*Loveless v. State* (Tex. Cr. App.), 49 S. W. 601; *Blackwell v. Commonwealth* (Ky.), 54 S. W. 843; 21 Ky. L. Rep. 240; *Rawls v. State*, 48 Tex. Cr. App. 622; 89 S. W. 1071; *Oxley v. Allen* (Tex. Civ. App.), 107 S. W. 945.

In Mississippi the failure to return the result of the vote under oath was held to avoid the election. *Grubbs v. Griffin* (Miss.), 25 So. 663.

In South Carolina the board of commissioners for the election of State and county officers, and not the board of commissioners for

the election of Federal officers, declare the result of the election. *State v. Jennings*, 79 S. C. 246; 60 S. E. 699.

In Michigan the board of county supervisors have only administrative and not judicial powers in local option election matters. *Feek v. Bloomingdale*, 82 Mich. 393; 47 N. W. 37; 10 L. R. A. 69.

Where a statute required the board of commissioners to meet in special session to canvass the votes and declare the result, it was held that the published order need not show it was made at a special session, for that would be presumed. *Neal v. State*, 51 Tex. Cr. App. 513; 102 S. W. 1139; *Huff v. State* (Tex. Cr. App.), 102 S. W. 1144. See also *State v. Edmunds*, (Ore.), 104 Pac. 430.

A recital in the order that on a certain day the vote was canvassed "to determine whether or not the sale of spirituous, vinous or malt liquors shall be prohibited," is not fatal because it have the words "intoxicating liquors" are used instead of those of the statute. *Neal v. State, supra*; *Huff v. State, supra*.



necessary to state the result as the canvassers found it, and such certificate will be *prima facie* evidence of the result thus shown. In the absence of impeaching facts, it will be presumed that the officer making the certificate was justified by a legal and proper canvass of the votes in issuing the certificate as to the result of such election. The well-settled presumptions of the regularity of official action, and that things required to be done have been rightly done, apply as in other cases. The presumption is, therefore, that the election has been properly conducted, and that the officers charged with the duties of ascertaining and declaring the result have discharged their duty faithfully, and the failure of the proper officer to make such certificate within the time provided for will not affect the election.<sup>35</sup>

<sup>35</sup> *In re* Bothwell, 44 Mo. App. 215; *State v. Meekin*, 51 Mo. App. 299; *Prather v. State*, 12 Tex. App. 401; *Coleman v. State*, 54 Tex. Civ. App. 396; 112 S. W. 1072.

In South Carolina the statute concerning the adoption of the dispensary law is sufficiently complied with if the managers, the intendant and the wardens of the town certify in writing to the result of the balloting. *Hunter v. Senn*, 61 S. C. 44; 39 S. E. 235.

The finding cannot be overturned by an abstract of the vote made by the election commissioners, when the certificate does not cover the question of license, although it does cover the votes cast for a candidate for office. *State v. Sanger* (Ark.), 88 S. W. 903.

In Arkansas the failure of the election commissioners to lay before the county court the returns of the election does not deprive that court of its power to grant licenses, if the actual vote was

in favor of the granting. *Bordwell v. State*, 77 Ark. 161; 91 S. W. 555.

An order passed by the court certifying that the returns showed 1,459 "for dispensary" and 1,190 "against dispensary" is sufficient, and puts the act into force. *Chamlee v. Davis*, 115 Ga. 266; 41 S. E. 691; *Hubbard v. Commonwealth*, 10 Ky. L. Rep. (abstract) 683; *Bennett v. Commonwealth*, 11 Ky. L. Rep. (abstract) 370.

In Kentucky the certificate of the result must be filed with the county clerk before the act goes into force. *Cress v. Commonwealth* (Ky.), 37 S. W. 493; 18 Ky. L. Rep. 633.

Where the declaration of the result of the election must be signed by the canvassing board, the signing of such a result by the town clerk only is not sufficient. *People v. Hamilton*, 27 N. Y. Misc. Rep. 308; 58 N. Y. Supp. 584.

In New York the certificate of the canvassing board as to the

### Sec. 540. The order of prohibition.

In some of the States the statute not only provides that the court or board of commissioners shall declare the result of the election, but they shall enter an order, if that be the result of the election, prohibiting the sale of intoxicating liquors in the voting territory. This order need not be in the words and form required by the statute, but a substantial compliance with its provisions is sufficient.<sup>36</sup> Thus an entry declaring a sale, gift or barter "is absolutely prohibited, except for the purposes and under the regulations prescribed

result is conclusive. *In re Brown*, 38 N. Y. Misc. Rep. 157; 77 N. Y. Supp. 261, and the clerk cannot overturn it by a statement showing a different result when he came into office long after the election. *Ibid*.

An omission in the order declaring the result without reference to the voting box is not fatal and a reference to it is unnecessary. *Efrid v. State*, 44 Tex. Cr. App. 447; 71 S. W. 957.

Until the votes have been canvassed the election has not been "properly submitted," as a statute requires it to be. *In re Burrell*, 50 N. Y. Misc. Rep. 261; 100 N. Y. Supp. 470.

The failure to file a certificate of the result with the municipal clerk in Ohio does not prevent local option going into force. *Otte v. State*, 29 Ohio Cir. Ct. Rep. 203.

If the persons who canvass the returns are candidates for election at the same election, the canvass is void. *Commonwealth v. Shuck*, 10 Ky. L. Rep. (abstract) 874.

If the local option act do not

provide who shall canvass the vote, then the general election officers—the local option election being held at the time of the general election—can canvass it. *Commonwealth v. Shuck*, 10 Ky. L. Rep. (abstract) 874.

Where the action of the canvassing board is final, mandamus does not lie to control its action. *Haehlne Brewing Co. v. Board* (Mich.), 121 N. W. 202; 16 Detroit L. N. 184.

If all the members of the board assemble and canvass the result, it is immaterial how or when it was called together. *State v. Edmunds* (Ore.), 104 Pac. 430.

The board of supervisors or court may require the election canvassers to execute a new certificate where the certificate returned is defective, but it can be corrected by its own statements. *Thomas v. Abbott*, 105 Mich. 687; 63 N. W. 984.

<sup>36</sup> *James v. State*, 21 Tex. App. 353; 17 S. W. 422; *Holloway v. State*, 53 Tex. Cr. App. 246; 110 S. W. 745; *Doss v. Commonwealth*, 14 Ky. L. Rep. (abstract) 334.

by law'' is sufficient;<sup>37</sup> and such order need not give the date the election was ordered.<sup>38</sup> Delay on the part of the court in making the order will not invalidate the election.<sup>39</sup> It is not necessary that the order except the statutory exceptions of sales for medicinal and sacramental purposes.<sup>40</sup> It is not necessary for the order to state that proper notices of the election were given,<sup>41</sup> nor need it describe the territory by metes and bounds, if it constitutes a political district of the State.<sup>42</sup> Thus describing the territory as "Precinct Number Two" where the order was for an election in "Justice Precinct Number Two," of a named county, was held sufficient.<sup>43</sup> It is not necessary for the order to declare that prohibition will continue in the district until it is invalidated by a vote of the electors.<sup>44</sup> Until the order of prohibition is made there is no prohibition in force, when such order is required.<sup>45</sup> The entering of the order is *prima facie* evidence that all the preliminary steps had been taken.<sup>46</sup> It is not necessary for the court or board to state they "opened" the polls and counted the votes, especially where it appears from the record that it will not affect the election.<sup>47</sup> The failure of the judge of the court to make an entry of the publication, as required by statute, will not invalidate the election,<sup>48</sup> nor will his failure

<sup>37</sup> *Ex parte Burrage*, 26 Tex. App. 35; 9 S. W. 72; *Daniel v. State*, 32 Tex. Cr. App. 16; 21 S. W. 68; *Zollicoffer v. State* (Tex. Cr. App.), 38 S. W. 775.

<sup>38</sup> *Daniel v. State*, *supra*.

<sup>39</sup> *Ex parte Burger*, 32 Tex. Cr. Rep. 459; 24 S. W. 289.

<sup>40</sup> *Gilbert v. State*, 32 Tex. Cr. Rep. 596; 25 S. W. 632; *Ex parte Perkins*, 34 Tex. Cr. Rep. 429; 31 S. W. 175; *Bruce v. State* (Tex. Cr. App.), 35 S. W. 383; *Loveless v. State* (Tex. Cr. App.), 49 S. W. 601; *Truesdell v. State*, 42 Tex. Cr. App. 544; 61 S. W. 935; *People v. Whitney* 105 Mich. 622; 63 N. W. 765.

<sup>41</sup> *Bruce v. State* (Tex. Cr. App.), 35 S. W. 383.

<sup>42</sup> *Bruce v. State*, *supra*.

<sup>43</sup> *Loveless v. State* (Tex. Cr. App.), 49 S. W. 601; *Efird v. State*, 44 Tex. Cr. App. 447; 71 S. W. 957.

<sup>44</sup> *Lipari v. State*, 19 Tex. App. 431.

<sup>45</sup> *Holloway v. State*, 53 Tex. Cr. App. 246; 110 S. W. 745.

<sup>46</sup> *Ex parte Schilling*, 38 Tex. Cr. App. 287; 42 S. W. 553; *Chapman v. State*, 37 Tex. Cr. App. 167; 39 S. W. 113.

<sup>47</sup> *Beaty v. State*, 53 Tex. Cr. App. 432; 110 S. W. 449.

<sup>48</sup> *Beaty v. State*, *supra*.

to give the dates of the publication, where he certifies that the publication was made "for the time and in the manner required by law" render the certificate ineffective as evidence of the publication.<sup>49</sup> If an election under such a statute results in favor of prohibition, it is sufficient for an order declaring the result to state that fact and to prohibit the sale of intoxicating liquors within the locality for which the election was petitioned. It is not essential to the sufficiency of the order that it shall declare that the prohibition shall continue until such time as the qualified voters of the locality, by a majority vote, at an election held therefor, shall decide otherwise. Such limitation is fixed by law and cannot be affected by the order of a court.<sup>50</sup>

<sup>49</sup> *Harryman v. State*, 53 Tex. Cr. App. 474; 110 S. W. 926; *Carnes v. State* (Tex. Cr. App.), 110 S. W. 928.

<sup>50</sup> *Ex parte Beeverage*, 26 Tex. App. 35; *Coleman v. State*, 54 Tex. Civ. App. 396; 112 S. W. 1072.

In the discharge of their duty declaring the result of the election and entering an order of prohibition the court exercises neither judgment nor discretion, and mandamus lies to compel it to comply with the law. *State v. Richardson* (Ore.), 85 Pac. 225.

Until the order be made there can be no prohibition. *Holloway v. State*, 53 Tex. Cr. App. 246; 110 S. W. 745.

Where it is the duty of the judge of the court to make an entry declaring the result of the election, it is not necessary for him to write it in person, its transcription by another being sufficient. *Coleman v. State*, 54 Tex. Cr. App. 396; 112 S. W. 1072. In this case the county clerk entered an order declaring the result of the election. On the succeeding page was an order signed

by the county clerk declaring that the six previous pages had been read over in open court and were correct. It was held that this was an adoption of the entry of the clerk as the official act of the judge.

An order of prohibition entered in violation of an injunction order is void. *Doss v. Commonwealth* 14 Ky. L. Rep. (abstract) 334.

Where a statute required, on a second election resulting against prohibition, the court to enter an order setting aside the previous order enforcing prohibition, it was held not necessary to enter an order of any kind where the second election resulted in favor of prohibition. *State v. Edmunds* (Ore.), 104 Pac. 430.

Where the order of prohibition could not affect sales by druggists and pharmacists selling wine for sacramental purposes it was held that a saloon keeper could not object to an order that did not except such sales. *People v. Whitney*, 105 Mich. 622; 63 N. W. 765.



**Sec. 541. Order for publication concerning prohibition order.**

In some of the States the board or court declaring the result of the election or entering the order of prohibition must order that publication be made of the result of the election or the fact that an order prohibiting sales had been made. This order for publication may be made at any time after the result of the election is declared or the order of prohibition made, unless the language of the statute imperatively requires it to be made within a time stated.<sup>51</sup> If the statute requires the court or board to designate or select the paper in which the notice of prohibition shall be inserted it must make the selection, but where the county judge was required to make the selection, it was held not necessary to provide in the order that he should make such selection.<sup>52</sup>

**Sec. 542. Publishing notices of order and result of election.**

In some of the States the order is not in force until the fact of adoption of prohibition or "no license" has been published for a certain length of time or so many publications of the result of the election has been made in a newspaper, usually so many weekly publications. When this is the case the requisite number of publications must be made before the prohibition of the order becomes effective.<sup>53</sup> Where three

<sup>51</sup> *Biddy v. State* (Tex. Cr. App.), 108 S. W. 689; *Rawls v. State*, 48 Tex. Cr. App. 622; 89 S. W. 1071 (eleven months' delay).

<sup>52</sup> *Johnson v. State*, 52 Tex. Cr. App. 624; 108 S. W. 683; *Sinclair v. State*, 45 Tex. Cr. App. 487; 77 S. W. 621.

<sup>53</sup> *Moss v. State*, 47 Tex. Cr. App. 459; 89 S. W. 833; *Johnson v. State* (Tex. Cr. App.), 89 S. W. 834; *Ellis v. State* (Tex. Cr. App.), 89 S. W. 974; *Strick-*

*land v. State* (Tex. Cr. App.), 47 S. W. 720; on rehearing reversing judgment. (Tex. Cr. App.) 47 S. W. 470; *Lively v. State* (Tex. Cr. App.), 72 S. W. 393; *Chenowith v. State*, 50 Tex. Cr. App. 238; 96 S. W. 19; *In re Coe*, 24 Up. Can. 439; *In re Miles*, 28 Up. Can. 333; *In re Day*, 38 Up. Can. 528; *In re Wycott*, 38 Up. Can. 533; *In re Hartley*, 25 Up. Can. 12; *State v. Weeks*, 38 Mo. App. 566; *Ezzell v. State*, 29 Tex. App. 521; *In re McLean*, 25 Up. Can. 619.

weekly publications were made, when four were required, and the fourth was enjoined, and an appeal from an order dismissing the action taken, a *supersedeas* bond having been given, the appeal was dismissed by agreement, and the fourth publication was then made in the first issue of the paper thereafter, although more than thirty days after the third publication had been made, it was held that the publications were continuous, the county judge having no authority to proceed with the publication while the proceedings on appeal were *in fieri*.<sup>54</sup> Where the statute requires a minute of the publication to be made of record by the judge of the court, an entry in his minutes, that the result of the election was published "for the time and in the manner required by law" is sufficient, although it does not show whether the publication was made by posting or by insertion of a notice in the newspaper.<sup>55</sup> Where a statute required the order to be published four successive weeks, a publication November 21st, 28th, December 5th and 12th was a compliance with its requirements, where the minute of the publication was entered December 19th.<sup>56</sup> Where a statute required publication for four successive weeks, but an injunction, after two publications had been made, for sixteen months prevented further publications; but on its dissolution two more publications were made, it was held that the publication was not sufficient.<sup>57</sup> A statute requiring the order declaring that prohibition had carried does not require the names of the judges signing it to be published.<sup>58</sup> Where a statute requires the judge of the court to

<sup>54</sup> Gill v. State, 48 Tex. Cr. App. 517; 89 S. W. 272; *Ex parte* Wood (Tex. Cr. App.), 81 S. W. 529.

<sup>55</sup> Byrd v. State, 53 Tex. Cr. Rep. 507; 111 S. W. 149; Lively v. State (Tex. Cr. App.), 72 S. W. 393.

<sup>56</sup> *Ex parte* Sullivan (Tex. Cr. App.), 75 S. W. 790.

<sup>57</sup> Griffin v. State (Tex. Cr. App.), 87 S. W. 155; Stephens v. State (Tex. Cr. App.), 87 S. W.

157; Chenowith v. State, 50 Tex. Cr. App. 238; 96 S. W. 19. But see Riggs v. State (Tex. Cr. App.), 97 S. W. 482.

<sup>58</sup> Hillard v. State, 48 Tex. Cr. App. 314; 87 S. W. 821.

A restraining order of a Federal court prohibiting the publication of the order was held not to annul the election. McHam v. Love, 39 Tex. Civ. App. 512; 87 S. W. 875.

select a newspaper, and he forbids the proprietor of a paper to publish the order, but he does publish it, such judge cannot ratify his act by adopting and certifying to the publication.<sup>59</sup> If the order misstates the date of the election, that will not invalidate it.<sup>60</sup> Where the order declared that the order was published "for four successive weeks ending on" a certain Saturday it will be presumed, in order to avoid the presumption that the first publication was made on Sunday, that the time of publication had already expired on such Saturday.<sup>61</sup> The fact that the order was published an unnecessary number of times will not vitiate the election.<sup>62</sup> While a statute may require the judge to make the order for publication, yet that does not mean that he shall write it, it being sufficient if he sign an order written by another.<sup>63</sup> An order suspending the operation of the law until publication has been made and certified to by the judge, and requiring such publication to be for four weeks, is not void on the ground that it renders uncertain the time when the law takes effect, though the publication be made for five weeks.<sup>64</sup> The court itself need not draft the notice for publication nor recite it in the order for publication.<sup>65</sup> The fact that the notice was published in other newspapers than the one selected will not affect the election if it be published the requisite number of times in the one selected, but the full number of publications cannot be made up by several publications of the notice in different newspapers.<sup>66</sup> Unless a statute requires

<sup>59</sup> *Chenowith v. State*, 50 Tex. Cr. App. 238; 96 S. W. 19.

<sup>60</sup> *Luck v. State* (Tex. Cr. App.), 97 S. W. 1049.

<sup>61</sup> *Lambert v. State*, 37 Tex. Cr. App. 232; 39 S. W. 299.

<sup>62</sup> *Sinclair v. State*, 45 Tex. Cr. App. 487; 77 S. W. 62; *Chapman v. State*, 37 Tex. Cr. App. 167; 39 S. W. 113.

<sup>63</sup> *Coleman v. State*, 53 Tex. Cr. App. 578; 111 S. W. 1011.

<sup>64</sup> *Thurmond v. State*, 46 Tex. Cr. App. 162; 79 S. W. 316.

The fact that the commissioners' court in Texas unauthorizedly signed the order with the county judge does not invalidate it. *Hanna v. State*, 48 Tex. Cr. App. 269; 87 S. W. 702.

<sup>65</sup> *State v. Hitchcock*, 124 Mo. App. 101; 101 S. W. 117.

<sup>66</sup> *State v. O'Brien*, 35 Mont. 441; 90 Pac. 514.

A skip of one week in the publication was held not to invalidate the election. *Carnes v. State*, (Tex. Cr. App.), 103 S. W. 934.

the publication of the order to be made within a certain designated time after the order is entered, it may be published within a reasonable time thereafter.<sup>67</sup> If a statute provides that a designated officer of the court shall make proclamation of the result of an election without providing in what manner such proclamation shall be made, a verbal proclamation made by him at the court house door that "the local option law had carried, and that the majority of the votes were against the sale of intoxicating liquors," will be sufficient. Such a statute, in the absence of further explanatory words, simply requires an announcement in some form of the result certified by the judges of the election, as a conclusion of the whole matter, and fixing the period from which the law becomes assertive. It requires the officer to make proclamation without directing him how to do it. One of Webster's definitions of proclamation is "the act of proclaiming; a declaration or notice by public outcry, such as is given by criers at the opening and adjourning of courts."<sup>68</sup>

### **Sec. 543. When local option takes effect.**

When a local option law goes into effect depends very much upon the provisions of the statute upon that subject. In one State at least, the statute provides that it shall go into operation immediately after an election has been held at which a majority vote was cast in favor of the adoption of the law.<sup>69</sup>

The fact that the commissioners' court ordered the publication, when the order should have been made by the county judge, will not vitiate the election. *Neal v. State*, 51 Tex. Cr. App. 513; 102 S. W. 1139; *Huff v. State*, 51 Tex. Cr. App. 441; 102 S. W. 1144.

Nor will a suggestion by the district judge who tried the contest affect the election. *Searcy v. State*, 51 Tex. Cr. App. 444; 102 S. W. 1127.

An order for the publication does not show the publication was

made. *Covington v. State*, 51 Tex. Cr. App. 48; 100 S. W. 368.

<sup>67</sup> *Ezzell v. State*, 29 Tex. App. 521.

<sup>68</sup> *Macken v. State*, 62 Md. 224. Allegations in indictment as to publication. *Smitham v. State*, 53 Tex. Cr. App. 173; 108 S. W. 1183.

Unless some statute requires it, there need be no return or proof to the court of the publication. *State v. Bush*, 118 S. W. 670.

<sup>69</sup> *Commonwealth v. Lillard*, 10 Ky. Law Rep. 561; 9 S. W. 710.



But in Texas it has been held that a local option law, when adopted by a majority vote of the electors does not become operative until the result of the election has been declared by a proper order to that effect, and if publication of the order is required, that must be made, and the time provided for have fully elapsed. For instance, if the statute requires that the order must be published four successive weeks, the publication must be for four full consecutive weeks, or twenty-eight days from the day of its first publication, and until that time has elapsed, the sale of intoxicating liquors in the community to be affected, will not be a violation of the law; and where, as in Alabama, it is provided that no penal statute shall go into effect until thirty days after the adjournment of the Legislature, such limitation is to be taken into account in determining when a local option law will become effective.<sup>71</sup> It has been held, however, that the operation of a local option law in a given district does not depend upon the forwarding, without delay, by the county clerk to the secretary of the State, when the statute requires it to be done, of a certified transcript of the resolution of prohibition, and of so much of the journal of the proceedings of the board of supervisors as pertains to the election, including the tabular statement of votes, together with a copy of the affidavit of publication or the notice of the adoption of the resolution, and that a failure of the clerk to comply with the statute in this regard will not defeat the proceeding. In such case mandamus will lie to compel him to forward such transcript, but the operation of the law will not be made to depend upon that fact. If so, the act of the individual might be corruptly used to defeat the will of the people.<sup>72</sup>

<sup>70</sup> Phillips v. State, 23 Tex. App. 304; 4 S. W. 893; Olivaris v. State, 23 Tex. App. 305; 4 S. W. 903.

<sup>71</sup> Olmstead v. Cook, 89 Ala. 228; 7 So. 776. See Richter v. State, 156 Ala. 127; 47 So. 163.

<sup>72</sup> Giddings v. Wells, 99 Mich. 221; 58 N. W. 64.

In Kentucky before the statute goes into force the certificate of the canvassing board must be filed with the clerk of the county court. Cress v. Commonwealth (Ky.), 37 S. W. 493; 18 Ky. L. Rep. 633. *Contra* in Ohio, Otte v. State, 29 Ohio Cir. Ct. Rep. 203.

In Canada it was held that lo-

### Sec. 544. Contesting validity of election.

The general rule is that the ascertainment and declaration of the result of a local option election is *prima facie* correct, and is conclusive until in a proper action brought for that purpose the true result is ascertained and determined by a direct judicial proceeding instituted for that purpose. It would lead to confusion and ridiculous absurdity to allow the result of such an election to be contested every time the result of it, as determined by the election officers, became materially collateral in a litigation. In one case a defendant might be able to prove facts showing that such an election was void for one cause or another; in another a defendant, charged with a like offense, might be less fortunate, and the State might show that it was regular and valid; and so on indefinitely. The law does not make provision for such continual and repeated contests in every case that may arise. It intends that one contest, properly instituted for the purpose, shall establish the validity or invalidity of the election questioned. If there are those who are dissatisfied with the conduct of the election, or the result of it as declared, they must promptly bring their action to contest its validity and the

cal option goes into force on election day, and of this fact all must take notice. *Smith v. Benton*, 20 Ont. 344; *Regina v. Halpin*, 12 Ont. 330.

A statute of Nova Scotia provided that if a vote be given against licensing, then the statute should be in force "upon, from and after the day on which the license for the sale of spirituous liquors then in force in such county" should expire. No license was in force in the county at the time of the election, and none had been in force for years. It was held that the statute never went into force, and there could be no conviction for a sale. *Queen v. Lyons*, 5 R. & G. (N. S.) 201. *Con-*

*tra, Ex parte Farrell*, 23 N. B. 467.

Under the Texas statute a sale after the fourth week by publication of the order of prohibition, but within twenty-eight days of the first publication is not a violation of the law. *Green v. State*, 53 Tex. Cr. App. 466; 110 S. W. 919.

Date set by Statute, *State v. Fulkerson* (Ark.), 83 S. W. 934; 86 S. W. 817; or by order of Police Jury in Louisiana. *Police Jury v. Descant*, 105 La. 512; 29 So. 976. Date when the vote may be taken, *State v. Wenzel*, 72 N. H. 396; 56 Atl. 918. Takes effect only on favorable vote. *In re O'Brien*, 29 Mont. 530; 75 Pac. 196.

correctness of the ascertained result.<sup>73</sup> But in some States it is held that if a statute provides for the contest of a local option election within a given time after it is held, and such contest is not made, this will not abridge the right of a person to show the law to be void, at any time when it is sought to hold him amenable for its violation. This is upon the theory that punishment cannot be inflicted for the violation of a void law.<sup>74</sup> Such a law may be contested for fraud, and a finding that the judges of such an election had been guilty of fraud invalidating the election, has been sustained, where the uncontradicted evidence showed that the judges electioneered with the voters in the booths and urged them to allow such judges to prepare their ballots, that a large number of ballots were prepared by one of the judges, and that they were prepared directly contrary to the expressed wish of the voters; and in such instances the voters were permitted to contradict their ballots.<sup>75</sup> Unless some statute specifically authorizes a contest of a local option election there can be none; and the question of its conduct is not "a civil or political right" within the meaning of that phrase as used in a constitution.<sup>76</sup> If a statute provides a complete remedy in equity for testing its validity, then that method must be pursued;<sup>77</sup> but if a statute does not authorize a court of

<sup>73</sup> Commonwealth v. Lillard, 10 Ky. Law Rep. 561; 9 S. W. 710; State v. Emerg, 98 N. C. 768; 3 S. E. 810; State v. Cooper, 101 N. C. 684; 8 S. E. 134.

<sup>74</sup> Young v. Commonwealth, 14 Bush (Ky.), 161; Curry v. State, 28 Tex. App. 475; 13 S. W. 752.

<sup>75</sup> Freeman v. Lazarus, 61 Ark. 247; 32 S. W. 680; 31 So. 361.

A statute authorizing the contestees to state grounds "to sustain" the election does authorize them to state grounds to avoid it. Locke v. Garnett (Ky.), 42 S. W. 918; 19 Ky. L. Rep. 1059.

<sup>76</sup> Hagens v. Police Jury, 121 La. 634; 46 So. 676; Haas v. Ne-

osho (Mo. App.), 123 S. W. 473; Darbourne v. Oberlin, 121 La. 641; 46 So. 679; Savage v. Wolfe, 69 Ala. 569.

The contest must be instituted in the court having jurisdiction thereof. Oxford v. Frank, 30 Tex. Civ. App. 343; 70 S. W. 426; Norman v. Thompson, 30 Tex. Civ. App. 537; 72 S. W. 62, 64; Ogburn v. Elmore, 123 Ga. 677; 51 S. E. 641; Kehr v. Columbia (Mo.), 116 S. W. 428.

<sup>77</sup> State v. Martin (Fla.), 46 So. 424; Puckett v. Snider, 110 Ky. 261; 61 S. W. 277; 22 Ky. L. Rep. 1718; Ogburn v. Elmore, 123 Ga. 677; 51 S. E. 641; Hard-

equity to proceed in such a matter it cannot interfere, even to enjoin the publication of the result, on the ground that the enforcement of the statute will destroy the petitioner's property.<sup>78</sup> If a statute provides for a contest, then the method thus provided must be followed.<sup>79</sup> The action under the statute is a special proceeding, and the courts are limited to such subjects as are specified by the statute.<sup>80</sup> The presumption is that the election officers did their duty, that the election was regular and lawfully conducted, that a correct result was attained, and he who asserts the contrary has the burden to overcome this presumption.<sup>81</sup> The contestee may go behind the election returns and show that illegal votes were cast,<sup>82</sup> and that legal votes were improperly refused.<sup>83</sup> But the acceptance of illegal votes or the refusal of legal votes must have been in sufficient numbers to have changed what the result would otherwise have been.<sup>84</sup> Where the registrar's books were not kept open for the election the full length of time, it was held that before the result of the election would be set aside, it must be shown that the result would have been different if they had been properly kept open.<sup>85</sup> The petition for a contest must definitely and with certainty point out the irregularities, and merely alleg-

ing v. McLennan Co., 27 Tex. Civ. App. 25; 65 S. W. 56; Kidd v. Truett, 28 Tex. Civ. App. 618; 68 S. W. 310.

<sup>78</sup> Merrill v. Savage (Tex. Civ. App.), 109 S. W. 408; Hill v. Roach, 26 Tex. Civ. App. 75; 62 S. W. 959; Norton v. Alexander, 28 Tex. Civ. App. 466; 67 S. W. 787.

<sup>79</sup> Merrill v. Savage, *supra*; Fike v. State, 25 Ohio Cir. Ct. Rep. 554.

<sup>80</sup> Cofield v. Button (Tex. Civ. App.), 109 S. W. 493.

<sup>81</sup> Puckett v. Snider, 110 Ky. 261; 61 S. W. 277; 22 Ky. L. Rep. 1718; Kidd v. Truett Co., 28 Tex. Civ. App. 618; 68 S. W. 310;

Trinkle v. State (Tex. Cr. App.), 23 S. W. 1114.

<sup>82</sup> *In re Clearof* [1907], 14 App. Ont. L. R. 392; *In re Armour* [1907], 14 App. Ont. L. R. 606; *In re Metcalfe*, 17 Ont. 357.

<sup>83</sup> *In re Pounder*, 19 App. Ont. 684.

<sup>84</sup> *In re Pounder, supra*. People v. Hasbrouck, 21 N. Y. Misc. Rep. 188; 47 N. Y. Supp. 109; H. W. Metcalf Co. v. Orange County (Fla.), 47 So. 363.

<sup>85</sup> Chamlee v. Davis, 115 Ga. 266; 41 S. E. 691; Jossey v. Speer, 107 Ga. 828; 33 S. E. 718; Hardy v. State, 52 Tex. Cr. App. 420; 107 S. W. 547.



ing the grounds of the contest in the words of the statute is not sufficient.<sup>86</sup> An allegation that the anti-prohibitionist paid the poll tax of five hundred voters in order to have them vote against the question submitted presents no question for contest, unless it be averred that they or some of them voted against prohibition.<sup>87</sup> But the fact that those in favor of prohibition—in this case ladies—furnished coffee and eatables at the election for the purpose of influencing voters is not sufficient to overturn the election, even though it might subject them to prosecution for a violation of the law.<sup>88</sup> But the use by the election officers of whisky in the voting room, in many instances accompanying the elector into the booth and marking or seeing him mark his ballot, permitting those not electors to be in the room during the election and canvass, are such irregularities as require the precinct vote to be rejected.<sup>89</sup> So holding the election at a time not authorized by law is fatal to it.<sup>90</sup> In order to set aside an election it is not necessary to find that the election officers acted corruptly; it is sufficient that their acts, however innocent, improperly produced an incorrect result.<sup>91</sup> A continuance of the trial may be granted, as where exceptions to depositions are sustained, necessitating the taking of new ones.<sup>92</sup> The contest is triable by the court and not by jury.<sup>93</sup> The usual statute allowing contest is broad enough to permit a citizen of the election district to contest the result, without a showing of special interest.<sup>94</sup> The contest must be brought within the time the statute prescribes.<sup>95</sup> Persons not originally parties

<sup>86</sup> *Stinson v. Gardner*, 97 Tex. 287; 78 S. W. 492; *Jossey v. Speer*, 107 Ga. 828; 33 S. E. 718.

<sup>87</sup> *Stinson v. Gardner*, *supra*.

<sup>88</sup> *In re Clipperly*, 50 N. Y. Misc. Rep. 266; 100 N. Y. Supp. 473.

<sup>89</sup> *Banks v. Sargent*, 104 Ky. 843; 48 S. W. 149.

<sup>90</sup> *Early v. Rains*, 121 Ky. 439; 89 S. W. 289; 28 Ky. L. Rep. 415.

<sup>91</sup> *Drake v. Drewry*, 112 Ga. 308; 37 S. E. 432.

<sup>92</sup> *Locke v. Garnett* (Ky.), 42 S. W. 918; 19 Ky. L. Rep. 1059.

<sup>93</sup> *Dye v. Angus* (Iowa), 110 N. W. 323.

<sup>94</sup> *Norton v. Alexander*, 28 Tex. Civ. App. 466; 67 S. W. 787.

<sup>95</sup> *Desroches v. Cote*, 11 Rev. Leg. 386; *Alexander v. State*, 53 Tex. Cr. App. 504; 111 S. W. 145. (In this Texas case it was held that a defendant indicted for a violation of the liquor laws could not, after the time for a

to the contest proceedings cannot come in at the hearing and file a counter protest.<sup>96</sup> If the contestor must first give notice to the contestee of his intention to contest, such notice is a prerequisite to his standing in court;<sup>97</sup> and by answering the contestee does not waive his right to the notice.<sup>98</sup> Where the grounds of contest were that the polls were unlawfully closed for an hour and thereby a large number of electors were deprived of the right to vote, it was held that the names of these electors must be given, or a valid excuse alleged for not giving them.<sup>99</sup> The validity of the election law as a whole cannot be raised on a contest under its provisions.<sup>1</sup> Failure to produce evidence on the presentation of the petition for an order for election that the requisite number of voters had signed it is not such an error as will reverse the result of the election, where the judge to whom it was presented said he knew most of the signers and also knew enough electors had signed it.<sup>2</sup> Where a voter presenting his ballot is also required to exhibit his tax receipt showing his right to vote, a failure of the election officers to require its presentation will not avoid the election unless it be shown that its presentation would have produced a different result, by showing that those so voting were not entitled to vote.<sup>3</sup> Where the result

contest had expired, raise the question of the validity of the election proceedings.) *Cole v. Commonwealth* (Ky.), 98 S. W. 1002; 30 Ky. L. Rep. 385; *Hardy v. State*, 52 Tex. Cr. App. 488; 107 S. W. 547; *Wilson v. State* (Tex. Civ. App.), 107 S. W. 818.

<sup>96</sup> *Miller v. Drake*, 113 Ga. 347; 38 S. E. 747; *Douglass v. Hamilton* (Ark.), 120 S. W. 387; *McCormick v. Jester* (Tex.), 115 S. W. 278.

<sup>97</sup> *Norton v. Alexander*, 28 Tex. Civ. App. 466; 67 S. W. 787; *Drake v. Drewry*, 112 Ga. 308; 37 S. E. 432; *Messer v. Cross*, 26 Tex. Civ. App. 34; 63 S. W. 169.

<sup>98</sup> *Norton v. Alexander*, *supra*.

<sup>99</sup> *Oxley v. Allen* (Tex. Civ. App.), 107 S. W. 945.

Illegal proceedings at a previous illegal election are immaterial. *Oxley v. Allen*, *supra*.

<sup>1</sup> *Harris v. Sheffield*, 128 Ga. 299; 57 S. E. 305; 59 S. E. 771.

The court cannot try matters beyond the scope prescribed by the statute. *Harris v. Sheffield*, *supra*.

<sup>2</sup> *Howard v. Stenfil* (Ky.), 102 S. W. 831; 31 Ky. L. Rep. 207.

<sup>3</sup> *Hash v. Ely* (Tex. Civ. App.), 100 S. W. 980.

A court or board cannot refuse to count the vote on the ground that the election was not held in accordance with the law and that

of the election was in favor of issuing licenses, a contest was begun which was dismissed by the court, a license was then issued, afterwards an appeal taken to the circuit court and the election declared void, and then on appeal taken to a court of appeals and a *supersedeas* issued; it was held that the license was valid and that the licensee could sell under it during its life or until the disposal of the appeal.<sup>4</sup>

on contest a court would decree that the election was void. *Burks v. State* (Tex. Civ. App.), 103 S. W. 850.

<sup>4</sup> *Commonwealth v. Weisenburgh*, 126 Ky. 8; 102 S. W. 846; 31 Ky. L. Rep. 449.

A collateral attack cannot be made on an election in a criminal prosecution. *Commonwealth v. Jones* (Ky.), 84 S. W. 305; 27 Ky. L. Rep. 16; *Barton v. State*, 43 Fla. 477; 31 So. 361; *State v. Rinke* (Mo.), 121 S. W. 159, unless the proceedings are void for want of jurisdiction. *State v. Mitchell* (Mo.), 115 S. W. 1098. As to appeal see *In re McCullough*, 51 Ark. 159; 10 S. W. 259.

Where a statute required the contest to be begun within thirty days after the return day of election, and the result was declared June 22d, but the contest was begun July 22d, it was held that it was begun in time. *McCormick v. Jester* (Tex.), 115 S. W. 278.

Where a statute provided that objections to the capacity of the contestors must be raised by a sworn plea in abatement, the allegation in the petition that the contestors are resident citizens and property owners of the county, as the statutes required them to be, cannot be controverted. *McCormick v. Jester*, *supra*.

A jury trial cannot be demanded. *McCormick v. Jester*, *supra*.

By bringing an action to secure an injunction restraining the publication of the result, one does not bar himself from contesting such proceedings, after the restraining order is dissolved. *Savage v. Umphries* (Tex. Civ. App.), 118 S. W. 893.

Upon a proceeding to enjoin the publication of the result of an election, it is not enough to aver that the petition for calling an election did not have a sufficient number of signatures where the statute required it to be signed by not less than ten per cent. of the registered voters of the county, but in no event should it be necessary to obtain more than five hundred petitioners who are legal voters. *Roesch v. Henry* (Ore.), 103 Pac. 439.

An injunction to restrain the board from promulgating the result of the election cannot be secured before the result of the election as been ascertained. *Ponchatoula v. Tangipahoa*, 120 La. 292; 46 So. 16.

A temporary restraining order will be dissolved on the coming in of the answer squarely denying the allegations of illegality in the election proceedings, the presumption being in favor of the regularity of the election. *Wallace v.*

### Sec. 545. Mandamus, when not a proper remedy.

If, by a local option law, authority is vested in an officer, for instance, an ordinary, to consolidate the returns and decide all questions and contests arising under elections held

Salisbury, 147 N. E. 58; 60 S. E. 713.

Injunction will not lie where proceedings by contest will afford the relief prayed, even upon an allegation of irreparable injury to plaintiff's property if publication be made. *Robinson v. Weingale*, 36 Tex. Civ. App. 65; 83 S. W. 182.

[Citing *Ex parte* Towles, 48 Tex. 413; *Williamson v. Lane*, 52 Tex. 335; *Ex parte* Whitlow, 59 Tex. 273; *State v. De Gress*, 53 Tex. 387; *City of Fort Worth v. Davis*, 57 Tex. 225; *Gibson v. Templeton*, 62 Tex. 556; *Jennett v. Owens*, 63 Tex. 264; *Odell v. Wharton*, 87 Tex. 173; 27 S. W. 123; *Norman v. Thompson* (Tex. Sup.), 72 S. W. 62; *Wright v. Fawcett*, 42 Tex. 206; *Rogers v. Johns*, 42 Tex. 340; *McAllen v. Rhodes*, 65 Tex. 348; *Buckler v. Turbeville*, 17 Tex. Civ. App. 120; 43 S. W. 810; *Peck v. Weddell*, 17 Ohio St. 271; *Bynum's Case*, 101 N. C. 412; 8 S. E. 136; *Garrigue's Case*, 28 Pa. 9; 70 Am. Dec. 103; *Moulton v. Reid*, 54 Ala. 320; *Harding v. Commissioners*, 65 S. W. 56; 3 Tex. Ct. Rep. 162; *Summer v. Crawford*, 91 Tex. 132; 41 S. W. 994; *Hill v. Roach* (Tex. Civ. App.), 62 S. W. 959; *McDaniel v. State*, 23 S. W. 989; *Ex parte* Mayes, 39 Tex. Cr. R. 36; 44 S. W. 831; *Norton v. Alexander*, 67 S. W. 787; 4 Tex. Ct. Rep. 723.]

See also *Ogburn v. Elmore*, 121 Ga. 72; 48 S. E. 702.

*Contra* *H. W. Metcalf Co. v. Orange* (Fla.), 47 So. 363 (by statute).

A statute providing that the court in which the contest is brought shall have "final jurisdiction" to hear and determine the contest, cuts off an appeal from its decision. *Saylor v. Duel*, 236 Ill. 429; 86 N. E. 119. (The statute is constitutional.)

If no statute gives an appeal, none lies. *Haynes v. Cass County* (Mo.), 115 S. W. 1084.

A mere taxpayer cannot make himself a party, nor appeal. *Haynes v. Cass County*, *supra*; *Kehr v. Columbus* (Mo.), 116 S. W. 428.

The validity of an election cannot be raised on *habeas corpus* proceedings. *Ex parte* Thulmeyer (Tex.), 119 S. W. 1146.

Facts not pleaded cannot be proven, as that unnumbered ballots had been cast and counted for prohibition. *McCormick v. Jester* (Tex.), 115 S. W. 278.

As to service of notice of contest on deputy instead of on his principal, see *McCormick v. Jester*, *supra*.

If a statute does not require a security to be given by the contestants, none can be required. *McCormick v. Jester*, *supra*.

Upon an order to a board to purge the poll books of illegal



by virtue of the law, and the law further provides a remedy if such officer fails to do so, or acts unfairly, the remedy thus provided must be pursued, and the constitutionality of the law cannot be tested by mandamus, for the reason that such an election and the supervision thereof by such an officer is an exercise of the political and police power, and it is not at all or in any sense judicial, unless where the act itself confers judicial jurisdiction. When such a law operates upon the private property of an individual and it is seized, destroyed or confiscated, or an individual is indicted for a violation of it, he may assail the portion thereof affecting his private property or personal liberty as unconstitutional, and the courts will make such adjudication as will maintain the integrity of the law as a whole, if possible, and, at the same time, protect the citizen against any unconstitutional or illegal portion of the law, if there be such. The courts will never blot out the existence of a great police and moral enactment

votes, the contestors cannot complain that it met within seven days after the order was entered. *Robertson v. Moore*, 15 Ky. L. Rep. (abstract) 240.

A writ of *certiorari* cannot be used as a substitute for an appeal for the correction of mere irregularities, as to quash an order of the court for an election, on the ground that the majority of adult inhabitants had petitioned for an election. *Douglass v. Hamilton* (Ark.), 120 S. W. 387. See *State v. Sundquist* (Wis.), 118 N. W. 836.

Nor can a lower court, where it acts judicially, be compelled to omit a certain city from the operation of its order. *State v. Malheur County*, 46 Ore. 519; 101 Pac. 907.

The court in a contest is not bound to have certain challenged ballots removed from the boxes

and then direct the clerk to count the remaining ballots and announce the result. *Savage v. Umphries* (Tex. Civ. App.), 118 S. W. 893.

If no appeal lies, the action of the lower court, where its judgment is final, cannot be controlled by mandamus. *People v. Cannon*, 236 Ill. 179; 86 N. E. 215.

The statute must be strictly followed in order to put the law in force. *Griffin v. Tucker* (Tex. App.), 119 S. W. 338.

In a prosecution for a violation of the local option statute, the proceedings for its adoption cannot be attacked, for this is a collateral attack. *Reno v. State* (Tex.), 117 S. W. 129; *Jerue v. State* (Tex. Cr. App.), 123 S. W. 414; *Wesley v. State* (Tex. Cr. App.), 122 S. W. 550; *Trinkle v. State* (Tex. Cr. App.), 123 S. W. 1114.

of this character, on the ground that parts of it are attacked as unconstitutional, in a general onslaught upon it all. On the contrary, they will preserve it all, if possible, giving the benefit of doubts to the co-ordinate branches of Government, even when a legitimate case of individual suffering in person or property is brought before them, and will never decide laws unconstitutional if cases can be otherwise adjudicated. They will always wait until the law is attempted to be put in operation, and then act against the officer who executes or attempts to execute it, and not against the lawmaking branch in the general scope of its power.<sup>5</sup> If it be sought to compel the lower court to make an entry putting the prohibition or licensing vote into force, the petition for the writ must show each necessary step for the election was duly taken, and that it was legal when taken.<sup>6</sup> Mandamus will not lie to secure a new election for a part of a county whereby the publication of the result of a previous election for the entire county would produce the desired result for that part.<sup>7</sup> The duties of the court to be coerced by the writ of mandamus must be ministerial and not discretionary or the writ will not be granted.<sup>8</sup>

### **Sec. 546. Prior laws, how affected by local option.**

A local option law enacted under a mandatory provision of the Constitution of a State, while in one sense it may be said to be a general statute, still in its operation it is confined to the localities which may adopt it, and in this sense it is a special statute and will be given the effect as such, and be held to set aside, and, during its operation, suspend all laws

<sup>5</sup> *Scoville v. Calhoun*, 76 Ga. 263.

Mandamus will not lie to compel a recount of the votes when another election can be called to determine the result. *People v. Mosso*, 30 N. Y. Misc. Rep. 164; 63 N. Y. Supp. 588.

If the action of the lower court is final, mandamus will not

lie to control its action. *People v. Cannon*, 236 Ill. 179; 86 N. E. 215.

<sup>6</sup> *State v. Molheur Co.*, 46 Ore. 519; 81 Pac. 368.

<sup>7</sup> *Adams v. Kelley* (Tex. Civ. App.), 44 S. W. 529.

<sup>8</sup> *State v. Richardson*, 48 Ore. 309; 85 Pac. 225.

and regulations in conflict with it, and will have effect, when adopted in a particular locality, to prohibit the sale of intoxicating liquors in that locality by any person, without regard to whether any such person has been licensed by the State, county, city or town to sell. By its adoption all such licenses are abrogated.<sup>9</sup> As a rule, the suspension of such general laws does not thereafter prevent the prosecution and punishment under them of anyone who may have previously violated them;<sup>10</sup> but when a local option law takes effect in a given locality it becomes operative as a whole and one violating its provisions must be prosecuted and punished under its provisions and not under the general law.<sup>11</sup> The rule is different, however, where the effect of adoption of a local option law is to repeal all former laws regulating the traffic in such liquor. The proposition is an old one and a plain one that after the repeal of a law no penalty can be enforced for a violation of its provisions committed while it was in operation, unless provision be made for that purpose. The repeal of a statute is a remission of penalties inflicted by it because of the absence of authority to punish when the law has ceased to exist. But where a law is not repealed but is merely suspended, it still has vitality to authorize punishment for its violation before its suspension. A repeal makes the law as if it had never been. Suspending its operation for a time leaves it operative as to the past, and in all respects wherein it is not abrogated by the new. A repealed statute is dead and

<sup>9</sup> *Butler v. State*, 25 Fla. 347; 6 So. 67; *Stringer v. State*, 32 Fla. 239; 13 So. 450; *Carson v. State*, 37 Fla. 331; 20 So. 547; *Tatum v. State*, 79 Ga. 176; 3 S. E. 907; *Garner v. State*, 8 Blackf. (Ind.), 368; *State v. Cook*, 24 Minn. 247; 31 Am. Rep. 344; *State v. Emery*, 98 N. C. 768; 3 S. E. 810; *State v. Smiley*, 101 N. C. 709; 7 S. E. 904; *State v. Carter*, 28 S. C. 1; 4 S. E. 790; *Robertson v. State*, 12 Tex. App. 541; *Donaldson v. State*, 15 Tex. App. 25; *Ex parte*

*Lynn*, 19 Tex. App. 293; *State v. Smith*, 26 Fla. 427; 7 So. 848.

<sup>10</sup> *People v. Wade*, 101 Mich. 69; 59 N. W. 438; *Hearn v. Brogan*, 64 Miss. 334; 1 So. 246; *Winterton v. State*, 65 Miss. 238; 3 So. 735; *Ex parte Swann*, 96 Mo. 44; 9 S. W. 10; *State v. Beam*, 51 Mo. App. 360; *Commonwealth v. Overby*, 107 Ky. 169; 53 S. W. 36; 21 Ky. L. Rep. 843.

<sup>11</sup> *Young v. Commonwealth*, 14 Bush (Ky.) 161; *State v. Bevans*, 51 Mo. App. 368.

no sting can be inflicted by it; but one which still lives, although displaced for a time as to its full effect, is not without power to vindicate its suspension. Being still a law there is no want of authority to punish under it for such violation of it.<sup>12</sup> In harmony with this general statement of the law, it has been held that if a county or a minor division thereof adopts a local option law and afterwards rescinds it, there is no legal authority for the punishment of a person who sold liquor in the county, or in such minor division while such local option law was in force,<sup>13</sup> and that the same rule maintains if the law is rescinded during an appeal. By such repeal a conviction under the repealed law is annulled.<sup>14</sup>

<sup>12</sup> *Regina v. Denton*, 16 Q. B. 832; 18 Q. B. 761; 83 E. C. L. 761; *United States v. 6 Fermenting Tubs*, 1 Abb. (U. S.) 268; *Carlisle v. State*, 42 Ala. 523; *People v. Tisdale*, 57 Cal. 104; *Hirschburg v. People*, 6 Colo. 145; *Higgenbotham v. State*, 19 Fla. 557; *Bank v. State*, 12 Ga. 475; *Whitehorse v. State*, 43 Ind. 473; *State v. Mason*, 108 Ind. 48; 8 N. E. 716; *Speckert v. Louisville*, 78 Ky. 287; *State v. O'Connor*, 13 La. Ann. 486; *Herald v. State*, 36 Me. 62; *Annapolis v. State*, 30 Md. 112; *Commonwealth v. Pattee*, 12 Cush. (Mass.) 501; *People v. Hobson*, 48 Mich. 27; *Wheeler v. State*, 64 Miss. 462; 1 So. 246; *Winterton v. State*, 65 Miss. 238; 3 So. 735; *State v. Patrick*, 2 Mo. App. Rep'r 1149; *Lewis v. Foster*, 1 N. H. 61; *Den v. DuBois*, 16 N. J. L. 285; *Hasting v. People*, 22 N. Y. 95; *State v. Wise*, 66 N. C. 120; *Cakins v. State*, 14 Ohio St. 222; *Genkiner v. Commonwealth*, 32 Pa. 99; *State v. Fletcher*, 1 R. I. 193; *State v. McCord* (S. C.), 1; *Brother v. State*, 2 Cold. (Tenn.)

201; *Greer v. State*, 22 Tex. 588; *State v. Meader*, 62 Vt. 458; 20 Atl. 730; *Leeftwiche's Case*, 5 Rand. (Va.) 657; *State v. Ingersoll*, 17 Wis. 631; *Book v. Commonwealth*, 107 Ky. 605; 55 S. W. 7; 21 Ky. L. Rep. 1342; *Dean v. State*, 49 Tex. Cr. App. 249; 92 S. W. 38.

<sup>13</sup> *Halfin v. State*, 5 Tex. App. 212; *Monroe v. State*, 8 Tex. App. 212; *Boone v. State*, 12 Tex. App. 184; *Fitze v. State*, 13 Tex. App. 372; *Treese v. State*, 14 Tex. App. 31; *Pinchard v. State*, 13 Tex. App. 373.

<sup>14</sup> *Prather v. State*, 14 Tex. App. 453; *Wasenhut v. State*, 18 Tex. App. 491; *White v. State*, 24 Tex. App. 230; 5 S. W. 857; *Dawson v. State*, 25 Tex. App. 670; 8 S. W. 820.

The Legislature may provide that the repeal of local option shall not release penalties incurred thereunder while in force. *Ezzell v. State*, 29 Tex. App. 521. See *Thomas v. Commonwealth*, 90 Va. 92; 17 S. E. 788; *Commonwealth v. Hoke*, 14 Bush 668.



**Sec. 547. Former laws, when not repealed.**

The general rule is, that when the provisions of a local option have been adopted and put in force in a given locality, it then becomes the exclusive regulation for the sale of intoxicating liquors in that locality, and has the effect to suspend during its continuance all other laws which are inconsistent with its terms.<sup>15</sup> And it has been held that a local option law was operative in a city which had adopted it, notwithstanding the city by its charter had the exclusive power to license and regulate the sale of intoxicating liquors. In this instance the local option law was passed subsequently to the city charter which provided that, "All other acts, whether special or general, so far as they conflict with the provisions of this act, are hereby repealed."<sup>16</sup> It also has been held that a special local option law is not repealed by a local general option law, where the general repealing clause of the latter act applies only to laws in conflict with it and provides for exemption from its operation of localities governed by other prohibitory laws, for the reason that a later general affirmative law does not abrogate an earlier special one by implication.<sup>17</sup> In Missouri, however, it has been held that the adoption of a local option law by a city or county did not have the effect to repeal the druggist's and pharmacist's law of that State, and that the latter might be invoked by a druggist as a defense to a criminal prosecution under the local option law.<sup>18</sup> But if a local option election results in favor

<sup>15</sup> *Bolt v. State*, 60 Ark. 600; 31 S. W. 460; *Young v. Commonwealth*, 14 Bush (Ky.) 161; *Commonwealth v. Jarrell*, 9 Ky. Law 572; 5 S. W. 563; *State v. Yewell*, 63 Md. 120; *Wheeler v. State*, 64 Miss. 462; 1 So. 632; *State v. Weeks*, 38 Mo. App. 566; *Raneh v. Commonwealth*, 78 Pa. St. 490; *Commonwealth v. Mueller*, 81 Pa. St. 127; *Robertson v. State*, 5 Tex. App. 155.

<sup>16</sup> *Olmstead v. Crook*, 89 Ala. 228; 7 So. 776; *Ranch v. Common-*

*wealth*, 78 Pa. 490; *Minnehaha Co. v. Champion*, 5 Dak. 397; 41 N. W. 754.

<sup>17</sup> *McGruder v. State*, 83 Ga. 616; 10 S. E. 281; *Zarresseller v. People*, 17 Ill. 101.

<sup>18</sup> *Ex parte Swain*, 96 Mo. 44; 9 S. W. 10; *State v. Moore*, 107 Mo. 78; 16 S. W. 937; *State v. Williams*, 38 Mo. App. 37; *State v. Kaufman*, 45 Mo. App. 656; *State v. Bevans*, 52 Mo. App. 130; *Fitzgerald v. Hurley*, 180 Mass. 151; 61 N. E. 815; *Smith v. Pat-*

of licensing the sale of intoxicating liquors it will have no effect on any prior law, for a general liquor law of the State cannot be abrogated by merely holding a local option election.<sup>19</sup> And if a local option law when adopted makes no provision for inflicting penalties for its violation, such violations, if repugnant to the general laws of the State governing the sale of such liquors, may be punished under such general laws.<sup>20</sup> So where a local option law provides that "in addition to the penalties now prescribed by law" unlawful sales may be enjoined, this has the effect, by implication, to continue in force and incorporate the penalties referred to.<sup>21</sup> In other words, it may be stated as true that a special local option law does not vary a prior general law touching the granting of a license to retail intoxicating liquors; for the reason that the one relates to the prohibition of sales altogether, and the other to regulations of sales, or making them unlawful under certain conditions.<sup>22</sup>

ton, 103 Ky. 444; 45 S. W. 459; 20 Ky. L. Rep. 165; *Storms v. Commonwealth*, 105 Ky. 619; 49 S. W. 451; 20 Ky. L. Rep. 1369; *Lawson v. Commonwealth (Ky.)*, 66 S. W. 1010; 23 Ky. L. Rep. 1983 (requiring druggists to register sales, still in force).

<sup>19</sup> *State v. Hollingsworth*, 100 N. C. 535; 6 S. E. 417.

<sup>20</sup> *Winerton v. State*, 65 Miss. 238; 3 So. 735; *Territory v. O'Connor*, 5 Dak. 397; 41 N. W. 746; 3 L. R. A. 355; *Grantham v. State*, 89 Ga. 121; 14 S. E. 892.

<sup>21</sup> *Territory v. O'Connor*, 5 Dak. 397; 41 N. W. 746; *Aaron v. State*, 34 Tex. Cr. Rep. 103; 29 S. W. 267.

<sup>22</sup> *Bell v. State*, 91 Ga. 227; 16 S. E. 207; *Redding v. State*, 91 Ga. 231; 18 S. E. 289; *Vallance v. King*, Barb. (N. Y.) 548; *Grantham v. State*, 89 Ga. 121; 14 S. E. 892.

Statutes not infrequently provide that the adoption of local option shall not affect licenses then in force. *Menken v. State*, 78 Ga. 608; 2 S. E. 559; *Griffin v. State*, 78 Ga. 679; 4 S. E. 154; *State v. Smith*, 26 Fla. 427; 7 So. 848.

When special local option laws are in force. *Crabb v. State*, 88 Ga. 584; 15 S. E. 455; *Knight v. State*, 88 Ga. 590; 15 S. E. 457; *Stahl v. Lee*, 71 Kan. 511; 80 Pac. 983; *Farris v. Commonwealth*, 111 Ky. 236; 63 S. W. 615; 23 Ky. L. Rep. 580.

When license law does not appeal general law prohibiting sales. *State v. Van Vliet*, 92 Iowa 476; 61 N. W. 241; *Commonwealth v. Weller*, 14 Bush 218; 29 Am. Rep. 407; when it does, *Commonwealth v. Bogie*, 1 S. W. 532; 8 Ky. L. Rep. 350; *Engle v. Commonwealth*, 1 S. W. 593; *Taber v. Lander*, 94 Ky. 237; 21 S. W. 1056; *Laffarty*

### Sec. 548. Changing boundary of district.

The adoption or rejection of a local option law, as a rule, is effected by the majority vote of a county, city, town, or other political division in favor of or against the granting of

v. Huffman, 99 Ky. 80; 35 S. W. 123; 32 L. R. A. 203; Commonwealth v. Hardin Co., 99 Ky. 188; 35 S. W. 275; Yunker v. State, 78 Md. 574; 28 Atl. 404; Boswell v. State, 70 Miss. 395; 12 So. 446; *In re* Clement, 187 N. Y. 274; 79 N. E. 1003; Commonwealth v. Lemon (Ky.), 76 S. W. 40; 25 Ky. L. Rep. 522.

A local option law declaring that it shall not be so construed as to prevent the sale of wine for medicinal or sacramental purposes, nor to prohibit a pharmacist furnishing alcohol for mechanical, scientific, art or medical purposes, does not repeal the usual druggists' and pharmacists' law. *Ex parte* Swann, 96 Mo. 44; 9 S. W. 10.

When general local option law repeals special city or town charter. *State v. Hutton*, 39 Mo. App. 410, and when general law does not repeal local law. *Crigler v. Commonwealth*, 120 Ky. 512; 87 S. W. 276; 27 Ky. L. Rep. 918; 87 S. W. 280; 27 Ky. L. Rep. 925, 926, 927; 87 S. W. 281; *Clark v. Riddle*, 101 Iowa 270; 70 N. W. 207; *Kennon v. Blackburn*, 127 Ky. 39; 104 S. W. 968; 31 Ky. L. Rep. 1256.

When local option adoption annuls licenses. *Ranch v. Commonwealth*, 78 Pa. 490.

When local option statute refers only to incorporated towns. *Tummings v. State*, 32 Tex. Cr. App. 117; 22 S. W. 409.

When an act subsequent to local option law repeals the latter so far as to sales of native wines. *Kahlbunner v. State*, 67 Miss. 368; 7 So. 288; *Hearn v. Brogan*, 64 Miss. 334; 1 So. 246.

When the period of prohibition is limited by a subsequent statute. *Commonwealth v. Kervill*, 108 Mass. 422.

When statute is for a resubmission of question of local option and does repeal act for local option. *Kirkpatrick v. Commonwealth*, 95 Ky. 326; 25 S. W. 113.

An amendment to a statute prohibiting the holding of local option election within four years of another local option election applies to a local option election within the four-year period held before its adoption. *Wynne v. Williamson*, 94 Ga. 603; 20 S. E. 436.

Where a county local option statute deprives a city therein of its power under the special charter to regulate sales of liquors. *Turner v. Forsyth*, 78 Ga. 683; 3 S. E. 649; *Cooper v. Shelton*, 97 Ky. 282; 30 S. W. 623; *In re O'Brien*, 29 Mont. 530; 75 Pac. 196.

Where a city having power to adopt local option is precluded by the county's adopting it. *Tatum v. State*, 79 Ga. 176; 3 S. E. 907; *Tangilpahoa v. Campbell*, 106 La. 464; 31 So. 49.

A vote for no licensing taken

a license to sell intoxicating liquors in such political division for a period of time fixed by law. Sometimes the majority is ascertained by ballot and sometimes by petition or remon-

after an application for a license is made precludes the granting of the license thereafter. *Dearen v. Taylor Co.*, 98 Ky. 135; 32 S. W. 402; *Bonacker v. State*, 42 Fla. 348; 29 So. 321.

If a part of a city lies in a county, adoption of local option prohibition by the county prohibits sales in such portion of the city. *Garrett v. Aby*, 47 La. Ann. 618; 17 So. 238.

The adoption of a no-license provision revokes licenses then in force. *State v. Cooke*, 24 Minn. 247; 31 Am. Rep. 344; *Robertson v. State*, 12 Tex. App. 541.

Voting for a license will not authorize a license in that part of the district voting for it that is within a distance of two miles of a church when another statute absolutely forbids a license within such distance. *State v. Hollingsworth*, 100 N. C. 535; 6 S. E. 417; *Barnesville v. Means* (Ga.), 57 S. E. 422.

Laws regulating taverns not repealed by adoption of local option. *Vallance v. King*, 3 Barb. 548.

License law not repealed by local option, and a sale in violation of it is punishable. *State v. Smiley*, 101 N. C. 709; 7 S. E. 904.

A sale under a license after local option is adopted cannot be justified. *Commonwealth v. Mueller*,\* 81 Pa. St. 127; *Robertson v. State*, 12 Tex. App. 541; *Bonacker v. State*, 42 Fla. 348; 29 So. 321; *Richter v. State*, 156 Ala. 127; 47 So. 163. *Ex parte Pratt*,

17 N. S. W. L. R. 295; *Ex parte Thompson*, 16 N. S. W. L. R. 42. Those two last cases relate to renewals.

Nor can a liquor tax be collected. *Robertson v. State*, 5 Tex. App. 155; *Rathburn v. State* (Tex. Civ. App.), 32 S. W. 45; *Tangipahoa v. Campbell*, 106 La. 464; 31 So. 49; *Snearly v. State*, 40 Tex. Cr. App. 507; 52 S. W. 547; 53 S. W. 696.

Nor penalties inflicted for offenses incurred under prior license laws. *Boone v. State*, 12 Tex. App. 184.

Prohibition in a justices' precinct in a county is not repealed by the failure of a county to subsequently vote for prohibition. *Ex parte Cox*, 28 Tex. App. 537; 13 S. W. 862; *Aaron v. State*, 34 Tex. Cr. Rep. 103; 29 S. W. 267.

If prohibition carry, the old law is abrogated without an express provision to that effect inserted in the court's order. *State v. Harvey*, 11 Tex. Civ. App. 691; 33 S. W. 885.

A statute prohibiting the holding of a second election "within the same prescribed limits, in less than two years after" such election is held does not prevent the holding of an election in a subdivision carved out of the territory previously voting within that time. *Ex parte Brown*, 35 Tex. Cr. Rep. 443; 34 S. W. 131.

When the county adopting local option does not prevent a city therein issuing a license. *Ken-*



strance. In Indiana the statute provides that no license shall be granted for a period of two years, if three days before the time when an application therefor must be filed, a remonstrance

non v. Blackburn, 127 Ky. 39; 104 S. W. 968; 31 Ky. L. Rep. 1256; see Renshaw v. Lane, 49 Ore. 526; 89 Pac. 147; Cole v. Commonwealth, 101 Ky. 151; 39 S. W. 1029; 19 Ky. L. Rep. 324, and where it does. O'Neal v. Minary, 125 Ky. 571; 101 S. W. 951; 30 Ky. L. Rep. 888.

*Ex parte* Fields, 39 Tex. Cr. App. 50; 46 S. W. 1127; Williams v. Davidson (Tex. Civ. App.), 70 S. W. 987; Evans v. Police Jury, 114 La. 771; 38 So. 555; *Ex parte* Douthitt (Tex. Cr. App.), 63 S. W. 131; Police Jury v. Mansura, 107 La. 201; 31 So. 650; Wallace v. Cubanola, 70 Ark. 395; 63 S. W. 485; State v. Hickerson (Mo. App.), 109 S. W. 108; Adams v. Kelley (Tex. Civ. App.), 45 S. W. 859; Doss v. Moore, 69 Ark. 258; 63 S. W. 66.

When the question of local option is submitted to a justice's precinct and at the same time to the entire county, and the precinct adopts and the county does not, or *vice versa*, effect. Baxter v. State, 49 Ore. 353; 88 Pac. 677; 89 Pac. 369.

That the right to license is only suspended by local option and not repealed. Mernaugh v. Orlando, 41 Fla. 433; 27 So. 34; People v. Brush, 41 N. Y. Misc. Rep. 56; 63 N. Y. Supp. 607; Eastham v. Commonwealth (Ky.), 49 S. W. 795; Tompkins v. State, 49 Tex. Cr. App. 154; 90 S. W. 1019; Commonwealth v. Powell (Ky.), 62 S. W. 19; 22 Ky. L. R. 1932.

Adoption of local option law suspends all inconsistent laws—see Butler v. State, 25 Fla. 347; 6 So. 67; Cason v. State, 37 Fla. 331; 20 So. 547; Mernaugh v. Orlando, 41 Fla. 433; 27 So. 34; Tatum v. State, 79 Ga. 176; 3 S. E. 907; Young v. Com., 14 Bush 161; State v. Hauley, 25 Minn. 429; Norton v. State, 65 Miss. 297; State v. Vandenburg (Miss.), 28 So. 835; *Ex parte* Swann, 96 Mo. 44; 9 S. W. 10; State v. Beam, 51 Mo. App. 368; Rauch v. Com., 78 Pa. 490; Rathburn v. State, 88 Tex. 281; 31 S. W. 189; *Ex parte* Lynn, 19 Tex. App. 293; Gibson v. State, 34 Tex. Cr. R. 218; 29 S. W. 1085; People v. Bush, 92 N. Y. App. Div. 611; 86 N. Y. Supp. 1144; 41 N. Y. Misc. Rep. 56; 83 N. Y. Supp. 607.

Where a prohibition territory again adopts prohibition while the first adoption is in force, the first remains in force and not the latter. Leftwich v. State (Tex. Cr. App.), 55 S. W. 571.

A vote by county is a vote as a unit, and a majority vote carries it, although some of the precincts vote the other way. *Ex parte* Fields, 39 Tex. Cr. App. 50; 46 S. W. 1127.

Druggist not entitled to a license. Eastham v. Commonwealth (Ky.), 49 S. W. 795; 20 Ky. L. Rep. 1639; People v. Henwood, 123 Mich. 317; 82 S. W. 70.

A city cannot so amend its charter as to avoid the prohibi-

in writing, signed by a majority of the legal voters of the township or ward for which such license is asked shall be filed with the auditor, against the granting of such license,

tion voted for in the county. *Baxter v. State* (Ore.), 88 Pac. 677; 89 Pac. 369; and in Texas, owing to the prohibition clauses in the Constitution, the Legislature can not grant a city a charter exempting it from the local option law. *Fox v. State*, 53 Tex. Cr. App. 150; 109 S. W. 370.

General statute prohibiting license repealing statute prohibiting issuing license in a particular city. *In re McGonnel*, 24 Pa. Super. Ct. 642.

Local option in force remains in force on adoption of a constitutional prohibitory provision. *White v. Commonwealth* (Ky.), 50 S. W. 678; 20 Ky. L. Rep. 1942.

A second adoption of local option by a county annuls a license vote taken by a city therein to begin when the first county local option had expired. *Police Jury v. Mansura*, 107 La. 201; 31 So. 650.

When city not voting is bound by result in county. *Bowman v. State*, 38 Tex. Cr. App. 14; 40 S. W. 796; 41 S. W. 635.

Where prohibition is in force in a city in a local option county, a vote of the city that the local option law should become inoperative in a certain precinct of it is equivalent to a vote that liquors therein might be sold. *C. B. George & Bro. v. Winchester*, 118 Ky. 429; 80 S. W. 1158; 26 Ky. L. Rep. 170.

A local option statute prohib-

iting sales of spirituous, vinous or malt liquors does not conflict with a later statute prohibiting the sale of any "intoxicating beverage, liquid mixture or decoction." *Rush v. Commonwealth* (Ky.), 47 S. W. 586; 20 Ky. L. Rep. 775.

Where subsequent city government act repeals county local option act within a city. *Jett v. Commonwealth* (Ky.), 49 S. W. 786; 20 Ky. L. Rep. 1619.

Where amendment of local option laws will not affect territory in which the law is then in force. *Ex parte Elliott*, 44 Tex. Cr. App. 575; 72 S. W. 837.

When both local and general prohibition law in force in a city. *Locke v. Commonwealth* (Ky.), 74 S. W. 654; 25 Ky. L. Rep. 76.

Brewery license cannot be issued. *Hager v. Jung Brewing Co.* (Ky.), 92 S. W. 573; 29 Ky. L. Rep. 176.

A local option law making it an offense to bring liquors into the district adopting prohibition does not apply to those whose license has not expired. *Sheehan v. Louisville, etc. R. Co.* (Ky.), 101 S. W. 380; 31 Ky. L. Rep. 113.

Effect of adoption of county local prohibition on city dispensary. *Barnesville v. Means*, 128 Ga. 197; 57 S. E. 422.

When county and not city the local unit. *O'Neal v. Mimary*, 125 Ky. 571; 101 S. W. 951; 30 Ky. L. Rep. 888; *Yates v. Nun-*

and that the majority of the voters shall be determined by the aggregate vote cast in the township or ward where the business is to be conducted for candidates for the highest

nelly, 125 Ky. 664; 102 S. W. 292; 30 Ky. L. Rep. 984.

When city and county not entitled to separate elections on same day. *Washington v. Giddens* (Ky.), 103 S. W. 321; 31 Ky. L. Rep. 647.

In Kentucky the adoption of constitutional provisions on local option did not repeal local laws then in force. *Commonwealth v. Hurst* (Ky.), 62 S. W. 1024; 23 Ky. L. Rep. 365; *Mullins v. Lancaster* (Ky.), 63 S. W. 475; 23 Ky. L. Rep. 436; *Farris v. Commonwealth*, 111 Ky. 236; 63 S. W. 615; 23 Ky. L. Rep. 580; *Stamper v. Commonwealth*, 102 Ky. 33; 42 S. W. 915; 19 Ky. L. Rep. 1014; *Thompson v. Commonwealth*, 103 Ky. 685; 45 S. W. 1039; 46 S. W. 492.

The adoption of local option by a city suspends all its licensing ordinances. *Mayhew v. Eugene* (Ore.), 104 Pac. 727; but not an ordinance declaring a place in the city maintained for the sale of liquor to be a nuisance. *Mayhew v. Eugene*, *supra*.

A statute of April 21, 1908, changed the beginning of the license year from May 1st to October 1st, and provided that the statute at the time the local option was taken should not be changed until October 1st following. In November, 1907, a license town voted for no license. It was held that the right to a license existed until October 1, 1908. *People v.*

*Bashford* (N. Y. Misc. Rep.), 112 N. Y. Supp. 1143; affirmed 128 N. Y. App. Div. 351; 112 N. Y. Supp. 502.

County's right to take away from city under special charter its right to grant a license. *Evans v. Commonwealth*, 10 Ky. L. Rep. (abstract) 681; *Commonwealth v. Brown*, 10 Ky. L. Rep. (abstract), 407.

Druggists are not exempted from operation of statute. *State v. Moore*, 107 Mo. 78; 16 S. W. 937.

The adoption of local option merely suspends and does not repeal the liquor licensing laws. *Brewer v. Commonwealth*, 14 Ky. L. Rep. (abstract) 270.

When the Legislature prohibits the sale in a district, but permits the citizens by vote to permit sales of liquors, the vote does not repeal the prohibitory statute, but simply permits sales until the citizens shall vote that they may not be made. *Commonwealth v. Hoke & Yokum*, 14 Bush 668.

Part of a town cannot permit sales when the town as a whole has prohibited them. *Commonwealth v. King*, 8 Ky. L. Rep. (abstract) 608.

Where the Legislature may adopt local laws, it may take a city's territory out of a local option law. *Hall v. Dunn* (Ore.), 97 Pac. 811; *State v. Cochran*, (Ore.), 104 Pac. 420; *State v. Malheur County* (Ore.), 101 Pac. 907.

office at the last election preceding the filing of such remonstrance. In construing this statute it was said that its manifest purpose was to permit the legal voters of the particular district at the time of filing of the remonstrance to say whether such license should be issued, and that it was not contemplated by the Legislature that between an election and the filing of an application for a license, a ward should be re-districted, nor would it be a reasonable interpretation of the statute to hold that such action by a common council would deprive the resident voters of the ward of the right to express their will in the premises. Accordingly, where such a re-districting had occurred, remonstrants no longer residents of the new ward were not entitled to be considered; but, on the other hand, if they were not permitted to remonstrate they were not to be counted in the aggregate of legal voters when it affirmatively appeared that they were no longer voters of the ward affected.<sup>23</sup> The general rule is that whenever an election has been held under and in conformity with the provisions of a local option law in a parish or county, and the vote cast is against granting licenses for the sale of intoxicating liquors, such vote will preclude a minor subdivision of such parish or county from subsequently holding another election for such minor portions upon such question. The former vote will control the entire parish or county, including its minor subdivisions, for the period of time for which the election was held; and if a new district is carved out and created with a new name from a district which has already adopted a local option law, such law will be enforced in the new district upon the theory that all qualified voters of such new district have had a right, and were called upon, to vote at the election held in the old district for or against the adoption of the law, and the result of that election subjects

Census to show status of city.  
State v. Cass County (Mo.), 119  
S. W. 1010, 1014.

Violation of license law may  
be prosecuted after adoption of  
local option. Cohens v. State  
(Tex.), 116 S. W. 571.

Where a vote is essential to a  
grant of a license. State v.  
Stakke (S. D.), 117 S. W. 129;  
118 S. W. 703.

<sup>23</sup> Abbot v. Inman, 35 Ind. App.  
262; 72 N. E. 284.



the entire population of the new district to the provisions of the law for the period of time covered by such election.<sup>24</sup> At the expiration of the time for which such election was held a minor or new division may hold such an election, and if the majority vote is not for the adoption of local option such determination will be binding for a like term and cannot be defeated by a general election of the parish or county upon the same subject for the time designated in the statute.<sup>25</sup>

<sup>24</sup> Ashurst v. State, 79 Ala. 276; Prestwood v. State, 88 Ala. 235; 7 So. 259; Commonwealth v. King, 86 Ky. 436; 6 S. W. 124; Cooper v. Shelton, 97 Ky. 282; 30 S. W. 623; Garrett v. Mayor, *et al*, 47 La. Ann. 618; 17 So. 238; Higgins v. State, 64 Md. 419; 1 Atl. 876; Whisenhurst v. State, 18 Tex. App. 491; Woodlief v. State, 21 Tex. App. 412; 2 S. W. 812.

<sup>25</sup> Whisenhurst v. State, 18 Tex. App. 491; Woodlief v. State, 21 Tex. App. 412; 2 S. W. 812; Parker v. State, 126 Ga. 443; 55 S. E. 329; Medford v. State, 45 Tex. Cr. App. 180; 74 S. W. 768; Nelson v. State (Tex. Cr. App.), 75 S. W. 502; Jones v. State, 67 Md. 256; 10 Atl. 216.

If a local option county be divided and an entirely new one be created local option continues in force in the new county. Parker v. State, 126 Ga. 443; 55 S. E. 329; Moore v. State, 126 Ga. 414; 55 S. E. 327; Amerker v. Taylor, 81 S. C. 163; 62 S. E. 7.

The addition of new territory to the local option district does not annul the former result nor authorize a new vote for the whole new territory before the expiration of the statutory time for a new vote. *Ex parte* Fields (Tex. Cr. App.), 86 S. W. 1022.

As to presumption that board in ordering election did not include territory where an election was unauthorized. Cofield v. Britton (Tex. Civ. App.), 109 S. W. 493 (town charter lapsed or forfeited).

"Dry" territory taken into "wet" territory remains "dry." *In re* Cunningham, 21 Can. Prac. 459; *Ex parte* Nagle, 30 N. B. 77; King v. McMullian, 9 Can. Cr. Cas. 531; *Ex parte* McCleaver, 21 N. B. 315; Regina v. Monteith, 15 Ont. 290; Regina v. Shovelear, 11 Ont. 727; *Ex parte* Pollard, 51 Tex. Cr. App. 488; 103 S. W. 878; Regina v. Higgins, 18 Ont. 148; Oxley v. Allen (Tex. Civ. App.), 107 S. W. 945; *Ex parte* Dalton, 27 N. B. 426; *Ex parte* Brennan, 30 N. B. 91; King v. McMullan, 38 Nova Scotia 129; *In re* Anderson, 14 Manitoba 535; Prestwood v. State, 88 Ala. 235; 7 So. 259.

So if a portion of a "wet" district be taken into a "dry" municipality, that portion continues "wet," and licenses issued therefor are in force. *Ex parte* McCleaver, 21 N. B. 315; but if the portion thus taken be created into an entirely new municipality, it may repeal the by-law granting local option prohibition, although the old municipality

### Sec. 549. Repeal of local option by vote—Second election in subdivisions.

Not infrequently statutes require the question of local option—whether for prohibition or license—to be submitted periodically to the voters, and other statutes provide for an election on the question when a petition is presented for that purpose. But nearly all of them provide that a certain period of time must elapse before the question can again be submitted for a vote; and when that is true an election held before that period has elapsed will result in a nullity or void election.<sup>26</sup> And the statute cannot be evaded in part by submitting the question to a subdivision of the district voting on the question<sup>27</sup> unless the statute provides for it.<sup>28</sup> Nor can the voting district be combined with a larger district and a vote thus taken within the prohibited time.<sup>29</sup> In determining whether the requisite time has elapsed the time is reckoned from the date of the election and not from the date of the publication of the result.<sup>30</sup> It is the duty of the court or

could not if such territory had remained therein. *Doyle v. Dufferien*, 8 Manitoba 286; *In re Henderson*, 14 Manitoba, 535; yet prohibition continues in force until set aside by a vote of the new municipality. *Higgins v. State*, 64 Md. 419; 1 Atl. 876; *Jones v. State*, 67 Md. 256; 10 Atl. 216.

Additional territory added on election day will not affect the election. *Ex parte Curlee*, 51 Tex. Cr. App. 614; 103 S. W. 896.

<sup>26</sup> *Tousey v. Stites* (Ky.), 66 S. W. 277; 23 Ky. L. Rep. 1738; *Commonwealth v. Nelson* (Ky.), 57 S. W. 495; 22 Ky. L. Rep. 414; *Savage v. Wolfe*, 69 Ala. 569 (petition showed election had been held within prohibition time, proceedings void); *Hancock v. Bingham* (Ky.), 102 S. W. 341; 31

Ky. L. Rep. 427; *Oxley v. Allen*, (Ky.), 107 S. W. 945.

<sup>27</sup> *Tousey v. Stites*, *supra*; *State v. Hickerson* (Mo. App.), 109 S. W. 108; *Caldwell v. Grider*, 88 Ala. 421; 7 So. 203.

<sup>28</sup> *Eggen v. Offutt*, 128 Ky. 314; 108 S. W. 333; 32 Ky. L. Rep. 1350; *Citizens, etc. v. Board*, 49 La. Ann. 641; 21 So. 742; *Police Jury v. Mansfield*, 49 La. Ann. 796; 21 So. 598; *Commonwealth v. Bottoms* (Ky.), 50 S. W. 684; 20 Ky. L. Rep. 1929; *Oxford v. Frank*, 30 Tex. Civ. App. 343; 70 S. W. 426; *Whisenhunt v. State*, 18 Tex. App. 491; *Woodlief v. State*, 21 Tex. App. 412; 2 S. W. 812.

<sup>29</sup> *Ex parte Randall*, 50 Tex. Cr. App. 519; 98 S. W. 870.

<sup>30</sup> *Ex parte Smith*, 48 Tex. Cr. App. 356; 88 S. W. 245.

board to refuse to order an election on the question of repeal where a sufficient length of time has not elapsed.<sup>31</sup> The fact that a city decided for a license when the county decided for prohibition will not authorize the city to vote before the requisite period has expired.<sup>32</sup> Where a city lying over certain population and lying within a county voting for prohibition was authorized, within less than the period that the second election could be submitted to the county, to hold its own separate election on the question, it was held that if the city did not have the requisite population at the time of the county election it could not claim the right to vote before the county period had elapsed on the ground that its population had increased to the requisite amount.<sup>33</sup> If the second election in a city is held too soon, but results in prohibition which was the result of the prior county election, a conviction for the violation of the local option law as adopted in such city will not be reversed, for local option on the county election was in force when the offense was committed.<sup>34</sup> If "dry" territory be added to a "wet" political division of the State, an election cannot be ordered or held within such division until the requisite time has elapsed for holding an election in the political division from which such "dry" territory was taken.<sup>35</sup> If the time for the county second election has ex-

<sup>31</sup> *Kidd v. Truett*, 28 Tex. Civ. App. 618; 68 S. W. 310; *Roper v. McKay*, 29 Tex. Civ. App. 470; 69 S. W. 459.

<sup>32</sup> *Commonwealth v. Bottoms* (Ky.), 57 S. W. 493; 20 Ky. L. Rep. 1929, reversing 57 S. W. 495.

Mandamus will not lie to compel a recount of the vote when another town election can be called. *People v. Mosso*, 30 N. Y. Misc. Rep. 164; 63 N. Y. Supp. 588.

If a second prohibition be adopted, a conviction for a violation during the first prohibition may be had. *Johnson v. State*,

53 Tex. Cr. App. 339; 109 S. W. 936; *Wade v. State*, 52 Tex. Cr. App. 608; 109 S. W. 191, 192; *Woods v. State* (Tex. Cr. App.), 75 S. W. 37. *Contra*, *Byrd v. State*, 51 Tex. Cr. App. 539; 103 S. W. 863.

<sup>33</sup> *State v. Robinson*, 129 Mo. App. 147; 108 S. W. 619.

<sup>34</sup> *Lyon v. State*, 42 Tex. Cr. App. 506; 61 S. W. 125.

<sup>35</sup> *Ex parte Fields* (Tex. Cr. App.), 86 S. W. 1022. *Contra*, *Doyle v. Dufferien*, 8 Manitoba 286; *In re Henderson*, 14 Manitoba 535.

pired, and a city is authorized to hold its own election, it can then do so, although the county has not called a second election.<sup>36</sup> A territory after adopting prohibition cannot be subdivided and then an election be called within the prohibited period for one of the smaller territorial districts.<sup>37</sup> Where a statute provided that if there was a majority vote for license a second election might be called, it was held that if the result of the election for license was a tie vote there could be no second election called.<sup>38</sup> If a county has voted upon the question of prohibition, no subdivision voting upon it thereafter—although it might lawfully so vote—can deprive the county, at the end of the prohibition period, or at any time thereafter, from voting on the question a second time,<sup>39</sup> for the statute with reference to a second election has

<sup>36</sup> *State v. Jackson*, 105 La. 436; 29 So. 870.

<sup>37</sup> *Ex parte Elliott*, 44 Tex. Cr. App. 575; 72 S. W. 837.

On the reversal of a prohibitory vote the privilege granted under a license to sell is revived, unless the holder has by some act abandoned it, or it by limitation has expired. *People v. Brush*, 41 N. Y. Misc. Rep. 56; 83 N. Y. Supp. 607; affirmed 92 N. Y. App. Div. 611; 86 N. Y. Supp. 1144.

See *Price v. Board*, 98 Md. 346; 57 Atl. 215.

Where prohibition continues in force until repealed, and the result of a second election is not in force until published, the State may rely upon the first election where the offense is committed after the second election and before the result is published. *Givens v. State*, 49 Tex. Cr. App. 267; 91 S. W. 1090, 1091. See *Thompson v. Commonwealth*, 103 Ky. 635; 45 S. W. 1039; *Decker v. State*, 39 Tex. Cr. App. 20; 44 S. W. 845; *State v. Foreman*, 121 Mo. App. 502; 97 S. W. 269.

A freeholder held to have a light to intervene and insist a second election would be void. *Coldwell v. Guider*, 88 Ala. 421; 7 So. 203.

<sup>38</sup> *Temmick v. Owings*, 70 Md. 246; 16 Atl. 719.

Where statute shortening the prohibition period does not apply to previous elections. *Dawson v. State*, 25 Tex. App. 670; 8 S. W. 820.

In Kentucky, until the certificate of the result of the second election is recorded, there is no change in the status of the liquor question. *Commonwealth v. Weisenburgh* (Ky.), 102 S. W. 846; 31 Ky. L. Rep. 449.

If the accused claims the second election was void because brought on too soon, he must show that as a fact. *Holland v. State*, 51 Tex. Cr. App. 147; 101 S. W. 1002.

<sup>39</sup> *Hancock v. Bingham* (Ky.), 102 S. W. 341; 31 Ky. L. Rep. 427; *Police Jury v. Mansura*, 119 La. 300; 44 So. 23; 119 La. 306; 44 So. 25; *Smith v. Patton*, 103



reference to the identical territory covered by the former election.<sup>40</sup> If the first election be void, not voidable, then the prohibitive period does not apply to the second election.<sup>41</sup>

**Sec. 550. Local option ordinance, when not invalid.**

An ordinance duly passed by the authorities of a municipal corporation prohibiting the keeping of intoxicating liquors for the purpose of a local sale will not conflict with the statute of the State which provides that if a majority of the votes cast at any election held under a general local option law shall be against the sale, it shall not be lawful for any person, within the limits of a municipal corporation where an election is held, to sell or barter for a valuable consideration, either directly or indirectly, or to give away to induce trade at any place of business, or to furnish at other places of business, any intoxicating liquors or intoxicating beverages, or other drinks, which if drunk to excess, will produce intoxication. Such an ordinance and statute are not inconsistent with each other.<sup>42</sup> And it has been held that when a city by ordinance has adopted the local option law of a State, a penalty affixed to the ordinance of not less than \$300 and not more than \$1,000 for the violation of its terms is not unreasonable and may be enforced.<sup>43</sup>

**Sec. 551. Eminent domain, power of not involved.**

A local option law rests in no degree upon the power of eminent domain. It does not contemplate either the taking

Ky. 444; 45 S. W. 459; 20 Ky. L. Rep. 165.

<sup>40</sup> Board v. Scott, 125 Ky. 545; 101 S. W. 944; 30 Ky. L. Rep. 694; Oxley v. Allen (Tex. Civ. App.), 107 S. W. 945.

In Louisiana an election result continues in force until a second one is called and the result reversed or changed. Police Jury v. Mansura, 119 La. 300; 44 So. 23; 119 La. 306; 44 So. 25.

In Texas the prohibitive period begins to run from the date the

first election went into force, and not from the date of the election. Seary v. State, 51 Tex. Cr. App. 444; 102 S. W. 1127.

If the second election be invalid because held too soon, its validity may be tested collaterally. Oxley v. Allen (Tex. Civ. App.), 107 S. W. 945.

<sup>41</sup> Oxley v. Allen, *supra*.

<sup>42</sup> Mason v. Atlanta, 77 Ga. 662.

<sup>43</sup> Warrensburg v. McHugh, 122 Mo. 649.

or damaging of anything. It is the exercise of the police power of a State or Commonwealth, pure and simple. The incidental effects upon the value of property that has been used for the manufacture or sale of intoxicating liquors result not from any interference with the property, but solely from the inability of the owners of the property to adjust their old business to the new law. The effect, if they can be a damage at all, is *damnum absque injuria*. The law does not take or damage the property of such owners for the public use, but only prevents them, to a certain limited extent, from taking or damaging the public for their use. Such is their real grievance, and for that they have no remedy. Where business and law conflict, it is the business that must give way and not the law.<sup>44</sup>

### Sec. 552. Cost of election.

Unless the statute imposes the cost upon them, those petitioning for the election are not liable for the costs of the election, nor anyone else, nor can they be required to make a deposit to cover the costs.<sup>45</sup> But a statute may require them to do so, especially the expenses up to the calling of the election.<sup>46</sup>

### Sec. 553. Consent of local authorities.

In Iowa a statute required as a condition to the issuance of a license that a written statement of general consent of a certain percentage of the voters at the last general election be presented to the board of supervisors, who should canvass it and enter its finding as to the results in its records. But under this law if the consent was given by the voters of a township that would not authorize the granting of a license to sell in a town within the township,<sup>47</sup> and where a town was

<sup>44</sup> *Menken v. City of Atlanta*, 78 Ga. 668; 3 S. E. 414.

<sup>45</sup> *O'Neal v. Minary*, 125 Ky. 571; 101 S. W. 951; 30 Ky. L. Rep. 888.

<sup>46</sup> *Butler v. Fiscal Court*, 126

Ky. 146; 103 S. W. 251; 31 Ky. L. Rep. 597.

<sup>47</sup> *Hill v. Gleisner*, 112 Iowa 397; 84 N. W. 511; *West v. Bishop*, 110 Iowa 410; 81 N. W. 696; *Meyer v. Hobson*, 116 Iowa 349; 90 N. W. 85.

incorporated after the canvass was made and the record signed, a canvass must then be as to the town before a license to sell in the town could be granted.<sup>48</sup> The canvass is made from the poll books of the last previous election; but if they be destroyed, then the board must ascertain the facts as well as it can.<sup>49</sup>

### Sec. 554. Juror's qualifications in local option cases.

Upon the trial of a person charged with an offense against a local option law, a juror is not disqualified who, upon his *voir dire*, states that he voted for the local option law, or that he is in favor of the law and its enforcement, or that he is opposed to the saloon business, or believes in prohibition, or that he has conscientious scruples against the saloon business. It would be a strange rule that would disqualify a juror because he is in favor of an existing law, believe in its enforcement, and is opposed to a business which, if carried on at all, is carried on in direct violation of a statutory prohibition. The question to be tried in such case is not the policy of the law, but whether or not the party charged has been guilty of its violation. Nor is a juror disqualified in such case who states that he understands the local option law to be in force, or that he knows that a local option election was held, and knows the result of the election was to supersede and suspend the general laws of the State respecting the sale of intoxicating liquors. Although the existence of the law is a fact to be proven, the question of the sufficiency of the proof is a matter for the court and not for the jury.<sup>50</sup> In such case, however, it would be error to refuse to permit a juror to be asked which way he would give a verdict if the

<sup>48</sup> *Schuneman v. Sherman*, 118 Iowa 230; 91 N. W. 1064.

<sup>49</sup> *West v. Bishop*, 110 Iowa 410; 81 N. W. 696; *Wilson v. Bohstedt*, 135 Iowa 457; 110 N. W. 898.

Proof of filing of contest. *McConkie v. District Court*, 117 Iowa 334; 90 N. W. 716.

*Certiorari* to review proceedings. *Darling v. Boesch*, 67 Iowa 702; 25 N. W. 887.

How requisite percentage of voters ascertained. *Cameron v. Fellows*, 109 Iowa 534; 80 N. W. 567.

<sup>50</sup> *People v. Keefer*, 97 Mich. 15; 56 N. W. 105.

evidence, as between the people and defendant, should be equally balanced.<sup>51</sup>

### Sec. 555. Local prohibitory or local option statutes.

In the past—and even in a few States at the present day—liquor statutes have been frequently adopted for particular localities, and the question frequently arises what is the effect of a subsequent general statute for the entire State covering the same subject. Where no provision of the Constitution of the State forbids local legislation such statutes are valid, being enacted under the State's general police power to regulate the traffic in intoxicating liquors.<sup>52</sup> Necessarily the question whether a local law was repealed by a general law on the same subject must depend upon the intent of the Legislature as expressed in the latter act. There are many cases where it is held that the local act is not repealed, and consequently prosecutions must be based upon its provisions;<sup>53</sup> while on the contrary it has often been held that the general law repeals the local statute.<sup>54</sup> In matters of this kind, however, the general rule that repeals by implication are not favored prevails.<sup>55</sup> But if a local law is enacted for a par-

<sup>51</sup> *Monaghan v. Insurance Co.*, 53 Mich. 246; 18 N. W. 797; *Otsego Lake Tp. v. Kirston*, 72 Mich. 1; 40 N. W. 26; *Theisen v. Johns*, 72 Mich. 285; 40 N. W. 727; *People v. Keefer*, 97 Mich. 15; 56 N. W. 105.

<sup>52</sup> *Stickrod v. Commonwealth*, 86 Ky. 285; 5 S. W. 580; 9 Ky. L. Rep. 563.

<sup>53</sup> *Blackburn v. Commonwealth*, 15 Ky. L. Rep. (abstract) 239; *Wooton v. Commonwealth*, 15 Ky. L. Rep. (abstract) 495; *Commonwealth v. Weller*, 14 Bush 218; 29 Am. Rep. 407; *Bodgett v. State* (Ala.), 48 So. 54; *Rice v. Commonwealth* (Ky.), 61 S. W. 473; 22 Ky. L. Rep. 1793; *Bailey v. Commonwealth* (Ky.), 64 S. W. 995; 23 Ky. L. Rep. 1223; *Cranor*

*v. Albany*, 43 Ore. 144; 71 Pac. 1042; *State v. Piner*, 141 N. C. 760; 53 S. E. 305; *Hail v. State*, 48 Tex. Cr. App. 514; 90 S. W. 503; *People v. Mulkins*, 25 N. Y. Misc. Rep. 599; 54 N. Y. Supp. 599.

<sup>54</sup> *Albright v. Commonwealth*, 7 Ky. L. Rep. (abstract), 762; *Kemp v. State*, 120 Ga. 157; 47 S. E. 548; *Tinsley v. State* (Ga.), 35 S. E. 303; *Blake v. State*, 118 Ga. 333; 45 S. E. 249; *Commonwealth v. Duncan*, 11 Ky. L. Rep. (abstract) 402; *Commonwealth v. Warren*, 10 Ky. L. Rep. (abstract) 490; *Mueller v. People*, 24 Colo. 251; 48 Pac. 965.

<sup>55</sup> *Commonwealth v. Weller*, 14 Bush 218; 29 Am. Rep. 407.



ticular district, then it supersedes the general statute as to such district.<sup>56</sup> Such a statute containing a provision that the violation of its provisions shall be punished according to existing laws for the illegal sale of whisky is valid and capable of enforcement.<sup>57</sup> If a local act be unconstitutional that will leave the general statute on the same subject in force.<sup>58</sup> Where sales within four miles of any schoolhouse were prohibited, and the statute was so amended as to extend its provisions to towns not having over two thousand inhabitants, but several sales made by persons having licenses "at the date of the passage of that act during the time for which such licenses were granted," which was for a year, and four years subsequently this amendment was so amended as to require the number to be five thousand, it was held that the latter act did not re-enact the first amending statute or revitalize its provisions so as to except from its operations sales made under licenses in force at the time the act was passed, and licenses which had expired before the last amendment was made were no protection for sales thereafter made, not being saved by the later act.<sup>59</sup> A few cases may be noted in this connection concerning those statutes prohibiting sales within certain distances of schools and the like, for they are strictly local prohibition statutes. A statute of this character prohibited sales within three miles of any schoolhouse if the proper steps were taken to put it in force. A schoolhouse was located within less than three miles of a State line, but it was held that the statute was not for that reason void or inapplicable, and that the inhabitants living in such other State but within the three mile limit were not to be counted nor their consent required in determining if the requisite number in the county had voted for local

<sup>56</sup> *Commonwealth v. Anderson*, 10 Ky. L. Rep. 307; *Gifford v. Commonwealth*, 2 Ky. L. Rep. (abstract) 437; *Commonwealth v. Bogie*, 7 Ky. L. Rep. (abstract) 601; *Collins v. State*, 114 Ga. 70; 39 S. E. 916; *Cotton v. State*, 62 Ark. 585; 37 S. W. 48.

<sup>57</sup> *Commonwealth v. Edinger*, 7 Ky. L. Rep. (abstract) 442; *Bergmeyer v. Commonwealth*, 3 Ky. L. Rep. (abstract) 823.

<sup>58</sup> *Tinsley v. State* (Ga.), 35 S. E. 303.

<sup>59</sup> *Webster v. State* (Tenn.), 75 S. W. 1020.

option.<sup>60</sup> Under such a statute where the number required by statute petitions for a prohibitory order, it is the imperative duty of the board or court petitioned to make the order.<sup>61</sup> The sole question before the court is to determine if the requisite number of persons have signed the petition.<sup>62</sup> Where local prohibition within three miles of a schoolhouse was established, and three years afterwards a new schoolhouse, a quarter of a mile from the first schoolhouse, was built, and a new prohibition order was entered, and thereafter at a general county election a majority of the votes were cast for licenses and the court revoked the first order prohibiting the sale of liquors within the prohibitory district, it was held that the overlapping of the areas of the prohibitory orders did not make the second one invalid, and that the revoking of the first order did not have any effect upon the second one and, therefore, the defendant was not protected after such county had voted for licenses.<sup>63</sup> A recital in the order which locates the schoolhouse at a wrong place does not invalidate the order, it not being necessary to locate it.<sup>64</sup> Parol evidence is admissible to show which schoolhouse was in question where there were two buildings used for school purposes within the district.<sup>65</sup> An order revoking a prohibitory order is self-executing, and remains in force until set aside or superseded. An appeal from the order of revocation does not suspend it.<sup>66</sup> A petitioner for prohibition has such an interest in the matter that he may appeal from a denial to enter an order as prayed for in the petition.<sup>67</sup>

<sup>60</sup> *Lindley v. State* (Ark.), 120 S. W. 987; *Thomas v. Burke* (Ark.), 121 S. W. 1061.

<sup>61</sup> *Bridewell v. Ward*, 72 Ark. 187; 79 S. W. 762.

<sup>62</sup> *Douglass v. Hamilton* (Ark.), 120 S. W. 387.

<sup>63</sup> *Lindley v. State* (Ark.), 120 S. W. 987.

<sup>64</sup> *Lindley v. State*, *supra*.

<sup>65</sup> *Thomas v. Burke* (Ark.), 121 S. W. 1060.

<sup>66</sup> *Bordwell v. State*, 77 Ark. 161; 91 S. W. 555.

<sup>67</sup> *Thomas v. Burke* (Ark.), 121 S. W. 1060.

## ARTICLE II. VIOLATION OF LOCAL OPTION LAW.

## SECTION.

- 556. Sale of liquors.
- 557. Shipping liquors into local option territory.
- 558. Bringing liquors within local option territory.
- 559. Soliciting orders in local option district.
- 560. Sale under license.

## SECTION.

- 561. Time for license expiring or lapsing.
- 562. Transportation of intoxicating liquors.
- 563. Under what statute prosecutions to be brought.
- 564. Proof that local option was in force.

**Sec. 556. Sale of Liquor.**

When local option has been adopted and has gone into force sales or gifts of liquors thereafter in the territory adopting it are unlawful. What is and what is not a sale has been elsewhere discussed, and what is there said need not be repeated in this connection. Whatever transaction amounts to a sale or gift is forbidden by these statutes, and all such transactions are punishable by fine or imprisonment.<sup>68</sup> Thus, where a defendant kept liquor at his house in a prohibition county, and on being solicited to sell he and the solicitor took the desired amount of liquor, rowed across a river into another county where the liquor was delivered and the money therefor received, and they then returned, it was held that the sale was brought about by a subterfuge within the meaning of a

<sup>68</sup> *Stoval v. State* (Tex. Cr. App.), 97 S. W. 92; *Brookman v. State*, 50 Tex. Cr. App. 277; 96 S. W. 928; *Ball v. Commonwealth* (Ky.), 99 S. W. 326; 30 Ky. L. Rep. 600; *Oxford v. State* (Tex. Cr. App.), 97 S. W. 484; *Polk v. State* (Tex. Cr. App.), 97 S. W. 467; *Commonwealth v. McDermott* (Ky.), 96 S. W. 475; 29 Ky. L. Rep. 752; *Jackson v. State*, 49 Tex. Cr. App. 248; 91 S. W. 574; *Pike v. State*, 40 Tex. Cr. App. 613; 51 S. W. 395; *Walker*

*v. State*, 52 Tex. Cr. App. 293; 106 S. W. 376.

In Kentucky, under the statutes, it is held a brewer may sell his beer in the local option county where his brewery is located. *Lexington Brewing Co. v. Commonwealth*, 124 Ky. 476; 99 S. W. 618; 30 Ky. L. Rep. 758; *New South, etc. Co. v. Commonwealth*, 123 Ky. 443; 96 S. W. 805; 29 Ky. L. Rep. 873; but not in another local option county. *F. W. Cook Brewing Co. (Ky.)*, 99 S. W. 354, 355; 30 Ky. L. Rep. 598, 600.

statute making all sales by trick or device illegal.<sup>69</sup> An intent not to violate the local option law is not material.<sup>70</sup> But an express agent of a carrier delivering the liquors and collecting the amount due on them cannot be charged with having sold them.<sup>71</sup> Sales by wholesale are prohibited by local option laws as well as by retail.<sup>72</sup> But these statutes do not prevent a distiller selling out to his partner his interest in the distillery or its manufactured product.<sup>73</sup>

### Sec. 557. Shipping liquors into local option territory.

Sales, with some very restricted exceptions, are universally made illegal in local option territory. It is difficult at times to say with exactness just where the sale takes place. In an instance of shipping liquors into a local option county by common carrier, under a contract of sale, the point of shipment is the place where the sale is consummated, even though the liquor is sent C. O. D.<sup>74</sup> In such an instance it matters

<sup>69</sup> *Merritt v. Commonwealth*, 122 Ky. 669; 92 S. W. 611; 28 Ky. L. Rep. 184; *Lemore v. Commonwealth*, 127 Ky. 480; 105 S. W. 930; 32 Ky. L. Rep. 387.

See where a gift of liquor is not a violation of a local option statute preventing a sale. *Commonwealth v. Dickerson* (Ky.), 76 S. W. 1084; 25 Ky. L. Rep. 1043.

<sup>70</sup> *Williams v. State*, 45 Tex. Cr. App. 477; 77 S. W. 215; *Jolly v. State*, 53 Tex. Cr. App. 484; 110 S. W. 749.

<sup>71</sup> *State v. Cairns*, 64 Kan. 782; 68 Pac. 621.

<sup>72</sup> *Greiner v. Kelley Drug Co.* (Tex. Civ. App.), 75 S. W. 536.

<sup>73</sup> *Stamper v. Commonwealth* (Ky.), 103 S. W. 286; 31 Ky. L. Rep. 707.

<sup>74</sup> *Freshman v. State*, 37 Tex. Cr. App. 126; 38 S. W. 1007; *Joseph v. State* (Tex. Cr. App.), 86 S. W. 326; *Lester v. State*

(Tex. Cr. App.), 86 S. W. 326; *Green v. State* (Tex. Cr. App.), 87 S. W. 1043; *Weil v. State*, 48 Tex. Cr. App. 603; 90 S. W. 644; *McDermott v. Commonwealth* (Ky.), 96 S. W. 474; 29 Ky. L. Rep. 750; *Doores v. Commonwealth*, 121 Ky. 226; 89 S. W. 161; 28 Ky. L. Rep. 192; 89 S. W. 164; 28 Ky. L. Rep. 196; *Kearns v. Commonwealth*, 15 Ky. L. Rep. (abstract), 332; *Blasingame v. State*, 47 Tex. Cr. App. 582; 85 S. W. 275; *Harris v. State*, 47 Tex. Cr. App. 588; 85 S. W. 284, 1198; *Queen v. Cahill*, 6 Can. Cr. Cas. 204; 35 N. B. 240; *Hirsch v. State*, 50 Tex. Cr. App. 1; 96 S. W. 40; *James v. State*, 45 Tex. Cr. App. 592; 78 S. W. 951; *State v. Cairns*, 64 Kan. 782; 68 Pac. 621; *Commonwealth v. Price, etc. Co.* (Ky.), 105 S. W. 102; 31 Ky. L. Rep. 1350; *Weathered v. State* (Tex. Cr. App.),



not that the order for the liquor was taken in the local option county.<sup>75</sup> And one to whom the liquor is shipped to deliver to the purchaser, in turning it over to him does not violate the law.<sup>76</sup> But where a person telephoned to a liquor dealer outside the prohibition territory to send him some liquor, which the dealer did by his wagon, and in order to evade the statute the driver refused to accept pay for the liquor unless the purchaser would go with him across the line of the prohibited territory, it was held there was a clear violation of the statute.<sup>77</sup> And where the liquor is to remain the property of the seller until taken out of the express office by the purchaser, then the seller is guilty of shipping liquor into the county under a statute prohibiting it.<sup>78</sup> Where the order was

60 S. W. 876; *Commonwealth v. Current*, 11 Ky. L. Rep. (abstract) 764; *Commonwealth v. Russell*, 11 Ky. L. Rep. (abstract) 576; *Mullen v. State*, 30 Ohio Cir. Ct. Rep. 251; *Beard v. State* (Tex.), 115 S. W. 592; *Jones v. Dermott v. Commonwealth* (Ky.), 96 S. W. 474; 20 Ky. L. Rep. 750.

<sup>75</sup> *Joseph v. State*, *supra*; *Luster v. State*, *supra*; *Foshee v. State* (Tex. Cr. App.), 87 S. W. 620; *Owens v. State*, 47 Tex. Cr. App. 634; 85 S. W. 794; *Commonwealth v. Current*, 11 Ky. L. Rep. (abstract) 764; *Bennett v. Commonwealth*, 11 Ky. L. Rep. (abstract) 370.

<sup>76</sup> *Harris v. State*, 47 Tex. Cr. App. 588; 85 S. W. 284, 1198; *Glass v. State*, 68 Ark. 266; 57 S. W. 793; *James v. State*, 45 Tex. Cr. App. 592; 78 N. W. 951; *Queen v. Cahill*, 35 N. B. 240; 6 Can. Cr. Cas. 204.

<sup>77</sup> *Commonwealth v. Adair*, 121 Ky. 689; 89 S. W. 1130; 28 Ky. L. Rep. 657; *Merritt v. Commonwealth*, 122 Ky. 669; 92 S. W. 611; 28 Ky. L. Rep. 184. See also *Hall*

*v. Commonwealth*, 13 Ky. L. Rep. (abstract) 399.

In Kentucky it would seem that if the liquor is sent C. O. D. the law fixes the place of sale at the place where the carrier delivered the goods to the purchaser, but if not sent C. O. D., then the statute does not apply. *Doores v. Commonwealth*, 121 Ky. 226; 89 S. W. 162, 164; 28 Ky. L. Rep. 192, 196.

Soliciting orders within a local option county and afterward shipping the liquor pursuant to the orders received cannot be regarded a trick or device to evade the statute, within the prohibition of a statute making all sales by trick or device unlawful. *Doores v. Commonwealth*, 121 Ky. 226; 89 S. W. 162, 164; 28 Ky. L. Rep. 192, 196.

When sales of native wine are prohibited and when not in local option counties. *Bates v. State*, 81 Ark. 336; 99 S. W. 388.

<sup>78</sup> *Hirsch v. State*, 50 Tex. Cr. App. 1; 96 S. W. 40.

Statutes sometimes make the place where the money is paid for

solicited in a prohibition territory by an agent of a foreign dealer, the order taken and the money for the liquor then and there paid, it was considered that the method adopted was a mere trick to evade the statute and the transaction was an illegal sale.<sup>79</sup> Where A received in a local option county from B money, and agreed to send him whisky, which he did, it was held that he was more than an agent, that he sold the liquor to B, and had violated the law.<sup>80</sup> But a right to return the liquors if they do not correspond with the sample does not change the place of sale from the place of shipment to the place of consignment.<sup>81</sup> Where A received money from B in a local option county to buy him whisky in a non-local option county, which he did and sent it to B by the hand of a person not under his control nor acting as his agent, it was held that he had not violated such local option law.<sup>82</sup> So a filling of a telephone order in a non-prohibition county to ship liquor by carrier into a local option county, is not a violation of the law in the latter county.<sup>83</sup> When the evidence showed that the accused shipped two packages of liquors by express "C. O. D." to E in a local option county to be delivered by the express agent to anyone who had an order signed by E, upon payment of the charges, and upon some one telling G if he wanted liquor

the liquors the place of sale. *Hysler v. Commonwealth*, 116 Ky. 410; 76 S. W. 174; 25 Ky. L. Rep. 608; *Buckman v. Commonwealth*, 11 Ky. L. Rep. (abstract) 526.

<sup>79</sup> *State v. Small* (S. C.), 60 S. E. 676.

Some States by statute have made the place of delivering in the local option county the place of sale. *State v. Herring*, 145 N. C. 418; 58 S. E. 1007; *Newson v. State*, 1 Ga. App. 790; 58 S. E. 71; *State v. Patterson*, 134 N. C. 612; 47 S. E. 808.

<sup>80</sup> *McDermott v. Commonwealth* (Ky.), 100 S. W. 830; 30 Ky. L. Rep. 1227. But see *Anderson v.*

*State*, 82 Ark. 405; 101 S. W. 1152; *Ford v. State*, 82 Ark. 603; 102 S. W. 1196.

<sup>81</sup> *Gill v. Kaufman*, 16 Kan. 571.

In Georgia a sale by mail order to minor, shipped to him in another county, can be prosecuted in either the county of shipment or of the consignment. *Newsome v. State*, 1 Ga. App. 700; 58 S. E. 71.

<sup>82</sup> *Beard v. State* (Tex.), 115 S. W. 592.

<sup>83</sup> *McDermott v. Commonwealth* (Ky.), 96 S. W. 474; 29 Ky. L. Rep. 750.

F would give an order upon the express agent, which F did and received an order upon which he got the liquor, paying its cost and the amount of the transportation charges, and the agent said F had ordered him to deliver "any and every package" received by him, it was held that there was sufficient evidence to send the case to the jury on the question whether E and F were acting merely as the accused's agents.<sup>84</sup>

**Sec. 558. Bringing liquors within local option territory.**

Under the usual local option statutes it is an offense to bring intoxicating liquor within the local option territory, even for one's own use, where it is shipped by express C. O. D.<sup>85</sup> Where a foreign dealer solicited an order for liquors in a local option county, shipped those ordered to an adjoining county that was not a local option county, and they were then transported into the local option county by wagon, it was held that the presumption was the wagon was the buyer's, and that the sale was consummated in the non-local option county.<sup>86</sup>

**Sec. 559. Soliciting orders in local option district.**

In most of the States it is made a penal offense to solicit orders for intoxicating liquors in local option territory. It was found essential to the integrity of the local option law that statutes forbidding the solicitation of orders for liquors should be adopted. Thus, where a dealer having his place of business in Louisiana solicited orders in Mississippi, to be delivered in the former State to an express company for the purchaser, it was held that he had violated a statute of the latter State making it a misdemeanor to act as the agent of

<sup>84</sup> *Current v. Commonwealth*, 11 Ky. L. Rep. (abstract) 764.

<sup>85</sup> *Young v. State* (Tex. Cr. App.), 66 S. W. 567; *Hoyt v. State* (Tex. Cr. App.), 89 S. W. 1082; *Pecaria v. State*, 48 Tex. Cr. App. 352; 90 S. W. 42; *Randall v. State*, 49 Tex. Cr. App. 261; 90 S. W. 1012; *McGuire v. Commonwealth* (Ky.), 99 S. W. 612; 30

Ky. L. Rep. 720; *Jackson v. State*, 49 Tex. Cr. App. 248; 91 S. W. 574.

<sup>86</sup> *Pabst Brewing Co. v. Commonwealth*, (Ky.), 107 S. W. 728, 729; 32 Ky. L. Rep. 1010, 1013. So where he sends it to his agent to deliver them. *People v. De Groot*, 111 Mich. 245; 69 N. W. 248; 3 Det. L. N. 619.

either the seller or purchaser in making a sale in local option territory.<sup>87</sup> An advertisement of liquors for sale and soliciting orders for them is not a violation of a statute forbidding the solicitation of orders in a local option district;<sup>88</sup> nor is mailing printed circulars.<sup>89</sup> Under a statute making an offense to sell or furnish intoxicating liquors in the Indian Territory, one who sends his agent into that territory and solicits orders for liquors and then fills the order by shipping the liquor ordered into the territory is guilty of violating the statute.<sup>90</sup> A statute prohibiting the solicitation of purchases of liquors applies to a single solicitation and by one not engaged in the sale of liquors or in the liquor business.<sup>91</sup> To constitute the offense of soliciting orders for liquors to be shipped into a prohibition district it is not necessary that the liquors be shipped,<sup>92</sup> nor an order be received.<sup>93</sup> Where a statute prohibits personal solicitation of orders for liquor, a solicitation by mail is a violation of its provisions.<sup>94</sup> Where a statute made it an offense to solicit orders "by an agent" in a prohibition territory, and a person solicited and obtained an

<sup>87</sup> Hart v. State, 87 Miss. 171; 39 So. 523; Blasingame v. State, 47 Tex. Cr. App. 582; 85 S. W. 275; Winslow v. State (Tex. Cr. App.), 98 S. W. 241; Mills v. State, 148 Ala. 633; 42 So. 816; Williams v. State, 107 Ga. 693; 33 S. E. 641.

<sup>88</sup> Carter v. State, 81 Ark. 37; 98 S. W. 704.

<sup>89</sup> State v. Wheat, 48 W. Va. 259; 37 S. E. 544.

<sup>90</sup> Taylor v. United States, 6 Ind. T. 350; 98 S. W. 123.

<sup>91</sup> Mills v. State, 148 Ala. 633; 42 So. 816.

The phrase "solicit or order" has been construed to mean "solicit order for," the statute using the language "to solicit or order or sell goods, wares," etc. Republic of Hawaii v. Warbel, 11 Hawaii 221.

In Texas it was held that a statute making it an offense "to solicit an order for the sale" of liquor in a local option district was unconstitutional, as to interstate shipments, being a violation of the interstate commerce act. *Ex parte Massey*, 49 Tex. Civ. App. 60; 92 S. W. 1086; *Ex parte Hackney* (Tex. Civ. App.), 92 S. W. 1092; Carter v. State (Tex. Civ. App.), 92 S. W. 1093.

<sup>92</sup> Levy v. State, 133 Ala. 190; 31 So. 805.

<sup>93</sup> State v. Wheat, 48 W. Va. 259; 37 S. E. 544.

<sup>94</sup> Rose v. State, 4 Ga. App. 588; 62 S. E. 117; State v. Wheat, 48 W. Va. 259; 37 S. E. 544.

The offense is not committed until the message is received, and then it may be prosecuted in the county in which it is received.



order, and then went to the defendant, a dealer, not revealing that he had solicited an order, but bought of him liquor to fill the order, it was held that the defendant was not liable, for he did not solicit the order "by agent" or otherwise.<sup>95</sup>

### Sec. 560. Sale under license.

If liquor may be sold in such territory under a license, then the fact of a sale under a license is one of defense, and the State need not prove that the accused had no license;<sup>96</sup> but if the statute is so worded as to require the State to prove that the accused had no license, then the custodian of records of the licensing board or court may testify that he has examined the records and found no license had been issued.<sup>97</sup>

### Sec. 561. Time for license expiring or elapsing.

Where licenses in a district adopting local option have a certain time to run after its adoption, during which time sales thereunder may be made, and it appears that the defendant held a license at the time of the sale, then the prosecution must show, if it does not otherwise appear in evidence, that a sufficient time had expired between the date of the adoption of local option and the date of the sale for the license to have expired, in order to secure a conviction.<sup>98</sup>

<sup>95</sup> State v. Earles, 84 Ark. 479; 106 S. W. 941.

These statutes apply only to prohibition territory. Rose v. State, 1 Ga. App. 596; 58 S. E. 20.

A statute making it an offense to "solicit orders" has no application where one "takes or accepts orders," there being no solicitation. Sanderfur-Julian Co. v. State, 72 Ark. 11; 77 S. W. 596.

A statute forbidding sales "by samples, by soliciting or procuring orders or otherwise, within the State, without taking out a license" does not prevent a brewer

in another State making an exclusive business arrangement with a person in the State for the purchase and sale of his beers, without taking out a license. New York Breweries Corp. v. Baker, 68 Conn. 337; 36 Atl. 785.

<sup>96</sup> Robinson v. State (Tex. Cr. App.), 75 S. W. 526.

<sup>97</sup> Holton v. Bimrod, 8 Kan. App. 265; 55 Pac. 505.

<sup>98</sup> *Ex parte* McDonald, 20 N. B. 542; *Ex parte* Russell, 20 N. B. 536; Regina v. Risteen, 22 N. B. 51.

### Sec. 562. Transportation of intoxicating liquors.

In some of the States statutes have been enacted forbidding common carriers or any person carrying liquors into local option territory, and inflicting penalties if they do. These statutes are often made applicable by their terms to instances where the liquors are received by a carrier in another State and delivered in the State enacting them;<sup>99</sup> but in this respect they are invalid.<sup>1</sup> A statute providing that "no person \* \* \* shall bring into this State, or transport from place to place within this State, by wagon, cart, or other vehicle, or by any other means or mode of carriage, any liquors," applies to one carrying liquors on his person from place to place, that being a "means or mode of carriage," and the finding of liquors in the possession of a person who is selling them in a prohibition territory raises the presumption that he carried them there.<sup>2</sup> But the general rule is that such statutes apply only to common carriers or carriers for hire.<sup>3</sup> A statute which makes it unlawful to carry liquors for unlawful use to any "place or county," makes it an offense to carry them for an unlawful use from place to place within a county; and whether or not the transportation was for an unlawful use is a question for the jury.<sup>4</sup> The carrier cannot escape on the ground that it believes the acts of the consignor are legitimate acts of interstate commerce.<sup>5</sup> If there be no statute forbidding the transportation into prohibition territory, then the carrier cannot be convicted of a sale who merely carries the

<sup>99</sup> *Cincinnati, etc. R. Co. v. Commonwealth*, 126 Ky. 563; 104 S. W. 394; 31 Ky. L. Rep. 954.

<sup>1</sup> *American Exp. Co. v. Commonwealth*, 206 U. S. 139; 27 Sup. Ct. 609; 51 L. Ed. 993, reversing (Ky.), 97 S. W. 807; 30 Ky. 207; *Adams Exp. Co. v. Kentucky*, 206 U. S. 129; 27 Sup. Ct. 606.

<sup>2</sup> *State v. Pope*, 79 S. C. 87; 60 S. E. 234; *State v. Reilly*, 108 Iowa 735; 78 N. W. 680.

Such a statute applies to trans-

portation in a wagon by a person not a common carrier. *State v. Campbell*, 76 Iowa 122; 40 N. W. 100.

<sup>3</sup> *McGuire v. Commonwealth (Ky.)*, 99 S. W. 612; 30 Ky. L. Rep. 720.

<sup>4</sup> *State v. Arnold*, 80 S. C. 383; 61 S. E. 891.

<sup>5</sup> *Adams Express Co. v. Commonwealth (Ky.)*, 92 S. W. 932, 935, 936; 29 Ky. L. Rep. 224, 230, 231.

property of the consignee and delivers it to him.<sup>6</sup> Where a statute prohibits the transportation of intoxicating liquors, the mere carrying from a wholesale house to a retail dealer in the same town or city is a violation of its provisions.<sup>7</sup> If the transportation is within the State, and it is made by a common carrier, it is no defense that the law required the carrier to carry the goods, for the law does not require the performance of an illegal act.<sup>8</sup> If a statute is against the "receiving for conveyance liquors unlawfully sold or intended for unlawful sale," it is an offense to merely receive the liquors for conveyance, in case a sale has been made, this completing such sale, regardless of the intention of the carrier.<sup>9</sup> Where it is necessary to show that the carrier received the liquor to carry it to a certain place under a reasonable belief that it was intended to be sold in violation of law, the general reputation of the consignee as a liquor seller may be put in evidence, as well as the discoveries made on a search warrant for liquors at the place of the consignee.<sup>10</sup> But a carriage of boxes without a knowledge they contain liquors does not render the carrier liable.<sup>11</sup> The carrier must act in good faith, and if it know the liquor is contraband it will be liable, though the shipper inform it the box does not contain liquors.<sup>12</sup>

<sup>6</sup> *Southern Exp. Co. v. State* 107 Ga. 670; 33 S. E. 637.

A statute forbidding "any common carrier or person" carrying liquor into local option territory applies to an individual taking it there. *State v. Reilly*, 108 Iowa 735; 78 N. W. 680. But a statute forbidding a railroad corporation or a person or corporation regularly and lawfully conducting a general express business to carry liquors except in vessels with certain marks upon them, does not apply to a person not conducting a general express business. *Commonwealth v. Beck*, 187 Mass. 15; 72 N. E. 357.

<sup>7</sup> *State v. Campbell*, 76 Iowa 122; 40 N. W. 100; *Commonwealth v. Walters*, 11 Gray 81.

<sup>8</sup> *State v. Goss*, 59 Vt. 266; 9 Atl. 829.

<sup>9</sup> *Commonwealth v. Locke*, 114 Mass. 288.

<sup>10</sup> *Commonwealth v. Harper*, 145 Mass. 100; 13 N. E. 459.

<sup>11</sup> *Adams Express Co. v. Commonwealth (Ky.)*, 112 S. W. 577; 33 Ky. L. Rep. 967.

<sup>12</sup> *Adams Express Co. v. Commonwealth*, *supra*.

See *Robert Porter Brewing Co. v. Southern Express Co. (Va.)*, 63 S. E. 6.

### Sec. 563. Under what statutes prosecutions to be brought.

Under what statutes prosecutions for violation of local option laws are to be brought the cases are not at one with each other. In some States it is held that the prosecution may be for selling liquor without a license, since the general licensing laws still remain in force notwithstanding they have no application to the territory adopting local option, or the prosecution may be brought for a violation of the specific provisions of the local option law, at the election of the prosecution.<sup>13</sup> But in other States it has been held that the local option law supersedes the general law, and prosecutions must be under it.<sup>14</sup> As a rule, a general local option takes the place of a special local option law.<sup>15</sup> If two local option elections have been held, a prosecution may be maintained under either, if both resulted in favor of prohibition.<sup>16</sup> But where the local option law provides no penalty, then prosecutions under the general liquor statute for a sale without a license may be maintained.<sup>17</sup>

<sup>13</sup> *Commonwealth v. Barbour*, 121 Ky. 689; 89 S. W. 479; 28 Ky. L. Rep. 433; *Commonwealth v. Weller*, 14 Bush 218; 29 Am. Rep. 407; *State v. Swanson*, 85 Minn. 112; 88 N. W. 416; *State v. Darling*, 77 Vt. 67; 58 Atl. 974; *State v. Scampini*, 77 Vt. 92; 59 Atl. 201; *State v. Arbes* (Minn.), 73 N. N. W. 403; *State v. Holt*, 65 Minn. 423; 72 N. Y. 700; *Swift v. State*, 108 Tenn. 610; 69 S. W. 326; *Wooten v. Commonwealth*, 15 Ky. L. Rep. (abstract) 495; *Wells v. State*, 119 Ga. 556; 45 S. E. 443; *State v. Ely* (S. D.), 118 N. W. 687.

<sup>14</sup> *State v. Vandenburg* (Miss.), 28 So. 825; *Edwards v. State*, 123 Ga. 542; 51 S. E. 630; *Stamper v. Commonwealth* (Ky.), 103 S. W. 286; 31 Ky. L. Rep. 707; *Holland v. State*, 51 Tex. Cr. App. 547; 103 S. W. 631; *Commonwealth v.*

*Anderson*, 10 Ky. L. Rep. 307; *Harp v. Commonwealth* (Ky.), 61 S. W. 467; 22 Ky. L. Rep. 1792; *Allen v. Commonwealth*, 10 Ky. L. Rep. (abstract) 280; *Young v. Commonwealth*, 14 Bush, 161; *Batty v. State*, 114 Ga. 79; 39 S. E. 918; *State v. Graves*, 135 Mo. App. 171; 115 S. W. 1054.

<sup>15</sup> *Bailey v. Commonwealth* (Ky.), 64 S. W. 995; 23 Ky. L. Rep. 1223.

<sup>16</sup> *Weathered v. State* (Tex. Cr. App.), 60 S. W. 876. But see where the precinct local option was held merged in the county local option. *Roby v. State* (Tex. Cr. App.), 57 S. W. 651.

<sup>17</sup> *Green v. Commonwealth*, 15 Ky. L. Rep. (abstract) 297. It is sometimes expressly so provided. *Pitner v. State*, 37 Tex. Cr. App. 268; 39 S. W. 662.



**Sec. 564. Proof that local option was in force.**

Where courts do not take notice whether or not local option has been adopted in the territory where it has been charged the offense was committed, there can be no conviction unless the fact of adoption be shown.<sup>18</sup> And mere proof by parol is not sufficient.<sup>19</sup> The proof should be made by record, and when this is done the court may charge the jury that the law in the particular locality is in force.<sup>20</sup> If the defendant claims that the local option law has been repealed by vote, he has the burden to show that fact if he desires to avail himself of it as a defense.<sup>21</sup> But where a statute provides that it shall be presumed the law was in force, unless that fact is denied by a plea filed, then no question is presented in the absence of a plea.<sup>22</sup> In the absence of such a statute the State must prove

<sup>18</sup> *Bottoms v. State* (Tex. Cr. App.), 73 S. W. 16, 20, 963; *Cradick v. State*, 48 Tex. Cr. App. 385; 88 S. W. 347; *Allen v. State* (Tex. Cr. App.), 98 S. W. 869; *Armstrong v. State* (Tex. Cr. App.), 47 S. W. 981; *Loveless v. State*, 40 Texas Cr. App. 221; 49 S. W. 892; *Nichols v. Commonwealth* (Ky.), 87 S. W. 1072; 27 Ky. L. Rep. 1176, reversing 86 S. W. 513; 27 Ky. L. Rep. 690; *Barker v. State* (Tex. Cr. App.), 47 S. W. 980; *McGovern v. State*, 49 Tex. Cr. App. 35; 90 S. W. 502; *Ladwig v. State*, 40 Tex. Cr. App. 585; 51 S. W. 390; *State v. Bol-lenebeck*, 98 Minn. 480; 108 N. W. 3; *Shilling v. State* (Tex. Cr. App.), 51 S. W. 240; *Tatum v. Commonwealth* (Ky.), 59 S. W. 32; 22 Ky. L. Rep. 927; *Davis v. State* (Tex. Cr. App.), 107 S. W. 832, 839.

<sup>19</sup> *Malone v. State* (Tex. Cr. App.), 51 S. W. 381.

<sup>20</sup> *Johnson v. State* (Tex. Cr. App.), 55 S. W. 968; *Webb v.*

*State* (Tex. Cr. App.), 58 S. W. 82; *Segars v. State*, 40 Tex. Cr. App. 577; 51 S. W. 238; *Shilling v. State* (Tex. Cr. App.), 51 S. W. 240; *Carnes v. State*, 51 Tex. Cr. App. 437; 103 S. W. 934; *New-bury v. State* (Tex. Cr. App.), 44 S. W. 843; *Benson v. State*, 39 Tex. Cr. App. 56; 44 S. W. 167, 1091; *State v. O'Brien*, 35 Mont. 482; 90 Pac. 514; *Wiginton v. State*, 51 Tex. Cr. App. 492; 102 S. W. 1124; *Neal v. State*, 51 Tex. Cr. App. 513; 102 S. W. 1139; *Huff v. State*, 51 Tex. Cr. App. 441; 102 S. W. 1144.

<sup>21</sup> *Loveless v. State* (Tex. Cr. App.), 49 S. W. 601.

<sup>22</sup> *Kehoe v. State* (Tex. Cr. App.), 89 S. W. 270; *Cantwell v. State*, 47 Tex. Cr. App. 511; 85 S. W. 19; *Powell v. State*, 50 Tex. Cr. App. 592; 99 S. W. 1002; *Snead v. State*, 40 Tex. Cr. App. 262; 49 S. W. 597; *Piper v. State*, 53 Tex. Cr. App. 485; 110 S. W. 898; *Bruce v. State*, 36 Tex. Cr. App. 53; 39 S. W. 683; *Harryman*

the adoption of local option beyond a reasonable doubt.<sup>23</sup> In some States, however, the courts take judicial notice in what counties local option or prohibition prevails, and, of course, in such instances proof of its adoption is not necessary.<sup>24</sup> And it also will, when it is proven to have been adopted, take judicial notice how long it will continue in force.<sup>25</sup>

v. State, 53 Tex. Cr. App. 474; 110 S. W. 926; *Jordan v. State*, 37 Tex. Cr. App. 222; 38 S. W. 780; 39 S. W. 110; *Wright v. State*, 37 Tex. Cr. App. 3; 35 S. W. 150; 38 S. W. 811; *Kelly v. State*, 36 Tex. Cr. App. 480; 38 S. W. 779.

<sup>23</sup>*Stick v. State*, 23 Ohio Cir. Ct. Rep. 392. *Contra*, *Allen v. State* (Tex. Cr. App.), 59 S. W. 264.

<sup>24</sup>*State v. Arnold*, 80 S. C. 383; 61 S. E. 891; *Crigler v. Common-*

*wealth*, 120 Ky. 512; 87 S. W. 276, 280, 281; 27 Ky. L. Rep. 918, 925, 926; *Ball v. Commonwealth* (Ky.), 99 S. W. 326; 30 Ky. L. Rep. 600; *Combs v. Commonwealth* (Ky.), 104 S. W. 270; 31 Ky. L. Rep. 822; *Irby v. State*, 91 Miss. 542; 44 So. 801; *Bass v. State*, 1 Ga. App. 728, 790; 57 S. E. 1054.

<sup>25</sup>*State v. Hall*, 130 Mo. App. 170; 108 S. W. 1077.

## CHAPTER XVI.

### WHAT LIQUORS ARE PROHIBITED.

#### SECTION.

- 565. Statutory provisions.
- 566. Intoxicating liquors.
- 567. Intoxicating liquors, continued.
- 568. Spirituous.
- 569. Ale and beer—Malt liquors.
- 570. Wine—Vinous liquors.

#### SECTION.

- 571. Cider.
- 572. Fruit preserved in intoxicating liquors.
- 573. Drugs or medicines.
- 574. Manufacture.
- 575. Whether liquor is intoxicating a question for the jury.

#### **Sec. 565. Statutory provisions.**

It is altogether a matter of statutory provision what liquors it is illegal to sell, either without a license or under a prohibitory clause. In the earlier statutes on the subject of licenses and sales without them the term "intoxicating liquors" was frequently used, but there soon came into use the words "spirituous," "vinous" and "malt" liquors. But as new devices were used to evade those statutes, the Legislatures descended into details, specifying each particular liquor that was prohibited and concluding with a general term intended to cover any liquor that had been omitted in the enumeration. The English statute declares that the term intoxicating liquor "means spirits, wine, beer, porter, cider, perry and sweets,<sup>1</sup> and any fermented, distilled or spirituous liquor which cannot, according to any law for the time in

<sup>1</sup> By statute "sweets" include any liquor made by fermentation from fruit and sugar, or from fruit and sugar mixed with another material, and which has undergone a process of fermentation in its manufacture. 52 and 53 Vict. c. 42,

sec. 28. It includes made wines, mead and metheglin. 33 and 34 Vict. c. 29, sec. 3; 43 and 44 Vict. c. 20, sec. 40. Cider includes perry, beer includes cider, and wine includes sweets. 43 and 44 Vict. c. 20, sec. 40

force, be legally sold without a license from the Commissioners of Inland Revenue.”<sup>2</sup> By statute it is also provided that “any fermented liquor containing a greater proportion than forty per cent. of proof spirits shall be deemed and taken to be spirits.”<sup>3</sup> By another statute the word beer “shall in all cases be deemed to include beer, ale and porter; and the word cider shall in all cases be deemed to include cider and perry.”<sup>4</sup> By the statute of 1880 beer “includes ale, porter, spruce beer and black beer, and any other description of beer.”<sup>5</sup> These quotations in a measure will show to what extent legislation has gone.

### Sec. 566. Intoxicating liquors.

Alcohol when used as a beverage is an intoxicating liquor within the provisions of a statute forbidding the sale of intoxicating liquor without a license.<sup>6</sup> It includes all liquids, under whatever name, kind or quality, which are capable of producing drunkenness when drank as a beverage.<sup>7</sup> In Rhode Island, by statute, intoxicating liquor is defined to be any liquor containing two per cent. of alcohol.<sup>8</sup> In the Massachusetts statute of 1885, “ale, porter, strong beer, lager beer, cider, and all wines” are considered intoxicating.<sup>9</sup> In Iowa a statute defining intoxicating liquor as a liquor containing alcohol includes a liquor containing alcohol, however small

<sup>2</sup> 35 and 36 Vict. c. 94, § 74.

<sup>3</sup> 23 and 24 Vict. c. 27, § 21. British wine which contains a large proportion of alcohol is treated as fermented liquors. *Harris v. Jenns*, 22 J. P. 807; 9 C. B. (N. S.) 152; 30 L. J. M. C. 183; 3 L. T. 408; 9 W. R. 36.

<sup>4</sup> 1 Will. 4, c. 64, sec. 32; 32 and 33 Vict., c. 27, sec. 2.

<sup>5</sup> 43 and 44 Vict. c. 20, § 2; and 48 and 49 Vict. c. 51, § 4. In an early decision it was held that botanic beer or liquor brewed from sugar and water, though it contained two per cent. of spirit, did not require a license to sell

it. *Leah v. Minns*, 47 J. P. 198; but since then the act above quoted was enacted, a license is required for its sale. *Howarth v. Minns*, 51 J. P. 7; 56 L. T. 316.

<sup>6</sup> *Winn v. State*, 43 Ark. 151. See *State v. Witt*, 39 Ark. 216.

<sup>7</sup> *Moore v. State*, 96 Tenn. 544; 35 S. W. 556.

<sup>8</sup> *State v. Hughes*, 16 R. I. 403; 16 Atl. 911.

It was held that that statute could not be given a retroactive effect so as to make a liquor intoxicating which was not so formerly.

<sup>9</sup> *Commonwealth v. Shea*, 14 Gray, 386.



may be the amount.<sup>10</sup> In Alabama it is held that "intoxicating drinks" are not necessarily "spirituous, vinous or malt" liquors.<sup>11</sup> The mere fact that a gallon of beer may contain as much as a pint of alcohol is not conclusive that it is intoxicating.<sup>12</sup> If beer be classed by statute among intoxicating liquors, then it is error to permit a witness to answer the question that if a person would drink enough of it, it would intoxicate him, though the error is harmless.<sup>13</sup> Strong beer is an intoxicating liquor.<sup>14</sup> Lager beer has been classed by statute as an intoxicating liquor.<sup>15</sup> A statute forbidding a sale of a particular kind of liquor as a beverage, does not require the liquor to be intoxicating.<sup>16</sup>

### Sec. 567. Intoxicating liquors, continued.

Statutes requiring licenses usually specifically designate what liquors require a license to sell them, such as "spirituous, vinous or malt liquors." When such is the case there is little trouble on the question whether the liquor sold is one that a license is necessary to sell it. But many statutes in the past have simply used the term "intoxicating liquor," and this has afforded scope for a large number of decisions as to what was included therein by its use. If the liquor is intoxicating, then the extent of its intoxicating effect is not a subject of inquiry except as incidental to a determination whether or not it is an intoxicating liquor within the terms of the statute.<sup>17</sup> Evidence which

<sup>10</sup>State v. Intoxicating Liquors, 76 Iowa 243; 41 N. W. 6; 2 L. R. A. 408. See also Merkle v. State, 37 Ala. 139.

<sup>11</sup>Roberson v. State, 100 Ala. 123; 14 So. 869.

<sup>12</sup>Commonwealth v. Bloss, 116 Mass. 56.

<sup>13</sup>Kerkow v. Bruer, 15 Neb. 150; 18 N. W. 27.

<sup>14</sup>Rau v. People, 63 N. Y. 277; Markle v. Akron, 14 Ohio 586.

See Johnston v. State, 23 Ohio St. 556, where ale was excepted

from the provisions of a statute forbidding a sale of strong beer.

<sup>15</sup>State v. Rush, 13 R. I. 198.

<sup>16</sup>Merkle v. State, 37 Ala. 139.

It has been held in Arkansas that alcohol is neither ardent nor vinous liquor. State v. Martin, 34 Ark. 340. See also State v. Witt, 39 Ark. 216.

<sup>17</sup>Wadsworth v. Dunam, 117 Ala. 661; 23 So. 699; Frickie v. State, 40 Tex. Cr. App. 626; 51 S. W. 394; Pike v. State, 40 Tex. Cr. App. 613; 51 S. W. 395; Peo-

shows that the liquor actually drank produced intoxication is sufficient to support the charge that it was intoxicating;<sup>18</sup> but evidence that other liquor procured at another place and sold by the same name produced intoxication is not sufficient to show that the specific liquor sold was intoxicating, when the name given it does not import an intoxicating liquor.<sup>19</sup> So a sale of peppermint essence containing fifty per cent. of alcohol, although generally used as a carminative, but which may be and is used as a beverage to the vendor's knowledge, is an offense.<sup>20</sup> Under a statute requiring a license for sale of all distilled or rectified spirits or fermented or malt liquors, sales of a liquor containing between .74 per cent. and 1.18 per cent. in volume of alcohol requires a license, especially where it is intended as an evasion and to defeat the statute.<sup>21</sup> But liquor sold as a beverage cannot be classed as intoxicating where a statute declares that the term "intoxicating liquor" shall include liquors that will produce intoxication, regardless of the percentage of alcohol it contains, for the percentage may be so small as to not produce intoxication.<sup>22</sup> Where intoxicating liquors are declared by statute to include any malt liquor, then proof of a sale of beer shows a violation

ple v. Cox, 45 N. Y. Misc. Rep. 311; 92 N. Y. Supp. 125; Goode v. State, 87 Miss. 618; 40 So. 12; Greiner-Kelly Drug Co. v. Truett (Tex. Cr. App.), 75 S. W. 536.

<sup>18</sup> Fricke v. State, 40 Tex. Cr. App. 626; 51 S. W. 394; Pike v. State, 40 Tex. Cr. App. 613; 51 S. W. 395; Baker v. State (Tex. Cr. App.), 47 S. W. 980; State v. Good, 56 W. Va. 215; 49 S. E. 121; State v. Reynolds (Kan.), 47 Pac. 573; Taylor v. State, 44 Tex. Cr. App. 437; 72 S. W. 181; Matkins v. State (Tex. Cr. App.), 62 S. W. 911; McDaniel v. State (Tex. Cr. App.), 65 S. W. 1068; Kerr v. State, 63 Neb. 115; 88 N. W. 240.

<sup>19</sup> Kemp v. State (Tex. Cr. App.), 38 S. W. 937 (Hughes' Lemon Ginger); Malone v. State (Tex. Cr. App.), 51 S. W. 381.

<sup>20</sup> State v. Kezer, 74 Vt. 50; 52 Atl. 116.

<sup>21</sup> People v. Cox, 106 N. Y. App. Div. 299; 94 N. Y. Supp. 526; affirming 45 N. Y. Misc. Rep. 311; 92 N. Y. Supp. 125; State v. Calvin, 127 Iowa 632; 103 N. W. 968; Locke v. Commonwealth (Ky.), 74 S. W. 654; 25 Ky. L. Rep. 76; United States v. Cohn, 52 S. W. 38; State v. Morehead, 22 R. I. 272; 47 Atl. 545; State v. Gillispie, 63 W. Va. 152; 59 S. E. 957.

<sup>22</sup> State v. Virgo, 14 N. D. 293; 103 N. W. 610.

of the statute.<sup>23</sup> Blackberry cordial, if intoxicating, is prohibited,<sup>24</sup> and so is jamaica ginger.<sup>25</sup> Whether or not "hop-ale" or "hop-jack" is intoxicating is a question for the jury.<sup>26</sup> If a statute provides that the sale of liquor containing a certain per cent. of alcohol shall not be made without a license, it is immaterial whether or not it is intoxicating.<sup>27</sup> Peach brandy is an intoxicating liquor, and the jury may be so told.<sup>28</sup> If a liquor may be drunk in such quantities as practically not to produce intoxication, then it cannot be classed as an intoxicating liquor; but it is not error to refuse to say to the jury that "if drunk in reasonable quantities" it would not produce intoxication it cannot be classed as an intoxicating liquor.<sup>29</sup> Under a statute prohibiting the sale of alcohol it is immaterial that it is not intoxicating.<sup>30</sup> Liquor which requires the drinking of excessive quantities in order to produce intoxication is not usually classed as intoxicating liquors.<sup>31</sup> If a statute provides for the licensed sale of a

<sup>23</sup> *Douglass v. State*, 21 Ind. App. 302; 52 N. E. 238; *State v. Besheer*, 69 Mo. App. 72; *State v. Currie*, 8 N. D. 545; 80 N. W. 475; *Cullinan v. McGovern*, 94 N. Y. Supp. 525; *Williams v. State*, 72 Ark. 19; 77 S. W. 597.

<sup>24</sup> *Pike v. State*, 40 Tex. Cr. App. 613; 51 S. W. 395.

<sup>25</sup> *Mitchell v. Commonwealth*, 106 Ky. 602; 51 S. W. 17; 21 Ky. L. Rep. 222.

<sup>26</sup> *Daniel v. State*, 149 Ala. 44; 43 So. 22; *Rutherford v. State*, 48 Tex. Cr. App. 431; 88 S. W. 810; *Costello v. State*, 130 Ala. 143; 30 So. 376.

<sup>27</sup> *State v. York*, 74 N. H. 125; 65 Atl. 685.

It includes cider. *Commonwealth v. McGrath*, 185 Mass. 1; 69 N. E. 340; *Commonwealth v. Wenzel*, 24 Pa. Super. Ct. 467; *Eaves v. State*, 113 Ga. 749; 39 S. E. 318.

See also *People v. Cox*, 45 N. Y. Misc. Rep. 311; 92 N. Y. Supp. 125.

<sup>28</sup> *Howell v. State*, 124 Ga. 698; 52 S. E. 649; *Greiner-Kelly Drug Co. v. Truett* (Tex. Cr. App.), 75 S. W. 536.

<sup>29</sup> *Murray v. State*, 46 Tex. Cr. App. 128; 79 S. W. 568; *Fawcett v. State* (Tex. Cr. App.), 73 S. W. 807; *Racer v. State* (Tex. Cr. App.), 73 S. W. 807.

<sup>30</sup> *Commonwealth v. Wenzel*, 24 Pa. Super. Ct. 467.

<sup>31</sup> *State v. Reynolds* (Kan. App.), 47 Pac. 573; *Mason v. State*, 1 Ga. App. 534; 58 S. E. 139; *Davis v. State*, 36 Tex. Cr. App. 393; 37 S. W. 435; *Hewitt v. People* (Ill.), 57 N. E. 1077, affirming 87 Ill. App. 367; *Malone v. State* (Tex.), 51 S. W. 381; *State v. Parker*, 139 N. C. 586; 51 S. E. 1028; *Walker v. State* (Tex. Cr. App.), 98 S. W. 265; *Heintz*

particular liquor, its sale is legal though intoxicating, and although a statute forbids the sale of intoxicating liquors.<sup>32</sup> A sale of liquor that contains a mere "trace" of alcohol is not an intoxicating liquor.<sup>33</sup> If the liquor be intoxicating, it is immaterial that the vendor sold it as a medicine;<sup>34</sup> but if it be doubtful whether the liquor sold can be used as a beverage, and it has never been so used, its sale is not a violation of the statute.<sup>35</sup> The fact that the seller believed the liquor he sold was not intoxicating, and that he purchased it as such, is no defense.<sup>36</sup>

### Sec. 568. Spirituous.

Spirituous liquors mean distilled and fermented liquors under the Tennessee code,<sup>37</sup> and wine and ale;<sup>38</sup> and in Pennsylvania it need not be intoxicating.<sup>39</sup> In North Carolina it includes wine and beer.<sup>40</sup> Under the Mississippi Act of 1842 neither alcohol nor wine was a spirituous liquor.<sup>41</sup> "Spirituous liquors" does not include beer,<sup>42</sup> but if beer be mixed with

v. LePage, 100 Me. 542; 62 Atl. 605; Henderson v. State, 49 Tex. Cr. App. 269; 91 S. W. 569.

<sup>32</sup> Armour v. Meridian (Miss.), 24 So. 533.

In Georgia in 1901 native wine could not be sold. Hancock v. State, 114 Ga. 439; 40 S. E. 317.

<sup>33</sup> State v. Parker, 139 N. C. 586; 51 S. E. 1028.

Otherwise if slightly intoxicating. Queen v. McDonald, 24 Nov. Sco. 45.

<sup>34</sup> Colwell v. State, 112 Ga. 75; 37 S. E. 129.

<sup>35</sup> Mackall v. District of Columbia, 16 App. D. C. 301.

A malt tonic, not intoxicating, may be sold in a prohibition district. Reisenberg v. State (Tex. Cr. App.), 84 S. W. 585.

Where a liquid was shown to contain one ounce of alcohol in every four ounces it was treated

as a wine, though there was no statutory definition of wine. Harris v. Jenns, 9 C. B. (N S.), 152; 30 L. J. M. C. 183; 3 L. T. 408; 9 W. L. 36.

<sup>36</sup> Bascot v. State (Miss.), 48 So. 228; Cotton v. State (Tex.), 120 S. W. 432; Ware v. State (Ga.), 65 S. E. 333. But see Deadwiller v. State (Tex.), 121 S. W. 864.

<sup>37</sup> Fritz v. State, 1 Baxt. 15.

<sup>38</sup> State v. Sharrer, 2 Coldw. 323.

<sup>39</sup> Commonwealth v. Reyburg, 122 Pa. 299; 16 Atl. 351; 23 W. N. C. 151; 2 L. R. A. 415.

<sup>40</sup> State v. Giersch, 98 N. C. 720; 4 S. E. 193.

<sup>41</sup> Lemly v. State, 70 Miss. 241; 12 So. 22; 20 L. R. A. 645.

<sup>42</sup> Tinker v. State, 90 Ala. 647; 8 So. 855; State v. Brindle, 28 Iowa 512.



spirituous liquors, and sold as beer, a sale of the mixture is a violation of the statute forbidding the sale of spirituous liquors.<sup>43</sup>

### Sec. 569. Ale and beer—Malt liquors.

Under a statute forbidding the sale of malt liquors there may be a conviction on proof of a sale of beer.<sup>44</sup> Beer is neither a spirituous nor a vinous liquor;<sup>45</sup> but a sale of spirituous liquor with which beer has been mixed is covered by a charge of a sale of spirituous liquors.<sup>46</sup> Strong liquor covers a sale of strong beer,<sup>47</sup> but not ale.<sup>48</sup> Where a statute, without defining beer gave a city power to prohibit its sale, and the city adopted an ordinance in the terms of the statute, it was held that the beer sold need not be intoxicating to constitute a sale a violation of the ordinance.<sup>49</sup> But in this same State it has been held not sufficient to merely charge a sale of beer without alleging it was intoxicating.<sup>50</sup> If a

<sup>43</sup> Commonwealth v. Bathwick, 6 Cush. 247.

A city charter provided for an election to determine the question of license or no license for the retailing of spirituous, vinous or malt liquors. That section of the charter making it the duty of the town trustees to grant licenses in the event of a majority of the votes was cast in favor of a license omitted the word "spirituous." It was held that the omission of this word was evidently a mistake, and that the trustees were not confined merely to the licensing of vinous or malt liquors. Caldwell v. Grimes, 7 Ky. L. Rep. (abstract) 601.

<sup>44</sup> Adler v. State, 55 Ala. 16; Watson v. State, 55 Ala. 158; State v. Lemp, 16 Mo. 389; State v. Rush, 13 R. I. 198.

<sup>45</sup> Tinker v. State, 90 Ala. 647;

8 So. 855; State v. Brindle, 28 Iowa 512.

<sup>46</sup> Commonwealth v. Bathrick, 6 Cush. 247; Walker v. Prescott, 44 N. H. 511.

<sup>47</sup> Nevin v. Ladue, 3 Denio 43, 437; 1 Code Rep. 43; People v. Wheelock, 3 Park. Cr. Rep. 9; Tompkins Co. v. Taylor, 21 N. Y. 173; 19 How. Pr. 259; People v. Hawley, 3 Mich. 330.

<sup>48</sup> People v. Crilley, 20 Barb. 246; Cayuga Co. v. Freoff, 17 How. Pr. 442; *Contra*, Tompkins Co. v. Taylor, 21 N. Y. 173; 19 How. Pr. 259.

<sup>49</sup> Kettering v. Jacksonville, 50 Ill. 39.

As to "near" beer, see Campbell v. Thomasville (Ga.), 64 S. E. 815.

<sup>50</sup> Hansberg v. People, 120 Ill. 1; 8 N. E. 857; 60 Am. Rep. 549.

statute prohibits the sale of malt liquors it is immaterial that they are not intoxicating.<sup>51</sup>

### Sec. 570. Wine—Vinous liquors.

A statute forbidding the sale of vinous liquor means a liquor made from the juice of the grape.<sup>52</sup> It is an intoxicating<sup>53</sup> or spirituous liquor.<sup>54</sup> Blackberry wine is an alcoholic liquor.<sup>55</sup> Under a statute prohibiting the sale of vinous liquors the wine sold need not be intoxicating to violate its provisions.<sup>56</sup> Beer is not a vinous liquor, and a statute forbidding the sale of vinous liquors does not include beer,<sup>57</sup> nor alcohol.<sup>58</sup>

### Sec. 571. Cider.

Under a statute prohibiting the sale of "alcohol, or any spirituous, ardent, vinous, malt or fermented liquor," fermented cider, being an alcoholic beverage, cannot be sold.<sup>59</sup> But cider does not come under the terms of a statute preventing the sale of spirituous, malt or vinous liquor,<sup>60</sup> but it does under one preventing a sale of "all intoxicating liquors

<sup>51</sup> State v. O'Connell, 99 Me. 61; 58 Atl. 59; Dinkins v. State, 149 Ala. 49; 43 So. 114; Lange v. Bushnell, 197 Ill. 20; 63 N. E. 1086, affirming 96 Ill. App. 618; Lambie v. State, 151 Ala. 86; 44 So. 51; Markle v. State, 37 Ala. 169.

<sup>52</sup> Adler v. State, 55 Ala. 16.

<sup>53</sup> Wolf v. State, 59 Ark. 297; 27 S. W. 77; 43 Am. St. 34; State v. Page, 66 Me. 418.

<sup>54</sup> State v. Moore, 5 Blackf. 118; Jones v. Surprise, 64 N. H. 243; 9 Atl. 384.

*Contra*, Caswell v. State, 2 Humph. 402.

<sup>55</sup> Reyfelt v. State, 73 Miss. 415; 18 So. 925.

<sup>56</sup> Hatfield v. Commonwealth,

120 Pa. 395; 14 Atl. 151.

<sup>57</sup> Tinker v. State, 90 Ala. 647; 8 So. 855; State v. Brindle, 28 Iowa 512.

<sup>58</sup> Lemly v. State, 70 Miss. 241; 12 So. 22; 20 L. R. A. 645.

A statute permitting a sale of native wine made in the State means wine made in the State and not wine made in any other State or country. Commonwealth v. Petranich, 183 Mass. 217; 66 N. E. 807.

<sup>59</sup> Eureka Vinegar Co. v. Gazette Printing Co., 35 Fed. 570; People v. Foster, 64 Mich. 715; 31 N. W. 596; Commonwealth v. Roese, 1 Wilcox (Pa.), 253.

<sup>60</sup> Feldman v. Morrison, 1 Bradw. (Ill.), 460.

whatever,"<sup>61</sup> and especially "hard cider," which the court takes judicial notice that it is intoxicating.<sup>72</sup> Under a statute prohibiting a sale of "cider or fermented liquor" is included any cider, whether fermented or not;<sup>63</sup> but one prohibiting the sale of "spirituous liquors, wine, porter, ale, or beer, or any drink of like nature," has been held not to cover crab cider or cider.<sup>64</sup> Cider made from grapes is a fermented liquor.<sup>65</sup>

### Sec. 572. Fruit preserved in intoxicating liquors.

The sale of a bottle containing six peaches and one gill of brandy to preserve the peaches does not come within the provisions of a statute forbidding the sale of intoxicating liquors;<sup>66</sup> nor does extract of lemon though it may produce intoxication.<sup>67</sup> But whether or not brandied cherries was a sale of intoxicating liquors was deemed a question of fact, and if sold in a bottle containing liquor that could be drunk and would intoxicate, then an offense against the statute was committed.<sup>68</sup>

<sup>61</sup> State v. Hutchinson, 72 Iowa 561; 34 N. W. 421; State v. McNamara, 69 Me. 133; State v. Roach, 75 Me. 123; Commonwealth v. Dean, 14 Gray 99; Hertel v. People, 78 Ill. App. 109; State v. Robinson, 61 S. C. 106; 39 S. E. 247; Commonwealth v. Mahoney, 152 Mass. 493; 25 N. E. 833; State v. Crawley, 75 Miss. 919; 23 So. 625; State v. White, 72 Vt. 108; 47 Atl. 397; State v. Thornburn, 75 Vt. 18; 52 Atl. 1039; *Matkins v. State* (Tex. Cr. App.), 58 S. W. 108; Commonwealth v. McGrath, 185 Mass. 1; 69 N. E. 340; *Hewitt v. People* (Ill.), 57 N. E. 1077, affirming 87 Ill. App. 367; *Matkins v. State* (Tex. Cr. App.); 62 S. W. 911.

*Contra*, *Guptill v. Richardson*, 62 Me. 257.

<sup>62</sup> State v. Schaefer, 44 Kan. 90; 24 Pac. 92.

<sup>63</sup> State v. Spaulding, 61 Vt. 505; 17 Atl. 844.

<sup>64</sup> State v. Oliver, 26 W. Va. 422; 53 Am. Rep. 79.

<sup>65</sup> *Barker v. State* (Tex. Cr. App.), 47 S. W. 980.

Under its general welfare clause a town has power to impose a license tax on persons selling cider, as cider to some extent is intoxicating. *Pikeville v. Huffman*, 112 Ky. 360; 65 S. W. 794; 23 Ky. L. Rep. 1692.

<sup>66</sup> *Rabe v. State*, 39 Ark. 20.

<sup>67</sup> *Holcomb v. People*, 49 Ill. App. 73.

<sup>68</sup> *Petteway v. State*, 36 Tex. Cr. App. 97; 35 S. W. 646; *Royal v. State*, 78 Ala. 410; *United States v. Stafford*, 120 Fed. 720; *Musick v. State*, 51 Ark. 165; 10 S. W. 225.

### Sec. 573. Drugs or medicines.

Whisky cannot be classed as a medicine in order to escape the penalty for an unlawful sale.<sup>69</sup> If a liquid is primarily intended and used as a medicine and not as a beverage, and it contains medicinal properties rather than such properties as prevail in liquor drunk as a beverage, then the sale is not illegal unless some statute specifically makes it so.<sup>70</sup> Thus, lemon ginger and Empire Tonic Bitters, shown to be one-third alcohol and the remainder distilled water and extracts from herbs, and no more alcohol was used in the preparation than was necessary to preserve the herbs, were held not to come within the provisions of the statute when sold as a medicine.<sup>71</sup> But if the article may be used as an intoxicating beverage, it is a violation of the statute to sell it.<sup>72</sup> Yet if the liquor cannot be used as an intoxicating beverage, and the alcohol is a necessary preservative for the herbs, then no offense is committed by its sale.<sup>73</sup> Under a statute making it unlawful to manufacture "any intoxicating decoction, mix-

<sup>69</sup> Gault v. State, 34 Ga. 533.

<sup>70</sup> United States v. Stubblefield, 40 Fed. 454; State v. Williams, 14 N. D. 411; 104 N. W. 546; Carl v. State, 87 Ala. 17; 6 So. 118; 4 L. R. A. 380; Goode v. State, 87 Miss. 495; 40 So. 12; Carl v. State, 89 Ala. 93; 8 So. 156; Owen v. Armstrong, 13 Jut. 408; Russell v. Gloan, 33 Vt. 656; State v. Krinski, 78 Vt. 162; 62 Atl. 37; State v. Skillicorn, 104 Iowa 97; 73 N. W. 503; Bradley v. State, 121 Ga. 201; 48 S. E. 891; Walker v. State (Tex. Cr. App.), 98 S. W. 265; State v. Costa (Conn.), 62 Atl. 38; State v. Gregory, 110 Iowa 624; 82 N. W. 335; Chapman v. State, 100 Ga. 311; 27 S. E. 789.

<sup>71</sup> United States v. Stubblefield, 40 Fed. 454.

Where a statute forbids a druggist to sell intoxicating liquors,

a sale of half pint bottle of rock candy, ginger, glycerine and whisky in equal parts is in violation of its provisions. State v. Sharpe, 119 Mo. App. 386; 95 S. W. 298.

<sup>72</sup> Carl v. State, 87 Ala. 17; 6 So. 118; 4 L. R. A. 380; Carl v. State, 89 Ala. 93; 8 So. 156; Davis v. State, 50 Ark. 17; 6 S. W. 388; Heintz v. Le Page, 100 Me. 542; 62 Atl. 605; Colwell v. State, 112 Ga. 75; 37 S. E. 129; State v. Reynolds, 5 Kan. App. 515; 47 Pac. 573.

<sup>73</sup> Carl v. State, 87 Ala. 17; 6 So. 18; 4 L. R. A. 380; Carl v. State, 89 Ala. 93; 8 So. 156; Davis v. State, 50 Ark. 17; 6 S. W. 388; Russell v. State, 33 Vt. 656; Kincaid v. State, 49 Tex. Cr. App. 303; 92 S. W. 415; State v. Williams, 14 N. D. 411; 104 N. W. 546; State v. Krinski, 78 Vt. 162; 62 Atl. 37.



ture, compound or bitters whatever, in any quantity or for any use or purpose" within a certain district, a decoction sold as a medicine which contained sufficient alcohol to intoxicate a person drinking it was held prohibited.<sup>74</sup> Even though only an immoderate use of it is necessary to produce intoxication, its manufacture or sale is prohibited.<sup>75</sup> Thus, a sale of a "cordial" containing twenty-two per cent. of alcohol is a violation of the statute.<sup>76</sup> But in determining whether the sale of a particular liquor is prohibited by the liquor statutes it must always be borne in mind that these statutes do not prevent the sale of medicines.<sup>77</sup> Thus, under a statute defining intoxicating liquors as "all liquors and mixtures, by whatever name called, that will produce intoxication," it was held that medicines and toilet articles not ordinarily used as beverages did not come within its provisions. Such was said to be tincture of gentian, bay rum and essence of lemon. But whether it embraced "Sherman's Prickly Ash Bitters," and "McLean's Strengthening Cordial and Blood Purifier"—the latter composed of whisky, syrup of tulu, and syrup of wild cherry—was held to be a question of fact for the jury.<sup>78</sup> A statute may, however, be so positive in its terms as to absolutely prohibit the sale of medicinal preparations,<sup>79</sup> and the fact that the United States revenue laws require no license for their sale or manufacture is no defense.<sup>80</sup> Medicated bitters producing intoxication are such intoxicating liquors as a constitutional provision declares that the Legislature "shall enact a law whereby the qualified voters of any county \* \* \* may determine whether the sale of intoxi-

<sup>74</sup> *Compton v. State*, 95 Ala. 25; 11 So. 69.

See *State v. Costa* (Conn.), 62 Atl. 38.

<sup>75</sup> *Wodsworth v. Dunnam*, 98 Ala. 610; 13 Sa. 597.

<sup>76</sup> *Gostorf v. State*, 39 Ark. 450.

<sup>77</sup> *Davis v. State*, 50 Ark. 17; 6 S. W. 388.

<sup>78</sup> *In re Intoxicating Liquors*, 25

Kan. 751; 37 Am. Rep. 284; *State v. Gregory*, 110 Iowa 624; 82 N. W. 335; *Mason v. State*, 1 Ga. App. 534; 58 S. E. 139.

<sup>79</sup> *State v. Lillard*, 78 Mo. 136; *State v. Wilson*, 80 Mo. 303; *State v. Neese*, 38 S. C. 261; 16 S. E. 893; *Bradshaw v. State*, 76 Ark. 562; 89 S. W. 1051.

<sup>80</sup> *State v. Lillard*, 78 Mo. 136.

eating liquors shall be prohibited" therein.<sup>81</sup> Where a statute prohibited the sale of all mixtures "known as bitters or otherwise, which will produce intoxication," a sale of gum camphor and alcohol, mixed by the vendor and sold as a medicine is not prohibited.<sup>82</sup> If the sale be legal, no act of the purchaser can render it illegal. Thus, where liquor was lawfully sold as a medicine and in the condition in which it was sold it could not be used as a beverage, and the purchaser mixed it with water, and in that condition drank it as a beverage, it was held that the seller had committed no offense.<sup>83</sup> The sale of a non-intoxicant malt tonic is not an offense.<sup>84</sup> A sale of an article as medicine, made in good faith, under a belief that it is a medicine, is usually a good defense;<sup>85</sup> and if it be doubtful whether the liquor sold could be used as a beverage there must be an acquittal.<sup>86</sup> If the sale was otherwise legal when made, the fact that the compound separated when left standing for a while, and the alcohol could be drained off and drank, does not make the sale an infringement of the statute.<sup>87</sup>

<sup>81</sup> James v. State, 21 Tex. App. 353; 17 S. W. 422.

<sup>82</sup> State v. Haymond, 20 W. Va. 18; 43 Am. Rep. 787.

<sup>83</sup> Bertrand v. State, 73 Miss. 51; 18 So. 545; Walker v. Daily, 101 Ill. App. 575.

<sup>84</sup> Reisenberg v. State (Tex. Cr. App.), 84 S. W. 585; *Ex parte* Gray (Tex. Cr. App.), 83 S. W. 828.

<sup>85</sup> Goode v. State, 87 Miss. 495; 40 So. 12; Murry v. State, 46 Tex. Cr. App. 128; 79 S. W. 568; Walker v. Daily, 101 Ill. App. 575.

*Contra*, Colwell v. State, 112 Ga. 75; 37 S. E. 129.

<sup>86</sup> Mackall v. District of Columbia, 16 App. D. C. 301; State v. Costa (Conn.), 62 Atl. 38.

A statute forbade the sale, without a license, of "any vinous, spir-

ituous or malt liquors, wine, rum, gin, brandy or other ardent spirits, or any composition of which any of the said liquors shall form the chief ingredient, except as such as shall be compounded, by a less measure than a quart." It was held that the exception in the statute related only to compositions of which one or more of the liquors specified in the earlier part of the section formed its chief ingredient. State v. Marks, 65 N. J. L. 84; 46 Atl. 757; State v. Terry, 73 N. J. L. 554; 64 Atl. 113, affirming 72 N. J. L. 375; 61 Atl. 148.

<sup>87</sup> Parker v. State, 31 Ind. App. 650; 68 N. E. 912.

On trial for a sale of Peruna, it has been held that the defendant cannot escape by showing the

# **Sec. 574. Manufacture.**

A statute prohibiting the manufacture of intoxicating liquor applies to one distilling such liquor for his own use, as cider brandy.<sup>88</sup> Where a statute prohibited a distillation of spirituous liquors from corn, beer made of corn obtained by running it through the process of distillation once is a violation of its provisions.<sup>89</sup> Statutes of this kind apply both to corporations and individuals.<sup>90</sup>

# **Sec. 575. Whether liquor is intoxicating a question for the jury.**

Whether or not liquor is intoxicating, when the statute does not define what shall be deemed an intoxicating liquor, is a question for the jury under the evidence, and if there be a reasonable doubt on the question, the defendant must be acquitted; and it is the duty of the court to so charge the jury.<sup>91</sup> The burden is on the State to show that the liquor was intoxicating,<sup>92</sup> and an instruction when the evidence is conflicting, as to whether the liquor sold was intoxicating, and defining "intoxicating liquor" should be given the jury.<sup>93</sup>

sale was made in good faith and in the honest belief it was to be used as a medicine. *Stelle v. State* (Tex. Cr. App.), 92 S. W. 530.

If the intoxication is produced by the drugs in the liquor and not by the liquor, no offense is committed in making the sale. *Pearce v. State*, 48 Tex. Cr. App. 352; 88 S. W. 234.

<sup>88</sup> *State v. Lovell*, 47 Vt. 493.

<sup>89</sup> *State v. Summey*, 60 N. C. 496.

But one who leases his distill house and has no interest in the liquor distilled, does not violate the statute. *Ibid.*

<sup>90</sup> *Commonwealth v. Certain Intoxicating Liquors*, 115 Mass. 153.

<sup>91</sup> *Rutherford v. State*, 48 Tex. Cr. App. 431; 88 S. W. 810; *State v. Piche*, 98 Me. 348; 56 Atl. 1052; *State v. Bussamus*, 108 Iowa 11; 78 N. W. 700; *State v. Wold*, 96 Me. 401; 52 Atl. 909; *Commonwealth v. Beldham*, 15 Pa. Super Ct. 33.

<sup>92</sup> *Rutherford v. State*, 48 Tex. Cr. App. 431; 88 S. W. 810; *Hall v. State*, 122 Ga. 142; 50 S. E. 59.

<sup>93</sup> *Uloth v. State*, 48 Tex. Cr. App. 295; 87 S. W. 822; *Hendrick v. State*, 47 Tex. Cr. App. 371; 83 S. W. 711.

But not when it is alcohol. *Sebastian v. State*, 44 Tex. Cr. App. 508; 72 S. W. 849.

If the defendant claims that the sale was of cider made of the juice of grapes (scuppernong, in this instance), but a witness testifies it was wine and was intoxicating, the court cannot say to the jury that the court judicially knows such wine is an intoxicating liquor, but must leave the question for the jury to determine.<sup>94</sup> But under a statute defining "intoxicating liquor" to mean alcohol and all other intoxicating liquors whatever, that will produce intoxication, it is error to instruct the jury that any liquor which contains any percentage of alcohol is an intoxicating liquor when sold as a beverage.<sup>95</sup> The court cannot say to the jury that liquor containing three per cent. and over of alcohol is intoxicating and that liquor containing less than that is not intoxicating.<sup>96</sup> The court should not instruct that the liquor sold must have produced intoxication. The only question at issue is whether or not it was intoxicating.<sup>97</sup> If a statute prohibits the sale of malt liquors it is immaterial whether or not it is intoxicating, and the jury may be instructed that they need only "consider the evidence as to whether the liquor was intoxicating in determining whether it was a malt liquor."<sup>98</sup> It is error to charge that all lager beer is intoxicating where the evidence shows the beer sold contained not to exceed two per cent. alcohol and it would not intoxicate.<sup>99</sup> The court may instruct the jury that whisky is intoxicating.<sup>1</sup> The court may tell the jury that if there be a reasonable doubt whether the liquor sold contained sufficient alcohol to intoxicate they must acquit.<sup>2</sup>

<sup>94</sup> Hall v. State, 122 Ga. 142; 50 S. E. 59.

<sup>95</sup> State v. Virgo, 14 N. D. 29; 103 N. W. 610.

<sup>96</sup> State v. Piche, 98 Mo. 348; 56 Atl. 1052; State v. Page, 66 Me. 418; Commonwealth v. Blos, 116 Mass. 56.

<sup>97</sup> Matkins v. State (Tex. Cr. App.), 62 S. W. 911.

<sup>98</sup> Eaves v. State, 113 Ga. 749; 39 S. E. 318.

<sup>99</sup> Eaves v. State, 113 Ga. 749; 39 S. E. 318; Crawford v. State, 69 Ark. 360; 63 S. W. 801; Costello v. State, 130 Ala. 143; 30 So. 376.

<sup>1</sup> Douthitt v. State (Tex. Cr. App.), 61 S. W. 404.

<sup>2</sup> Bailey v. State (Tex. Cr. App.), 66 S. W. 780; Beaty v. State, 53 Tex. Cr. App. 432; 110 S. W. 449.



## CHAPTER XVII.

### ABATEMENT AND INJUNCTION.

#### SECTION.

- 576. Statute necessary to secure an injunction.
- 577. Grounds for abatement.
- 578. Statutory offense.
- 579. Offense which authorizes an abatement or granting of injunction.
- 580. No intention to violate the statute.
- 581. Grounds for injunction.
- 582. Temporary injunction.
- 583. Process—Notice.
- 584. Defenses.

#### SECTION.

- 585. Parties plaintiff.
- 586. Parties defendant.
- 587. Pleading—Complaint.
- 588. Pleading—Answer.
- 589. Evidence.
- 590. Trial.
- 591. Judgment.
- 592. Bond for continuance of use of premises.
- 593. Violation of injunction—Punishment.
- 594. Appeal—Review.
- 595. Costs—Attorney fees.

#### **Sec. 576. Statute necessary to secure an injunction.**

Equity affords no remedy to abate a liquor nuisance nor to enjoin one, unless the person seeking the injunction has suffered a damage peculiar to himself. "No person can maintain a private action for a mere public or common nuisance, for the reason that the exercise of such a right would lead to a great multiplicity of suits and endless interminable litigation."<sup>1</sup> But where an individual suffers a wrong peculiar to himself—suffers a damage over and above what the general public suffers—he may maintain suit for an injunction if his damage be irreparable or falls within the rules of equity where a party will be awarded an injunction rather than be compelled to resort to a court of law to recover

<sup>1</sup> Haggart v. Stehlin, 137 Ind. 43; 35 N. E. 997; Brown v. Perkins, 12 Gray 89; Christensen v. Kellogg, etc. Co., 110 Ill. App. 61; Strickland v. Knight, 45

Fla. 712; 36 So. 363; Territory v. Robertson, 19 Okla. 149; 92 Pac. 144; Depree v. State (Tex.), 119 S. W. 301.

damages. Such was the case where the owner of a lot adjoining a private residence, in a part of a city devoted entirely to residences, located a saloon thereon within ten feet of the door of plaintiff's residence.<sup>2</sup>

### Sec. 577. Grounds for Abatement.

Under an Ohio statute<sup>3</sup> on conviction of the proprietor of having illegally sold liquor, the premises will be abated as a matter of course unless it appears that he has voluntarily and permanently stopped the sale.<sup>4</sup> Under this statute it was the business and not the place where it was carried on that constituted the offense, and hence if the business had ceased no decree of abatement could be entered, for the decree had to be directed against the business and not against the place where it had been carried on.<sup>5</sup> A single sale did not make the place, or the seller a "keeper" of a nuisance.<sup>6</sup> The discharge of a clerk who made illegal sales is not such a cessation of the business as will be a sufficient defense, especially if subsequent sales be shown.<sup>7</sup> Under the West Virginia Code<sup>8</sup> there could be no abatement until the owner or keeper had been convicted of an illegal sale, and then a bill in equity filed wherein the conviction was set up as a reason for the abatement.<sup>9</sup>

<sup>2</sup> Haggart v. Stehlin, 137 Ind. 43; 35 N. E. 997.

(The opinion in 29 N. E. 1073 was set aside.) State v. Uhrig, 14 Mo. App. 413 Tron v. Lewis, 31 Ind. App. 178; 66 N. E. 490; Gowan v. Smith (Mich.), 122 N. W. 286; 12 Det. L. N. 365; Detroit Realty Co. v. Barnett, 156 Mich. 385; 120 N. W. 804; 16 Det. L. N. 107.

In North Carolina it is held that the question whether a liquor dealer has violated the local option law, wherein is involved the validity of a license he holds, he cannot be tried in equity, but resort must be had to a court of law where a jury can be secured.

Hargett v. Bell, 134 N. C. 394; 46 S. E. 749.

As to conflict between a city charter and the general law on the question of local option, see Paul v. State (Tex. Civ. App.), 106 S. W. 448.

<sup>3</sup> Act May 1, 1854.

<sup>4</sup> State v. Sundry Persons, 2 Ohio Dec. 435.

<sup>5</sup> Miller v. State, 3 Ohio St. 475.

<sup>6</sup> Miller v. State, 3 Ohio St. 475.

<sup>7</sup> Elwood v. Price, 75 Iowa 228; 39 N. W. 281.

<sup>8</sup> Code, c. 32, § 18.

<sup>9</sup> Hartley v. Henrietta, 35 W. Va. 222; 13 S. E. 375. *Contra*, Cowdery v. State, 71 Kan. 450; 80 Pac. 953.

### Sec. 578. Statutory offense.

In recent years, in order to cope adequately with the liquor traffic in a number of States, public opinion has demanded the adoption of statutes giving to courts of equity power to suppress it under certain circumstances, or equity powers in this particular have been given to courts of law for a like purpose. This is particularly true of the statutes of Maine, New Hampshire, West Virginia, Ohio,<sup>10</sup> Florida, Georgia, Iowa and Kansas. The remedy, as a rule, is to enjoin an act declared to be a nuisance; it is not to punish for past criminal acts, nor to enjoin the commission of them in the future. Its scope is to prevent the continuance of a nuisance already in existence.<sup>11</sup> It is a cumulative remedy, and is available even though other remedies be within themselves adequate and complete.<sup>12</sup> In Maine, upon petition of a certain number of legal voters the Supreme Court has been given power to abate a liquor nuisance.<sup>13</sup> Where a statute made a place where intoxicating liquors are sold in violation of law, or where kept in violation of law, or where persons are allowed to resort for the purpose of drinking,<sup>14</sup> it was held the keeping of the place where these things were done was the nuisance and not the selling or resorting to the place for the purpose of drinking.<sup>15</sup> And where a boarder in a hotel, with-

<sup>10</sup> At least at one time.

<sup>11</sup> *Davis v. Auld*, 96 Mo. 559; 53 Atl. 118; *State v. Roberts* (N. H.), 69 Atl. 722; *Devanney v. Hanson*, 60 W. Va. 3; 53 S. E. 603.

<sup>12</sup> *Legg v. Anderson*, 116 Ga. 401; 42 S. E. 720; *State v. Collins*, 74 Vt. 43; 52 Atl. 69; *Paul v. State* (Tex. Civ. App.), 106 S. W. 448; *In re Rancour*, 66 N. H. 172; 20 Atl. 930 (a civil proceeding.) *Hammer v. Dunlavy* (Iowa), 121 N. W. 1024.

<sup>13</sup> *Davis v. Auld*, 96 Me. 559; 53 Atl. 118.

This Maine statute illustrates

the difficulty of enforcing prohibition laws by the use of juries and even by the use of local courts. The death of one of the petitioners is no abatement of the cause of action, because in its nature is is criminal. *Beebee v. Wilkins* (N. H.), 29 Atl. 693.

<sup>14</sup> N. D. Rev. Codes 1899, § 7605.

<sup>15</sup> *State v. Nelson*, 13 N. D. 122; 99 N. W. 1077.

The word "place" was held to mean the particular room, tenement or apartment where the liquor is kept or sold, or the unlawful business done.

out the knowledge or consent of the proprietor kept liquor in his room, and on three or four occasions sold it, it was held that the court could not adjudge the entire hotel a nuisance but only the particular room, and that it could not do so unless the particular room was definitely ascertained.<sup>16</sup> A social club, formed and conducted in clear evasion of the law, may have its club rooms abated.<sup>17</sup> Actual sales are not always necessary to the commission of the offense, it being sufficient to show that liquors were kept in violation of the statute.<sup>18</sup> As the action is *quasi* criminal in its character, the facts claimed to constitute a nuisance must clearly fall within the provisions of the statute, even though the action is brought and maintained by an individual.<sup>19</sup>

**Sec. 579. Offenses which authorize an abatement or granting of injunction.**

Before an abatement of a place as a nuisance can be decreed or an injunction be issued, some violation of the law must be shown. But although a person may be authorized to sell liquor, yet if he persistently sell it in a manner which is a violation of the law, his act will render his business or place a liquor nuisance. Thus, if a druggist has a permit to sell liquors, yet if he sells them in a manner which is illegal or to persons to whom he is prohibited at the time from selling—as sales without a physician's prescription when prescriptions are required—his place may be abated as a liquor nuisance.<sup>20</sup> Such a place need not be kept in a disorderly manner to

<sup>16</sup> *State v. Nelson, supra.*

<sup>17</sup> *Cohen v. King Knob Club*, 55 W. Va. 108; 46 S. E. 799.

<sup>18</sup> *State v. Dominisse (Iowa)*, 99 N. W. 561.

<sup>19</sup> *Jones v. Mould*, 138 Iowa 683; 116 N. W. 733.

Under former Iowa statutes the proceedings partook of a criminal character. *State v. Greenway*, 92 Iowa 472; 61 N. W. 239; *State v. Van Vliet*, 92 Iowa 476; 61 N. W. 241. In Kansas they were

criminal proceedings, and the maintenance of a saloon would not be enjoined. *State v. Crawford*, 28 Kan. 726; 42 Am. Rep. 182.

<sup>20</sup> *State v. Donovan*, 10 N. D. 203; 86 N. W. 709; *McCoy v. Clark*, 104 Iowa, 491; 73 N. W. 1050; *State v. McGrier*, 9 N. D. 566; 84 N. W. 363; *Rizer v. Topper*, 133 Iowa 628; 110 N. W. 1038.



constitute it a nuisance.<sup>21</sup> Although the liquors be not drunk upon the premises where illegally sold, yet the penalty of the statute will be incurred as effectually as if they were drunk there.<sup>22</sup> A city may be empowered to declare that a place where ale containing alcohol in sufficient amount to produce intoxication is sold shall be a nuisance.<sup>23</sup> And it has been held that it is not necessary to show that the liquor sold was intoxicating in order to decree an abatement of the place.<sup>24</sup> But in Georgia where a dispensary was operated in good faith, and liquors likewise sold in violation of the law, it was held that it was not a "blind tiger," subject to be abated or enjoined.<sup>25</sup> In Iowa the statute applies not only to places of retail but also to places of wholesale and manufacture.<sup>26</sup> Irregularities in the granting of a license to sell will not authorize the abatement of the place where the liquor is sold, nor will the fact that the defendant has sold or is selling liquor illegally in another place justify the granting of an injunction, where the statute provides that the place where the illegal sale takes place and not the place itself shall constitute the nuisance.<sup>27</sup> Under a statute declaring that "all buildings, places or tenements used for the illegal keeping or sale of intoxicating liquor shall be deemed common nuisances," a hotel is a "place" and may be abated.<sup>28</sup> Where a landlord incurs the penalty of the statute, if he leases his premises for the liquor traffic or permits his tenant to carry on the traffic in violation of the statute, if the tenant, without his knowledge carries on an illegal traffic, a judgment abating such premises will not be given<sup>29</sup> especially if the illegal traffic has ceased before the action is brought.<sup>30</sup> Where a licensee

<sup>21</sup> Howard v. State, 6 Ind. 444.

<sup>22</sup> State v. Fraser, 1 N. D. 425; 48 N. W. 343.

<sup>23</sup> Langel v. Bushnell, 197 Ill. 20; 63 N. E. 1086, affirming 96 Ill. App. 618.

<sup>24</sup> State v. Hughes, 16 R. I. 403; 16 Atl. 911.

<sup>25</sup> Cannon v. Merry, 116 Ga. 291; 42 S. E. 274.

<sup>26</sup> Craig v. Werthmueller, 78

Iowa, 598; 43 N. W. 606.

<sup>27</sup> Clark v. Riddle, 101 Iowa 270; 70 N. W. 207.

<sup>28</sup> Commonwealth v. Purcell, 154 Mass. 388; 28 N. E. 288. See State v. Nelson, 13 N. D. 122; 99 N. W. 1077.

<sup>29</sup> State v. Stafford, 67 Me. 125.

<sup>30</sup> Merrifield v. Swift, 103 Iowa 167; 72 N. W. 444.

just before the expiration of his license entered into an arrangement with a person to add to his [the licensee's] stock large quantities of liquors, and then executed to him a mortgage thereon, and permitted this mortgage to be foreclosed, and under an execution issued on such decree was proceeding to sell and continue the sale of such liquors in retail quantities, from day to day, the purpose of the mortgagor and mortgagee being to evade the statute concerning the liquor traffic, the court enjoined the sale, holding that the sale was an abuse of the process issued on the decree.<sup>31</sup> If a party is openly violating the law he cannot avoid an injunction by bringing his business into conformity with the law before a hearing is had but after the suit is begun.<sup>32</sup> And although the defendant may have ceased to violate the statute before suit brought, yet if he be still in the liquor business, and there is a fair presumption that the violation of the statute will be resumed in the future, an injunction will be awarded.<sup>33</sup> So where a saloon keeper habitually sells liquor by the keg, and those purchasing it take it into the street in front of the saloon and there treat the crowd, or, when several purchasers drink the liquor and repeatedly become intoxicated and conduct themselves in so disorderly a manner that people avoid passing along the street, a nuisance is maintained upon the saloon premises which will be abated.<sup>34</sup> And if a statute requires sales to be made upon written requests and a sworn report of such sales made to an officer, and the sales are made upon insufficient or blank requests, which are afterwards filled out by the salesman, and no reports of sales are made, the maintenance of the saloon will be enjoined.<sup>35</sup> A dispensary

<sup>31</sup> *Fears v. State*, 102 Ga. 274; 29 S. E. 463.

<sup>32</sup> *Donnelly v. Smith*, 128 Iowa 257; 103 N. W. 776; *McCracken v. Miller*, 129 Iowa 623; 106 N. W. 4.

<sup>33</sup> *McCracken v. Miller*, 129 Iowa 623; 106 N. W. 4; *Bohstedt v. Shanks*, 136 Iowa 686; 116 N. W. 812. A promise not to violate the statute in the future will not prevent the granting of an

injunction or an abatement of the nuisance. *Long v. Joder*, 129 Iowa 471; 116 N. W. 1063.

<sup>34</sup> *Jung Brewing Co. v. Commonwealth*, 123 Ky. 507; 96 S. W. 595; 29 Ky. L. Rep. 939.

<sup>35</sup> *Peak v. Bidinger*, 133 Iowa 127; 110 N. W. 292; *Lofton v. Collins*, 117 Ga. 434; 43 S. E. 708; 61 L. R. A. 150; *State v. Estop*, 66 Kan. 416; 71 Pac. 857.

authorized by a State law, but operated illegally may be abated.<sup>36</sup> So an arrangement of the saloon which is a violation of a statute providing how it shall be arranged is a sufficient cause for its abatement.<sup>37</sup> Sales of liquor on an election day authorizes a decree abating the saloon, although the sales took place only on one of such days.<sup>38</sup> A pharmacist in Iowa cannot escape on the ground that the illegal sales were not made by him personally but by his brothers and sisters in the store without his authority.<sup>39</sup> Upon the accused's claim that he distributed the liquors among members of a club and that the transactions were not sales, it was held that he could not complain of an instruction authorizing a conviction if he used rooms for the sale of liquors therein, or kept such rooms for the unlawful purpose of distributing the liquors to the members of such club.<sup>40</sup>

**Sec. 580. No intention to violate the statute.**

If a person has in fact violated the statute, the fact that he had no corrupt intention to do so is no defense.<sup>41</sup>

**Sec. 581. Grounds for injunction.**

An injunction cannot be maintained to prevent a liquor dealer selling liquor to the plaintiff's employes;<sup>42</sup> nor will it lie to prevent a violation of the law unless, as previously stated, the plaintiff has suffered a peculiar damage.<sup>43</sup> This is true, even though the illegal act is a public nuisance.<sup>44</sup>

<sup>36</sup> *State v. Riddock* (S. C.), 61 S. E. 207; *State v. German Rifle Club*, 80 S. C. 126; 61 S. E. 208; *State v. Charleston, etc. Co.*, 80 S. C. 116; 61 S. E. 209; *State v. Riddock*, 80 S. C. 118; 61 S. E. 210.

<sup>37</sup> *State v. Gifford*, 111 Iowa 648; 82 N. W. 1034.

<sup>38</sup> *Hammond v. King*, 137 Iowa 548; 114 N. W. 1062.

<sup>39</sup> *Wilmot v. Johnson* (Iowa), 123 N. W. 336.

<sup>40</sup> *State v. Johns* (Iowa), 118 N. W. 295.

<sup>41</sup> *Rizer v. Tapper*, 133 Iowa 628; 110 N. W. 1038.

<sup>42</sup> *Northern Pac. R. Co. v. Whalen*, 3 Wash. T. 452; 17 Pac. 890.

<sup>43</sup> *Manor v. State* (Tex. Civ. App.), 34 S. W. 769; *Campbell v. Schofield*, 29 Leg. Int. 325; *State v. Schweickerdt*, 109 Mo. 496; 19 S. W. 47.

<sup>44</sup> *State v. Ubrig*, 14 Mo. App. 413; *State v. Wood*, 155 Mo. 425; 56 S. W. 474; 48 L. R. A. 596.

And even though a statute provide for an injunction to restrain an illegal act or maintenance of a series of acts, yet if the act has been fully performed or the series of acts have been discontinued, an injunction will not issue;<sup>45</sup> nor will it if the illegal acts have been performed on the premises without the accused's knowledge or consent.<sup>46</sup> But if the illegal maintenance of the nuisance has been discontinued after suit brought, then a decree enjoining it will be entered.<sup>47</sup> To justify the issuance of an injunction restraining the carrying on of the liquor traffic a statute authorizing its issuance is necessary; but such a statute does not cover an instance of a probability that there will be a violation of the law if an injunction be not issued.<sup>48</sup> Where defendant was enjoined maintaining a liquor nuisance on his premises, and afterwards another was enjoined maintaining a like liquor nuisance on another lot in the same block, and then the defendant purchased the house condemned and moved it onto his own lot, in which he sold liquor, it was held a new injunction would issue abating the building in its new location.<sup>49</sup>

### Sec. 582. Temporary injunction.

A conviction of unlawful sales is not necessary to the securing of an injunction; even a temporary injunction may be granted without such a conviction.<sup>50</sup> But where the lessee

<sup>45</sup> State v. Saunders, 66 N. H. 39; 25 Atl. 588; 18 L. R. A. 646; Eckhart v. David, 75 Iowa 302; 39 N. W. 513; State v. Strickford, 70 N. H. 297; 47 Atl. 262; Sharpe v. Arnold, 108 Iowa 203; 78 N. W. 819; Merrifield v. Swift, 103 Iowa 167; 72 N. W. 444.

<sup>46</sup> State v. Severson, 88 Iowa 714; 54 N. W. 347; Drake v. Kingsbaker, 72 Iowa 441; 34 N. W. 199.

<sup>47</sup> Halfman v. Spreen, 75 Iowa 309; 39 N. W. 517; Judge v. Kribs, 71 Iowa, 183; 32 N. W. 324; Donner v. Hotz, 74 Iowa 389; 27 N. W. 969.

<sup>48</sup> Pike County Dispensary v. Brundige, 130 Ala. 193; 30 So. 451.

The running of a saloon is not a nuisance *per se*, and municipal authorities cannot single out a particular saloon and arbitrarily declare its nuisance and close its doors. De Blanc v. New Iberia, 106 La. 680; 31 So. 311.

<sup>49</sup> Hill v. Dunn (Iowa), 93 N. W. 705.

<sup>50</sup> Littleton v. Fritz, 65 Iowa 488; 22 N. A. 641; 54 Am. Rep. 19; Pontius v. Winebrenner, 65 Iowa 591; 22 N. W. 646; Donnelly v. Smith, 128 Iowa 257; 103



has created the nuisance, and the lessor in good faith has sought to abate it, a temporary injunction will not be granted.<sup>51</sup> If the plaintiff is entitled to a temporary injunction it is error to refuse it. Such is the case where the complaint and affidavit in support of it makes out a *prima facie* case. In such an instance it is error to grant the defendant's application for a continuance without granting a temporary injunction.<sup>52</sup> On appeal from a temporary injunction a supersedeas will not be granted even though a bond for it be filed, for the reason that if it be granted the nuisance will be continued, to the detriment of the community when the temporary injunction bond affords ample protection to the defendant if the case be reversed.<sup>53</sup>

### Sec. 583. Process—Notice.

Notice to the person whose property it is sought to abate is absolutely necessary, just as it is when it is sought to enjoin the maintenance of a nuisance. But a statute may provide for notice to a non-resident of the State by publication, and such a statute will apply even to a non-resident trustee in bankruptcy.<sup>54</sup> The notice of a hearing for a temporary injunction, three days' notice being required, must have the formalities of a notice required in any other form of action to give the court jurisdiction.<sup>55</sup> Thus, where the plaintiff was required to give three days' notice that at a particular

N. W. 776; *Pontius v. Brumen*, 66 Iowa 88; 23 N. W. 277; *State v. Patterson*, 13 N. D. 70; 99 N. W. 67 *Powers v. Winters*, 106 Iowa 751; 77 N. W. 509; *McCoy v. Clark*, 104 Iowa 491; 73 N. W. 1050; *Barckell v. State* (Tex. Civ. App.), 106 S. W. 190.

<sup>51</sup> *Shear v. Brinkman*, 72 Iowa 698; 34 N. W. 483.

<sup>52</sup> *Tibbetts v. Burster*, 76 Iowa 176; 40 N. W. 707; *Sawyer v. Termohlen* (Iowa), 122 N. W. 921.

See *Powers v. Winters*, 106 Iowa 751; 77 N. W. 509.

<sup>53</sup> *Jacoby v. Shoemaker*, 26 Fla. 502; 7 So. 855.

If the accused admitted that the allegations of the petition were true, it was held that the granting of a preliminary injunction was within the discretion of the court. *Carelton v. Rugg*, 149 Mass. 550; 22 N. E. 55; 55 L. R. A. 193; 14 Am. St. 446.

<sup>54</sup> *Radford v. Thornell*, 81 Iowa 709; 45 N. W. 890.

<sup>55</sup> *Beck v. Vaughn*, 134 Iowa 331; 111 N. W. 994.

time he would file his petition in the office of the clerk of the court for a temporary injunction, a notice that at a particular time he would make application to the judge of the court on a petition for a temporary injunction, was held to give the court no jurisdiction of the matter. Such a notice must state the name of the judge to whom the application will be made and the place where he may be found. So such a notice is insufficient if it state that the action is brought by the county attorney when it should have been brought by the State.<sup>56</sup>

### Sec. 584. Defenses.

An injunction to restrain a defendant from maintaining a nuisance throughout the judicial district does not prevent the bringing of a second action when a second nuisance is maintained;<sup>57</sup> but such a judgment is a bar to a second action brought by another party seeking the same relief.<sup>58</sup> The motive with which the action is brought is no defense.<sup>59</sup> Where the owner of premises leased them for a lawful purpose with the privilege of erecting a building thereon for use, but the lessee, without his knowledge opened a saloon in such building, and after a preliminary hearing had been heard and a temporary injunction been granted, the owner served notice on the lessee to vacate the premises and brought an unsuccessful action to oust him, a refusal to restrain him and a dismissal of the action as to him was held not error.<sup>60</sup> The validity of an ordinance requiring the closing of saloons may be raised by the defendant.<sup>61</sup> It is no excuse for him that he violated the law by mistake.<sup>62</sup> Where it happened that the

<sup>56</sup> *Beck v. Vaughn*, 134 Iowa 331; 111 N. W. 994.

In Kansas it has been held that a notice of an application for a preliminary injunction need not be given, as none is required. *State v. Jepson*, 76 Kan. 644; 92 Pac. 600; *State v. Hunter* (Kan.), 92 Pac. 603.

<sup>57</sup> *Carter v. Steyer*, 93 Iowa 533; 61 N. W. 956.

<sup>58</sup> *Dickinson v. Eichorn*, 78 Iowa 710; 43 N. W. 620; 6 L. R. A. 721.

<sup>59</sup> *Hemmer v. Bonson*, 139 Iowa 210; 117 N. W. 257, 260.

<sup>60</sup> *Morgan v. Koestner*, 83 Iowa 134; 49 N. W. 80.

<sup>61</sup> *McNulty v. Toopf*, 116 Ky. 202; 75 S. W. 258; 25 Ky. L. Rep. 430.

<sup>62</sup> *State v. Gifford*, 111 Iowa 648; 82 N. W. 1034.

defendant had sold out his business, was not then engaged in the business, and did not intend to engage in such business, the injunction was refused.<sup>62</sup> But a discontinuance of the business after the granting of a preliminary injunction is not sufficient to secure the dismissal of the proceedings.<sup>64</sup> If there has been sales in violation of law a license to sell is no protection, and that is true where there has been such disorderly conduct permitted on the premises as to injuriously affect adjacent property when the proprietor of such adjacent property brings the suit for an injunction on the ground that he is suffering an irreparable injury because of the continuation of such conduct.<sup>65</sup> Where a statute provides that the suit might abate if the property owner paid the costs and gave a bond conditioned for the abatement of the nuisance, it was held not applicable to a defendant who had maintained the nuisance, but had abated it, who was not the owner of the premises.<sup>66</sup> But on the property owner complying with such statute the action abates.<sup>67</sup>

### Sec. 585. Parties plaintiff.

Usually the statute points out who shall bring the action for an abatement or an enjoining of the nuisance, and that statute must be followed. Thus, in Georgia the action is brought on behalf of the public by the solicitor general of the judicial district where the violations of the statute have taken place.<sup>68</sup> But there are statutes which authorize "any citizen" of a county to institute and maintain an action to enjoin a liquor nuisance. Under these statutes the person prosecuting the action must have the necessary qualifications, for if he

<sup>62</sup> *Ridley v. Greiner*, 117 Iowa 679; 91 N. W. 1033.

<sup>64</sup> *Drummond v. Richland City Drug Co.*, 133 Iowa 266; 110 N. W. 471; *State v. Donovan*, 10 N. D. 610; 88 N. W. 717.

<sup>65</sup> *Kissel v. Lewis*, 156 Ind. 233; 59 N. S. 478.

<sup>66</sup> *Patterson v. Nicol*, 115 Iowa 283; 88 N. W. 323.

<sup>67</sup> *Morris v. Lowry*, 113 Iowa 544; 85 N. W. 788; *Morris v. Connolly*, 113 Iowa, 544; 85 N. W. 789.

<sup>68</sup> *Walker v. McNelly*, 121 Ga. 114; 48 S. E. 718.

Substitution on reversal. *Sawyer v. Termohlen* (Iowa), 122 N. W. 924.

have not, he has not such an interest as enables him to maintain the action. If he has such qualifications he may prosecute the action both as a citizen and as an attorney for the State.<sup>69</sup> He acts in a representative capacity and cannot assent to any action of the court which will operate either as a license or permit to the maintenance of a liquor nuisance; and if he does so assent any other citizen may have a review of the decree, on *certiorari*, especially if such other citizen's consent to the location of the saloon constituting the nuisance was necessary before it could be located at the place it occupies.<sup>70</sup> By the prosecutor removing from the county, the case cannot be dismissed.<sup>71</sup> But after suit brought by a citizen of the county, no other citizen, so long at least as he is prosecuting it, has a right to intervene and thereby in any way control the action.<sup>72</sup> While the word citizen is usually construed to mean a "citizen of the county,"<sup>73</sup> yet this has been held to cover an instance of a Methodist clergyman residing in the county until removed by his conference to another location.<sup>74</sup> In Iowa the qualifications of the plaintiff to maintain the action is not raised by the general denial, nor by an answer denying knowledge or information sufficient to form a belief as to whether he is a citizen of the county.<sup>75</sup> A statute authorizing any citizen of the county to maintain the action in the name of the State does not require him to obtain the consent of the State's attorney or attorney general to bring it.<sup>76</sup> But in Kansas the proper officer must institute the

<sup>69</sup> *State v. Sioux Falls, etc. Co.*, 2 S. D. 363; 50 N. W. 629; *Devanney v. Hanson*, 60 W. Va. 3; 53 S. E. 603; *Lofton v. Collins*, 117 Ga. 434; 43 S. E. 708; 61 L. R. A. 150.

<sup>70</sup> *Hemmer v. Bonson*, 139 Iowa 210; 117 N. W. 257, 260.

<sup>71</sup> *Judge v. Kahl*, 74 Iowa 486; 38 N. W. 173.

<sup>72</sup> *Conley v. Zerber*, 74 Iowa 699; 39 N. W. 113.

<sup>73</sup> *Devanney v. Hanson*, 60 W. Va. 3; 53 S. E. 603.

<sup>74</sup> *Fuller v. McDonnell*, 75 Iowa 220; 39 N. W. 277.

<sup>75</sup> *Craig v. Hasselman*, 74 Iowa 538; 38 N. W. 402.

<sup>76</sup> *State v. Bradley*, 10 N. D. 157; 86 N. W. 354.

[Citing *Littleton v. Fritz*, 65 Iowa 488; 22 N. W. 641; 54 Am. Rep. 19; *Conley v. Zerber*, 74 Iowa 699; 29 N. W. 113; *Maloney v. Traverse*, 87 Iowa 306; 54 N. W. 155; *McQuade v. Collins* (Iowa), 61 N. W. 213; *State v. Sioux Falls Brewing Co.* (S. D.), 50 N. W.



action in behalf of the public, and the fact that the statute declares the place to be a public nuisance will not justify a citizen abating it without process of law.<sup>77</sup> Where the statute authorized public officers to maintain a civil action to abate a liquor nuisance, it was held that a municipal corporation could maintain an action to enjoin the illegal sale of liquors in such a place, although no vote had yet been taken to determine whether a local option law should be put in force forbidding the sale of liquors.<sup>78</sup> When citizens bring the action and describe themselves as the "mayor and councilmen" of the city, this description is mere surplusage and may be stricken out.<sup>79</sup>

### **Sec. 586. Parties defendant.**

The person who violates the liquor law is the person who is to be enjoined or whose premises or liquor is to be abated. If he hold a license, and yet sell in violation of the law, the statute applies to him and to his property.<sup>80</sup> If the nuisance to be abated is the house where the liquors were unlawfully sold, and the house is owned in partnership, then all the partners must be made defendants; for if only one be, then no decree ordering it be abated can be entered, for an effort to abate the interest of the partner made a party would lead to vexatious and unnecessary litigation.<sup>81</sup> Any person who is

<sup>77</sup> *State v. Stark*, 63 Kan. 529; 66 Pac. 243; 54 L. R. A. 910, citing *Jones v. Chanute*, 63 Kan. 243; 65 Pac. 243; *Brown v. Perkins*, 12 Gray 89; *Corthell v. Holmes*, 87 Me. 24; 32 Atl. 715. See also *Lee County v. Hooper*, 128 Ga. 99; 56 N. E. 997.

<sup>78</sup> *Britton v. Guy* (S. D.), 97 N. W. 1045.

<sup>79</sup> *Legg v. Anderson*, 116 Ga. 401; 42 S. E. 720.

In North Dakota the action is brought by the State on the relation of the attorney general. *State v. Donovan*, 10 N. D. 203; 86 N. W. 709.

In New Hampshire the State solicitor may be substituted as

plaintiff for the superintendent of police of a city, who has brought the action and asks leave to withdraw the petition. *State v. Lynch*, 72 N. H. 185; 55 Atl. 553.

The fact that another employed the attorney conducting the case for plaintiff does not warrant a dismissal of the action, where such plaintiff fully ratified the employment and took active part in the trial. *Rizer v. Tapper*, 133 Iowa, 628; 110 N. W. 1038.

<sup>80</sup> *State v. Webber*, 76 Iowa 686; 39 N. W. 286; *State v. Davis*, 44 Kan. 60; 24 Pac. 73.

<sup>81</sup> *Shear v. Green*, 73 Iowa 688; 36 N. W. 642; *State v. Douglass*, 75 Iowa 432; 39 N. W. 686.

in possession and control of the premises and liquor, if he manage them unlawfully may be made a defendant, even though he be not the owner;<sup>82</sup> but, of course, this would not be the case with one who is a mere servant of the owner or keeper.<sup>83</sup> All concerned in the keeping of the premises may be joined, except mere servants.<sup>84</sup> But the action cannot be maintained against parties where the nuisance has been created by mere trespassers, by erecting a building or tent on the premises and illegally selling liquors therein without the knowledge of the owner of such premises.<sup>85</sup> If the premises are occupied by a tenant, then both he and his landlord may be made parties, for the landlord has the power to eject his tenant from the premises as soon as he creates a nuisance thereon; and whether he leased the premises for a lawful or an unlawful purpose, as soon as the nuisance is created the premises are subject to abatement.<sup>86</sup> But unless the owner be made a party, and an opportunity be given him to be heard, no decree will be entered against him.<sup>87</sup> If the party in possession be a tenant for life, he has absolute control of the premises, and only his interest therein can be abated.<sup>88</sup> Where a statute provided that the owner and all persons interested in the premises, including the keepers of them, might be made parties, and they, their servants, agents, lessees, tenants and assigns enjoined from maintaining a nuisance thereon, it was held that an owner who was a resident in another State, but who maintained the place by an agent, could be joined, if he had reason to know his agent kept a liquor nuisance thereon.<sup>89</sup>

<sup>82</sup> *Schultz v. State*, 32 Ohio St. 276.

<sup>83</sup> *State v. Gravelin*, 16 R. I. 407; 16 Atl. 914.

<sup>84</sup> *Martin v. Blatter*, 68 Iowa 286; 25 N. W. 131; 27 N. W. 244.

<sup>85</sup> *State v. Lawler*, 85 Iowa 564; 52 N. W. 490.

<sup>86</sup> *Martin v. Blatter*, 68 Iowa 286; 25 N. W. 131; 27 N. W. 244; *Bell v. Glaseker*, 82 Iowa 736; 47 N. W. 1042; *State v. Douglass*, 75

Iowa 432; 39 N. W. 686; *State v. Riddock* (S. C.), 61 S. E. 207; *McCracken v. Miller*, 129 Iowa 623; 106 N. W. 4; *Morgan v. Koestner*, 83 Iowa 134; 49 N. W. 80.

<sup>87</sup> *State v. Marston*, 64 N. H. 603; 15 Atl. 222; *Danner v. Hotz*, 74 Iowa 389; 37 N. W. 969.

<sup>88</sup> *Danner v. Hotz*, 74 Iowa 389; 37 N. W. 969.

<sup>89</sup> *State v. Collins*, 74 Vt. 43; 52 Atl. 69.

If the premises to be abated be in the control of a bankrupt court, they may still be abated, for the jurisdiction of the bankrupt court is not such as to prevent the entering of a decree against them.<sup>90</sup> Where a statute provided that "persons interested" might be made defendants, it was held that a mortgagee could not be made a party unless he had possession, or some right to the possession or control of the property.<sup>91</sup>

### Sec. 587. Pleading—Complaint.

The complaint or petition must show that the place sought to be enjoined or abated is within the State,<sup>92</sup> and likewise show it lies within the territory over which the court wherein the proceedings are brought has jurisdiction. Where a private person may bring the action it need not be alleged that notice had been given to the prosecuting officer before suit was brought, unless the statute specifically requires it.<sup>93</sup> Where it is sought to hold the owner of the premises because he permitted a nuisance to be maintained thereon, it must be alleged he had notice of its maintenance; but an allegation that it was maintained with his permission is equivalent to an allegation that he knew of its maintenance.<sup>94</sup> If it is made an offense to use any building for the illegal sale or keeping of liquor, a petition is fatally defective which merely alleges that the building is occupied by its owner for the purpose of selling and keeping therein liquors for sale," because it does not state that the building was actually used for that purpose.<sup>95</sup> The petition must allege that the liquors were kept and sold by the defendants, and not that the build-

<sup>90</sup> Radford v. Thornell, 81 Iowa 709; 45 N. W. 890.

<sup>91</sup> State v. Massey, 72 Vt. 210; 47 Atl. 834.

In this case it was held that if the tenant created the nuisance, it must be alleged that the landlord, if made party, knew of the nuisance.

<sup>92</sup> Buck v. Ellenbolt, 84 Iowa

394; 51 N. W. 22; 15 L. R. A. 187.

<sup>93</sup> Wood v. Baer, 91 Iowa 475; 59 N. W. 289; Lewis v. Hogan, 91 Iowa 734; 59 N. W. 290.

<sup>94</sup> Gray v. Stienes, 69 Iowa 124; 28 N. W. 475; Commonwealth v. Brusie, 145 Mass. 117; 13 N. E. 378.

<sup>95</sup> State v. Martin, 64 N. H. 603; 15 Atl. 222.

ing occupied by the defendant "is a place where spirituous liquors are unlawfully kept and sold, and is a common nuisance."<sup>96</sup> An allegation that the defendant "is guilty of keeping and maintaining a certain tenement" is equivalent to the charge that he "did keep and maintain a certain tenement," and is in that respect sufficient.<sup>97</sup> Where the proceedings were required to be made upon the petition of twenty legal voters, it was held that the signature of the twentieth man might be added after the petition was filed.<sup>98</sup> The petition must allege specifically wherein the law has been violated which will justify an abatement of the places as a nuisance, and if it does not, the defendant may move that it be made more specific in that respect.<sup>99</sup> A petition which in one respect gives an inaccurate description of the place, yet such inaccuracy does not mislead the accused, is not bad because of such inaccuracy.<sup>1</sup> Where the statute provided that an information must be filed in a court of equity for the abatement of the nuisance upon a conviction of the keeper in a court of law of having illegally kept or maintained it, it is not necessary to aver that at the time of filing the information in the court of equity it had been maintained from the time of such conviction until the time of such filing.<sup>2</sup> Under an allegation that the owner knew a nuisance was kept on the premises, proof is admissible that his agent knew or had reason to know it was so maintained, and it is not a variance.<sup>3</sup> Where the statute required the petition for an injunction to "state the facts on which" the allegations of a violation of the law "are based," it was held that it could not be based

<sup>96</sup> *State v. Batchellor*, 66 N. H. 145; 20 Atl. 931. See *Our House v. State*, 4 Greene (Iowa) 172.

<sup>97</sup> *Commonwealth v. Gallagher*, 145 Mass. 104; 13 N. E. 359.

<sup>98</sup> *State v. Collins*, 68 N. H. 46; 36 Atl. 550.

This was where the proceedings were begun as an original

case in the Supreme Court of the State.

<sup>99</sup> *Abrams v. Sandholm*, 119 Iowa, 583; 93 N. W. 563.

<sup>1</sup> *State v. Reno*, 41 Kan. 674; 21 Pac. 803.

<sup>2</sup> *State v. Massey*, 72 Vt. 210; 47 Atl. 834.

<sup>3</sup> *State v. Collins*, 74 Vt. 43; 52 Atl. 69.



on information and belief.<sup>4</sup> So an information charging that the defendant sold liquors at a certain place contrary to law is deficient in not alleging in what manner they were sold contrary to law.<sup>5</sup> In pleading the nuisance facts must be alleged showing that the nuisance existed, and mere conclusions to the effect that a nuisance had been created is not sufficient.<sup>6</sup>

### Sec. 588. Pleading—Answer.

If the place where the liquor was sold was a drug store, and liquor can be there lawfully sold, then that fact is a matter of defense.<sup>7</sup> Where a statute was in force which provided that if one sue in a representative capacity and if his capacity to so bring the suit be not controverted, it will be taken as true; and to question the right it must be specifically controverted; a general denial was held not to raise the question that the plaintiff was not a citizen of the county when he had alleged that fact.<sup>8</sup> So an answer denying knowl-

<sup>4</sup> *Wheaton v. Slattery*, 96 N. Y. App. Div. 102; 88 N. Y. Supp. 1074.

[Citing *Matter of Peck*, 167 N. Y. 391; 60 N. E. 775; 53 L. R. A. 888; *Hoorman v. Climax Cycle Co.*, 9 App. Div. 579-585, 41 N. Y. S. 710; *People ex rel. J. B. Lyon Co. v. McDonough*, 76 App. Div. 257; 78 N. Y. S. 462; *Matter of Hunter*, 34 Misc. Rep. 389; 69 N. Y. S. 908, affirmed 59 App. Div. 626; 69 N. Y. S. 1137; *People v. Windholz*, 68 App. Div. 552; 74 N. Y. S. 241.]

<sup>5</sup> *Cohen v. King Knob Club*, 55 W. Va. 108; 46 S. E. 799.

In Kansas it is not necessary to aver that the place where the liquors were kept was not a dwelling house, that apparently being a defense. *Ft. Scott v. Dunkerton*, 78 Kan. 189; 96 Pac. 50. See also as to a drug store in Wash-

ington. *Kirkland v. Ferry*, 45 Wash. 663; 88 Pac. 1123.

In Maine the proceedings in equity are not governed by the strict rules of equity procedure, and it is not necessary to allege that the defendant intends to continue the illegal use of the premises. *Wright v. O'Brien*, 98 Me. 196; 56 Atl. 647.

<sup>6</sup> *Bowen v. Hale*, 4 Clarke (Ia.) 430. As to what is not a sufficient showing of information and belief, see *State v. Union Social Club*, 82 S. C. 142; 63 S. E. 545.

<sup>7</sup> *Kirkland v. Ferry*, 45 Wash. 663; 88 Pac. 1123.

<sup>8</sup> *Shear v. Green*, 73 Iowa 688; 36 N. W. 642; *Kaufman v. Dostal*, 73 Iowa 691; 36 N. W. 643; *Littleton v. Harris*, 73 Iowa 167; 34 N. W. 800; *Bloomer v. Glendy*, 70 Iowa 757; 30 N. W. 486.

edge or information sufficient to form a belief that the plaintiff has the requisite qualifications to bring the action is equivalent to a general denial and raises no issue on that question.<sup>9</sup> If the defendant does not deny the maintenance of the nuisance, the allegations of the petition or complaint will be taken as true.<sup>10</sup> So if the action is against the owner of the premises, where it is charged his tenant maintained the nuisance with his knowledge, if lack of knowledge be not alleged in the answer, the allegation in the complaint will be taken as if it were proven.<sup>11</sup> If the answer does not deny the nuisance, and the nuisance consists of sales without a license, an answer alleging that after the suit was brought the defendant obtained a license for the place where the sales had been made is demurrable.<sup>12</sup> To an answer alleging that the action was brought in bad faith and to annoy the defendant, no reply is necessary.<sup>13</sup>

### Sec. 589. Evidence.

The burden is upon the plaintiff to prove a sufficient amount of the allegations in the complaint to constitute a cause of action.<sup>14</sup> A mere preponderance of the evidence is sufficient to sustain the complaint.<sup>15</sup> Where the action was against the owner for permitting a nuisance to be kept on the premises by his tenant, proof that on several searches liquors were found on the premises in an ordinary saloon with places for concealing them, and that such owner had been subpoenaed as

<sup>9</sup> Craig v. Hasselman, 74 Iowa 538; 38 N. W. 402.

<sup>10</sup> Bloomer v. Glendy, 70 Iowa 757; 30 N. W. 486; Peisch v. Linder, 73 Iowa 766; 33 N. W. 133.

<sup>11</sup> Overton v. Schindele, 85 Iowa 715; 50 N. W. 977.

<sup>12</sup> Halfman v. Spreen, 75 Iowa 309; 39 N. W. 512; Tibbetts v. Burster, 76 Iowa 176; 40 N. W. 707; Rice v. Schlopp, 78 Iowa 753; 41 N. W. 603.

<sup>13</sup> McQuade v. Collins, 93 Iowa 22; 61 N. W. 43.

<sup>14</sup> Bowen v. Hale, 4 Clarke (Iowa) 430; Jones v. Byington, 128 Iowa 397; 104 N. W. 473; Sickinger v. State, 45 Kan. 414; 25 Pac. 868; State v. Reymann, 48 W. Va. 307; 37 S. E. 591; State v. Jepson, 76 Kan. 644; 92 Pac. 600, 603. Evidence showing abandonment of liquor business. Bhs-tedt v. Terefel (Iowa), 106 N. W. 513.

<sup>15</sup> Davis v. Auld, 98 Me. 559; 53 Atl. 118; State v. Collins, 68 N. H. 299; 44 Atl. 495.

a witness in a former prosecution, was held sufficient to justify a decree abating the nuisance, although the tenant's lease provided he should sell no liquors on the premises, and the owner denied all knowledge of the unlawful use of them.<sup>16</sup> Statutes often make the finding of liquors on the premises *prima facie* evidence of a nuisance, but these statutes are usually strictly construed. Thus, under the North Dakota statute the finding must be by an officer acting under the power of a search warrant, and not otherwise, to raise the presumption of illegality, and the proceedings must be instituted by an indictment.<sup>17</sup> But where the statute raises the presumption of illegality or of a nuisance on proof of sales, then the burden is on the defendant to show they were legal.<sup>18</sup> The accused may show that he had ceased selling liquor before the action was brought.<sup>19</sup> Where husband and wife were jointly indicted for maintaining a nuisance, and the evidence showed that a customer applied to the husband for liquors and he said he had none but his wife did, which she kept for private use; and thereupon the husband got the liquor from his wife and handed it to the customer, it was held that she could not be convicted of an illegal transaction.<sup>20</sup> Where the action was brought by an individual, and the plaintiff put in evidence an affidavit that he was an employe of the defendant's saloon and that the defendant was conducting such saloon in compliance with the law, it was held that he was bound thereby, except where the evidence showed statements in the affidavit were untrue.<sup>21</sup> Statutes are sometimes in force permitting the giving in evidence the reputation of the saloon,<sup>22</sup> but usually such evidence is not admissible without

<sup>16</sup> Littleton v. Harris, 73 Iowa 167; 34 N. W. 800.

<sup>17</sup> State v. Nelson, 13 N. D. 122; 99 N. W. 1077.

<sup>18</sup> Shear v. Green, 73 Iowa 688; 36 N. W. 642.

<sup>19</sup> Sharp v. Arnold, 108 Iowa 203; 78 N. W. 819.

<sup>20</sup> State v. Mathieson, 77 Iowa 485; 42 N. W. 377. See the case

as to what is sufficient evidence to justify a decree of abatement.

<sup>21</sup> Hawks v. Fellows, 108 Iowa 133; 78 N. W. 812.

<sup>22</sup> Farley v. O'Malley, 77 Iowa 531; 42 N. W. 435; State v. Mathieson, 77 Iowa 485; 42 N. W. 377; Hall v. Coffin, 108 Iowa 466; 79 N. W. 274.

the aid of a statute. Reputation that the business at the place was conducted lawfully is overcome by evidence showing actual violations.<sup>23</sup> Where a statute makes the possession of a United States license to sell intoxicating liquors *prima facie* evidence of illegal sales, and the accused claims the liquor actually sold was non-intoxicating, he has the burden to show it was not, and the fact that he took out the license to sell the particular liquor, because the United States Government claimed it was necessary on account of its alleged intoxicating qualities, is to be considered as an admission on the part of the accused that it was intoxicating, though not conclusive.<sup>24</sup> If the proceeding is against the landlord to abate a nuisance on his premises maintained by his tenant with his knowledge, statements that he made to tenants before he rented them if they should take them they would have to sell liquor, was held admissible to show a knowledge of sales made at subsequent times.<sup>25</sup> The evidence need not show any particular number of sales;<sup>26</sup> nor that they covered any particular period of time; sales for half an hour will make the premises a nuisance.<sup>27</sup> Where a landlord made no effort to stop sales, except to serve upon his tenant notice to vacate the premises, but permitted him to remain several days during which sales were made, it was held that the evidence showed he acquiesced in their being made.<sup>28</sup> Evidence is admissible that one of several defendants, on the day the defendant was on trial for having sold the liquors, claimed the seized liquors, is admissible as an admission of his ownership of the place.<sup>29</sup> Of course, it must be shown that the liquors kept or sold were

<sup>23</sup> Hall v. Coffin, 108 Iowa 466; 79 N. W. 274.

<sup>24</sup> State v. Schultz, 79 Iowa 478; 44 N. W. 713.

<sup>25</sup> State v. Davis, 69 N. H. 350; 41 Atl. 267; Bell v. Glaseker, 82 Iowa 736; 47 N. W. 1042.

<sup>26</sup> Craig v. Plunkett, 82 Iowa 474; 48 N. W. 984; Pottenger v. State, 54 Kan. 312; 38 Pac. 278.

<sup>27</sup> State v. Lord, 8 Kan. App. 257; 55 Pac. 503.

<sup>28</sup> State v. Grime, 85 Iowa 415; 52 N. W. 351.

<sup>29</sup> State v. Collins, 68 N. H. 299; 44 Atl. 495.

Effect of passage of Act of Congress known as the Wilson Bill upon liquors as evidence when found on the premises which were brought there before its passage. State v. Severson, 88 Iowa 714; 54 N. W. 347.



intoxicating liquors,<sup>30</sup> and illegal sales must be shown in the place sought to be enjoined or abated.<sup>31</sup> If the nuisance is shown to have existed before the action was brought, it will be presumed it existed at the time of beginning the action, so that actual sales up to its commencement need not be shown.<sup>32</sup> Evidence of a bar, glasses, bottles, a bartender, men drinking at the bar, and barrels in which accused said there was liquor, is admissible.<sup>33</sup> Whether or not the defendant knew liquor was being sold by his tenant or co-owner on the premises is a question for the jury.<sup>34</sup> So it may be shown upon the question of notice to the landlord defendant, that the leased premises were notoriously used by his tenant as a saloon, and that written notice of that fact was left at his home.<sup>35</sup> A conviction of one of the defendants alone of illegal sales may be shown, when connected with testimony that he had no place of business other than the one described in the petition.<sup>36</sup> Even though a statute permits the reputation of the place to be given in evidence, that fact will not overcome positive evidence that the landlord defendant had no knowledge of his tenant's illegal acts in making the leased premises a nuisance;<sup>37</sup> but evidence that such a reputation prevailed, coupled with evidence that the accused lived in the building used illegally by his tenant, and that he was seen frequently in and about the premises, is sufficient to show he had knowledge of such illegal usage.<sup>38</sup> Admission of evidence of other

<sup>30</sup> *State v. Gegner*, 88 Iowa 748; 56 N. W. 182; *In re Hunter*, 34 N. Y. Misc. Rep. 389; 69 N. Y. Supp. 908.

<sup>31</sup> *State v. Frahm*, 109 Iowa 101; 80 N. W. 209.

<sup>32</sup> *McCoy v. Clark*, 109 Iowa 464; 80 N. W. 538; *Contra*, *In re Hunter*, 34 N. Y. Misc. Rep. 389; 69 N. Y. Supp. 908. See *Nichols v. Thomas*, 89 Iowa 394; 56 N. W. 540; *State v. Williams*, 90 Iowa 513; 58 N. W. 904.

<sup>33</sup> *State v. Collins*, 68 N. H. 299; 44 Atl. 495.

<sup>34</sup> *State v. Collins*, 68 N. H. 299; 44 Atl. 495; *State v. Williams*, 90 Iowa 513; 58 N. W. 904.

<sup>35</sup> *Hamilton v. Baker*, 91 Iowa 100; 58 N. W. 1080.

<sup>36</sup> *State v. Collins*, 68 N. H. 299; 44 Atl. 495.

<sup>37</sup> *State v. Price*, 92 Iowa 181; 60 N. W. 514.

As to sufficiency of evidence, see *McCracken v. Miller*, 129 Iowa 623; 106 N. W. 4.

<sup>38</sup> *Carter v. Steyer*, 93 Iowa 533; 61 N. W. 956.

illegal sales is not such an error as will call for a reversal of the case where the testimony fully discloses the fact that the offense of keeping a nuisance has been committed.<sup>39</sup> In Iowa one who is entitled to sell liquors under certain circumstances has the burden to show that fact, in order to relieve himself from the presumption that the sale proven to have been made was illegal.<sup>40</sup> Where the defendant testified he had kept no whisky during a certain year, it was held admissible on cross-examination to ask him if he had not kept other intoxicating liquors, and if he had not bought whisky during the spring of that year.<sup>41</sup> In Vermont it is held evidence that the accused was in the possession of the premises and had a United States liquor license to sell liquors was sufficient to authorize the enjoining of the maintenance of his place as a nuisance.<sup>42</sup> For the purpose of showing the landlord defendant had notice of the illegality of the business his tenant was carrying on, an agent in charge of the premises may be asked if he had not read accounts in the newspaper of searches and seizures on the premises and of the conviction of the tenant.<sup>43</sup> Proof that liquors kept in another building than the one alleged to be abated were brought into the latter and there sold does not constitute a variance, although the statute required the liquors to be kept in the building where served.<sup>44</sup> A case may be made out by circumstantial evidence, as an unusual use of a dwelling house.<sup>45</sup> Unofficial certificates showing pur-

<sup>39</sup> *State v. Wheldon*, 6 Kan. App. 650; 49 Pac. 786.

<sup>40</sup> *Ritchie v. Zalesky*, 98 Iowa 589; 67 N. W. 399. See also *State v. Sundry Persons*, 2 Ohio Dec. 435.

<sup>41</sup> *State v. Hibner*, 115 Iowa 48; 87 N. W. 741.

<sup>42</sup> *State v. Lincoln*, 73 Vt. 221; 51 Atl. 9.

<sup>43</sup> *State v. Lundergan*, 74 Vt. 48; 52 Atl. 70.

<sup>44</sup> *State v. Lundergan*, *supra*.

A statute providing that the evidence may be "in the form of affidavits" does not violate a constitutional provision that in criminal cases the accused shall have the right "to meet the witnesses against him face to face." *State v. Mitchell*, 3 S. D. 223; 52 N. W. 1052.

Depositions may be used. *In re Rencour* (N. H.), 52 Atl. 930.

<sup>45</sup> *Commonwealth v. Kane*, 150 Mass. 294; 22 N. E. 903.

chases of liquors from the defendant may be put in evidence.<sup>46</sup> Expressions by the defendant that he would not lease any premises unless he could sell liquors therein—even if embodied in a letter—are admissible to show his intent in taking the premises described in the complaint.<sup>47</sup>

### Sec. 590. Trial.

Where the action is a civil proceeding to enjoin the maintenance of a nuisance, the court, without the intervention of a jury, tries the case as in any other suit to obtain an injunction.<sup>48</sup> But the court may submit the question whether or not the premises are a nuisance to the determination of a jury, and if found in the affirmative, enjoin their further use for such purposes.<sup>49</sup> The fact that the defendant plead

<sup>46</sup> *State v. Huff*, 76 Iowa 200; 40 N. W. 720.

Evidence held sufficient. *State v. Jepson*, 76 Kan. 644; 92 Pac. 600; *State v. Hunter*, 77 Kan. 850; 92 Pac. 603.

<sup>47</sup> *State v. Davis*, 69 N. H. 350; 41 Atl. 267.

When a detective does not represent a town in purchasing liquor in order to secure evidence of guilt. *People v. Chipman*, 31 Colo. 90; 71 Pac. 1108.

Proof that the liquors were consigned to the defendant, with his knowledge, raises the presumption he owned them. *State v. Johns* (Iowa), 118 N. W. 295.

Where the liquors were traced to the room described in the complaint which were shown to have been consigned to him with his knowledge, and it was also shown that some of the liquors were there disposed of to the prosecuting witness while the defendant was present in the room, and that the witness paid an assessment for some purpose, it was held that there was sufficient evi-

dence to sustain a conviction of the accused of having used the room for unlawful purpose. *State v. Johns*, *supra*.

Where it is shown that the accused used the premises for unlawful purposes up to the particular date, and there is no evidence to show he was not doing so after such date, it will be presumed his illegal conduct continued thereafter until the date of bringing the action. *State v. Johns*, *supra*.

Incriminating circumstances may be shown. *State v. Johns*, *supra*. *Strommert v. Johnson* (Iowa), 123 Pac. 337.

<sup>48</sup> *Cowdery v. State*, 71 Kan. 450; 80 Pac. 953.

<sup>49</sup> *State v. Harrington*, 69 N. H. 496; 45 Atl. 404.

It would seem in Iowa that on a continuance the mode of trial must be designated. *Elwood v. Price*, 73 Iowa 84; 34 N. W. 318.

As to what was a decree by consent, see *Geyer v. Douglass*, 85 Iowa 93; 52 N. W. 111.

guilty and consented to a temporary injunction was held not to deprive the court of the jurisdiction to enter a permanent injunction two years later.<sup>50</sup> If the court so instruct the jury that they may find the defendant guilty on facts not charged in the complaint, it is reversible error.<sup>51</sup> Where the defendant told a witness he was the owner of the saloon and he intended to keep on running it and selling liquors, and seven months later he was still running it, it was held not error to instruct the jury the evidence was competent to be considered with other facts that were shown by testimony in order to determine whether the place described in the complaint was a nuisance occasioned by sales of liquor therein.<sup>52</sup> The statute with reference to the trial and granting injunctions is liberally construed in order to further its object.<sup>53</sup>

### Sec. 591. Judgment.

The judgment must follow the complaint or petition. Thus, upon a bill to restrain the defendant from selling and keeping liquors with intent to sell them an injunction cannot be entered prohibiting him manufacturing liquor.<sup>54</sup> Under an Iowa statute<sup>55</sup> declaring the premises where illegal sales are carried on to be a nuisance, it is proper to enter a decree both against the premises and their owner.<sup>56</sup> In the same State the statute requires the court to decree that the premises be closed

<sup>50</sup> *Cunningham v. Gaynor*, 87 Iowa, 449; 54 N. W. 248.

<sup>51</sup> *State v. Goff*, 62 Kan. 104; 61 Pac. 683; reversing 10 Kan. App. 286; 61 Pac. 680.

<sup>52</sup> *State v. Durein*, 70 Kan. 1; 80 Pac. 987; affirmed 208 U. S. 613; 28 Sup. Ct. 567; 52 L. Ed.

<sup>53</sup> *State v. Jepson*, 76 Kan. 644; 92 Pac. 603; *State v. Hunter*, 74 Kan. 850; 92 Pac. 603.

Where the action was brought by a private person, to enjoin the maintenance of a saloon because

of its injury to his adjacent property, it was held proper to enjoin the defendant from conducting the saloon and selling liquors thereon instead of merely enjoining their use in an unlawful manner. *Kissell v. Lewis*, 156 Ind. 233; 59 N. E. 478.

<sup>54</sup> *Kaufman v. Dostal*, 73 Iowa 691; 36 N. W. 643; *State v. Piper*, 70 N. H. 282; 47 Atl. 703; 55 Code, § 2384.

<sup>55</sup> *Carter v. Bartel*, 110 Iowa 211; 81 N. W. 462.



for a year, and a judgment that prohibits the use of the place for the sale of liquors for a year "but not as against other use," is erroneous.<sup>57</sup> But where the action is against a tenant, and his landlord is not a party to it, while a decree will be entered closing the premises for a year, yet if his tenancy expire before the year terminates the decree becomes thereafter inoperative.<sup>58</sup> If the accused dies the cause of action abates, and as the destruction of the liquors and the closing of the premises are incidental to the judgment of conviction, no judgment can be entered ordering their destruction or the closing of the premises.<sup>59</sup> It is not error for the court, in a proper case, to decree an abatement of the nuisance, a destruction of the liquors, and a closing of the premises.<sup>60</sup> Subsequent lessees or purchasers are bound to take notice of the judgment closing the premises.<sup>61</sup> The judge in chambers cannot order the liquor destroyed and permanently enjoin the opening of the premises; that must be done in open court.<sup>62</sup> Where the statute simply provided for an injunction restraining the use of the premises illegally, it was held that no order to enforce the judgment could be issued, because the decree acted upon the person and an order to an officer to enforce it was unnecessary.<sup>63</sup> In such a case the decree operates upon the person and not upon the property.<sup>64</sup> A subsequent modification of the statute is not sufficient to authorize a modification of a judgment previously rendered.<sup>65</sup> Upon a complaint

<sup>57</sup> McCoy v. Clark, 109 Iowa 464; 80 N. W. 538; Lewis v. Brennan (Iowa), 117 N. W. 279.

<sup>58</sup> Danner v. Hotz, 74 Iowa 389; 37 N. W. 969.

<sup>59</sup> State v. McMaster, 13 N. D. 58; 99 N. W. 58.

<sup>60</sup> McClure v. Braniff, 75 Iowa 38; 39 N. W. 171; Dash v. United States Express Co. (Iowa), 99 N. W. 298.

<sup>61</sup> Buhlman v. Humphrey, 86 Iowa, 597; 53 N. W. 318.

<sup>62</sup> *In re* Harmer, 47 Kan. 262; 27 Pac. 1004.

<sup>63</sup> Miller v. State, 3 Ohio St. 475; Schultz v. State, 32 Ohio St. 276.

The order to close the premises may be made at any day of the term after a plea of guilty is entered or conviction had. State v. Sundry Persons, 2 Ohio Dec. 435.

<sup>64</sup> Schultz v. State, 32 Ohio St. 276.

<sup>65</sup> Denby v. Fie, 106 Iowa 299; 76 N. W. 702. See State v. Thomas, 74 Kan. 360; 86 Pac. 499.

seeking to abate "billiard and pool rooms" in a hotel, a finding that a nuisance was maintained as alleged therein and a decree enjoining the defendant from maintaining the nuisance "in said building and land" extends only to the billiard and pool rooms and not to the entire hotel.<sup>66</sup> If a temporary injunction has been granted, and the State does not promptly prove its case on answer filed, such injunction will be dissolved.<sup>67</sup> Where the statute required the court to order the premises closed for a year, upon conviction, a judgment following the words of the statute ordering it then closed for one year was construed to mean a closing for all purposes and not merely a closing for the sale of liquors.<sup>68</sup> If an injunction be granted, at the suit of a citizen, enjoining a place as a nuisance, that is a bar to a subsequent suit by another citizen.<sup>69</sup> An injunction obtained by collusion with the accused for the purpose of allowing it to remain without enforcement is not a bar to a second one.<sup>70</sup> If the action is to close certain described premises, the court cannot order closed premises not described in the complaint.<sup>71</sup>

<sup>66</sup> State v. Massey, 72 Vt. 210; 47 Atl. 834.

<sup>67</sup> State v. Reyman, 48 W. Va. 307; 37 S. E. 591.

Promptness is required, because the temporary injunction is a reflection upon the reputation of the place.

<sup>68</sup> State v. Brennan (Iowa), 117 N. W. 279.

A re-enactment of an old statute does not release one who has violated the old statute, as a rule, for the old statute is merely continued in force. State v. Prouty, 102 Iowa 105; 84 N. W. 670.

<sup>69</sup> Steyer v. McCauley, 102 Iowa 105; 71 N. W. 194.

Statements made by the sheriff of the county which induced the accused to make default do not constitute such a fraud as author-

izes a vacation of the judgment. Seddon v. State, 100 Iowa 378; 69 N. W. 671.

<sup>70</sup> Cameron v. Tucker, 104 Iowa 211; 73 N. W. 601.

<sup>71</sup> State v. Piper, 70 N. H. 282; 47 Atl. 703.

If the court has no jurisdiction the decree may be assailed in any court. Beck v. Vaughn, 134 Iowa 331; 111 N. W. 994.

A final judgment will not be reversed because a temporary injunction was granted without notice. State v. Douglass, 75 Iowa 432; 39 N. W. 686.

What was not an abuse of discretion where the court inflicted a fine of \$1,000 when the accused committed the offense before the statute was declared constitutional, and while its validity was un-

**Sec. 592. Bond for continuance of use of premises.**

In Iowa the statute provides that the premises shall be closed for all purposes for one year, but if the owner of them will give a bond conditioned that he will immediately abate the nuisance and prevent its being established therein within a year, the court may order the premises delivered over to him and cancel the judgment of abatement so far as it relates to the premises.<sup>72</sup> A similar statute is in force in Ohio, and the accused is entitled to avail himself of its provisions as a matter of course.<sup>73</sup>

**Sec. 593. Violation of injunction—Punishment.**

All parties defendant to the proceeding must obey the injunction entered against them. Proceedings lie to punish them for a violation of it, which are criminal in their nature, though issued in an equity action.<sup>74</sup> In proceedings to punish for contempt oral evidence may be heard, which may be embodied in a transcript for appeal the same as in any other case.<sup>75</sup> As a rule, a fine may be inflicted, the usual statute providing for it.<sup>76</sup> It is brought in the name of the State in Iowa, and need not be instituted in the name of the plaintiff in the original proceedings, and is an independent action.<sup>77</sup> The reception of evidence without ruling on an objection to

der question. *State v. Maloney*, 78 Iowa 598; 43 N. W. 606.

If the nuisance has been abated before the time for entering the decree, the court may refuse to make a temporary injunction perpetual. *Sawyer v. Termohland*, (Iowa), 122 N. W. 924.

<sup>72</sup> *Lewis v. Brennan* (Iowa), 117 N. W. 279.

<sup>73</sup> *Weaver v. State* (Ohio St.), 77 N. E. 273.

<sup>74</sup> *Grier v. Johnson*, 88 Iowa 99; 55 N. W. 80; *Brennan v. Roberts*, 125 Iowa 615; 101 N. W. 460; *Johnson v. Roberts* (Iowa), 101

N. W. 1131; *Schultz v. State*, 32 Ohio St. 276.

<sup>75</sup> *Goetz v. Stutsman*, 73 Iowa 693; 36 N. W. 644; *Drady v. Polk Co.*, 126 Iowa 345; 102 N. W. 115; *Davis v. Auld*, 96 Me. 559; 53 Atl. 118.

<sup>76</sup> *Jordan v. Wappello County*, 69 Iowa 177; 28 N. W. 548; *Goetz v. Stutsman*, 73 Ind. 693; 36 N. W. 644.

<sup>77</sup> *Fisher v. Cass County*, 75 Iowa 232; 39 N. W. 283. But see *Cameron v. Kepinos*, 89 Iowa 561; 56 N. W. 677.

its reception is error.<sup>78</sup> Anyone who knows of the violation of the injunction may make the affidavit for the prosecution.<sup>79</sup> The facts constituting the violation of the injunction must be set forth in the information, but evidential facts need not be set forth, such as who were the purchasers of the liquors or giving a description of the building where the liquors were sold.<sup>80</sup> A failure to aver that the action was pending at the time the information is filed is cured by an allegation that the injunctive order had not been dissolved or modified.<sup>81</sup> Defects in the information may be cured by admissions of the accused at the trial.<sup>82</sup> A copy of the decree need not be set out in it.<sup>83</sup> Where the injunction operates *in rem*, a lessee of the premises who maintains a nuisance thereon, in ignorance of such injunction, may be punished.<sup>84</sup> Belief that the sales are legal is no excuse;<sup>85</sup> nor is the fact that the judge of the court orally advised the sheriff to close the premises temporarily only.<sup>86</sup> Nor is it any defense that the person who has violated the injunction was enjoined under another name.<sup>87</sup> If the injunction is to prohibit anyone keeping liquors on the premises, the defendant owner is liable if it is kept there with his knowledge and assent.<sup>88</sup> A makeshift sale of the prem-

<sup>78</sup> McGlasson v. Scott, 112 Iowa 289; 83 N. W. 974.

<sup>79</sup> Fisher v. Cass County, 75 Iowa 232; 39 N. W. 283.

<sup>80</sup> McGlasson v. Scott, 112 Iowa 289; 83 N. W. 974; Pumphrey v. Anderson (Iowa), 119 N. W. 528.

<sup>81</sup> State v. Markuson, 5 N. D. 147; 64 N. W. 934.

<sup>82</sup> Brennan v. Roberts, 125 Iowa 615; 101 N. W. 460; Johnson v. Roberts (Iowa), 101 N. W. 1131.

<sup>83</sup> Brennan v. Roberts, *supra*; Johnson v. Roberts, *supra*.

See Sawyer v. Oliver (Iowa), 122 N. W. 950.

<sup>84</sup> Silvers v. Traverse, 82 Iowa 52; 47 N. W. 888; 11 L. R. A. 804; Sweeney v. Traverse, 82 Iowa 720; 47 N. W. 889. But see Buhlman v. Humphrey, 86 Iowa

597; 53 N. W. 318; and Newcomer v. Tucker, 89 Iowa 486; 56 N. W. 499; Pearson v. Cass Co., 90 Iowa 756; 57 N. W. 871.

In the last three cases persons not parties to the injunction proceedings were held not guilty of contempt, they being distinguished from the first case cited. But see State v. Porter, 76 Kan. 411; 91 Pac. 1073; 13 L. R. A. (N. S.) 462.

<sup>85</sup> State v. Bowman, 79 Iowa 566; 44 N. W. 813.

<sup>86</sup> Lewis v. Brennan (Iowa), 117 N. W. 279.

<sup>87</sup> Peck v. Conner, 82 Iowa 725; 47 N. W. 977.

<sup>88</sup> England v. Johnson, 86 Iowa 751; 53 N. W. 268.



ises and a re-purchase of them will not enable the defendant to evade the decree or escape punishment.<sup>89</sup> A punishment for contempt does not bar a proceeding for an act done before the time of the performance of the act for which he was punished, for as to that act there is no *res judicata*.<sup>90</sup> If the defendant relies upon the existence of facts which suspend the operation of the prohibitory statutes, he must allege and prove those facts as a defense.<sup>91</sup> Mere irregularity in the injunction decree is no defense in a prosecution for its violation.<sup>92</sup> A jury trial cannot be demanded.<sup>93</sup> The place to which the injunction relates and the place where the alleged act of violation took place may be identified as the same by anyone having knowledge of their identity.<sup>94</sup> Where the injunction is a perpetual one, it does not lapse and become non-enforceable.<sup>95</sup> A fine of \$400 for a violation of an injunction and \$15 attorney fees has been held not an abuse of discretion.<sup>96</sup> A general allegation of sale in violation of law is sufficient.<sup>97</sup> Good faith in making the sale is no defense to the contempt proceedings.<sup>98</sup> If the evidence shows a viola-

<sup>89</sup> Wagner v. Holmes, 88 Ind. 728; 55 N. W. 473.

<sup>90</sup> Rosenthal v. Hobson (Iowa), 77 N. W. 488.

Operation of injunction throughout judicial district. McGlasson v. Johnson, 86 Iowa 477; 53 N. W. 267; Sloan v. Johnson, 86 Iowa 750; 53 N. W. 268.

<sup>91</sup> West v. Bishop, 110 Iowa 410; 81 N. W. 696.

<sup>92</sup> Ohlrogg v. Worth County (Iowa), 99 N. W. 178.

<sup>93</sup> State v. Markuson, 7 N. D. 155; 73 N. W. 82.

<sup>94</sup> Ver Straeten v. Lewis, 77 Iowa 130; 41 N. W. 594.

As to sufficiency of evidence to show a violation of the injunction, see Wagner v. Holmes, 88 Iowa 728; 55 N. W. 473; Barton v. Mahasker Co., 90 Iowa 749; 57 N. W. 611; Cotant v. Hobson, 98

Iowa 318; 67 N. W. 255; Landt v. Remley, 130 Iowa 227; 85 N. W. 783; State v. Plamondon, 75 Kan. 269; 89 Pac. 23, and what was not. Hinkle v. Smith, 90 Iowa 761; 57 N. W. 891; State v. Thompson, 130 Iowa 227; 106 N. W. 515 (merely finding liquors on premises enjoined).

<sup>95</sup> State v. Durein, 46 Kan. 695; 27 Pac. 148.

<sup>96</sup> Beatty v. Roberts, 125 Iowa 619; 101 N. W. 462.

<sup>97</sup> Pumphrey v. Anderson (Iowa), 119 N. W. 528.

<sup>98</sup> Barber v. Brennan (Iowa), 119 N. W. 142; Pumphrey v. Anderson (Iowa), 119 N. W. 528.

In Iowa a sale anywhere within the judicial district is a violation of the injunction. Schlosser v. Mould (Iowa), 121 N. W. 520.

tion of the injunction, the court has no discretion in Iowa, but must convict the person in contempt, and if it do not, the proceedings for a contempt will be reversed.<sup>99</sup> Where the injunction prohibited sales of intoxicating liquor in a certain building, it was held no defense that the defendant did not know the liquors he sold were intoxicating.<sup>1</sup> Merely showing the accused's tenant or his sub-tenant sold liquor in violation of the injunction is not enough, because the accused was not bound to assume that he or either of them would violate the law.<sup>2</sup>

### Sec. 594. Appeal—Review.

The granting of a temporary injunction without notice is not such an error as will reverse the case on appeal from the granting of a final decree.<sup>3</sup> A judgment will not be reversed on the weight of the evidence.<sup>4</sup> An appeal lies from proceedings to hold the defendant in contempt of court, and such proceedings may be reviewed;<sup>5</sup> and if an appeal be not taken therefrom they are binding although erroneous.<sup>6</sup> An order fixing the amount of attorney fees at \$25 will not be disturbed, since the amount is within the discretion of the

<sup>99</sup> Barber v. Brennan (Iowa), 119 N. W. 142.

<sup>1</sup> State v. H. Ilgner & Co. (Kan.), 105 Pac. 14.

Agreed statement of facts, sufficiency. Sawyer v. Oliver (Iowa), 122 N. W. 950.

In this case the beer was drawn by a faucet on a pipe running down into the cellar below, to which there was no passage from the room in which the injunction forbade the keeping of liquor.

<sup>2</sup> Sawyer v. Mould (Iowa), 122 N. W. 813.

<sup>3</sup> State v. Douglass, 75 Iowa 432; 39 N. W. 686; State v. Gifford, 111 Iowa 648; 82 N. W.

1034; State v. Elad, 8 Kan. App. 625; 56 Pac. 153.

<sup>4</sup> Drake v. Freelan, 80 Iowa 768; 45 N. W. 576; Sickinger v. State, 45 Kan. 414; 25 Pac. 868; State v. Bowman (Iowa), 82 N. W. 493; State v. Davis, 69 N. H. 350; 41 Atl. 267; State v. H. Ilgner & Co., 105 Pac. 15.

<sup>5</sup> State v. Markuson, 5 N. D. 147; 64 N. W. 934; Brennan v. Roberts, 125 Iowa 615; 101 N. W. 460; Johnson v. Roberts, 101 N. W. 1131.

<sup>6</sup> *Ex parte Keeler*, 45 S. C. 537; 23 S. E. 865; 55 Am. St. 785; 31 L. R. A. 678.

trial court.<sup>7</sup> An appeal lies from a refusal to grant the writ.<sup>8</sup> The presumption is that the judgment is correct, and the party appealing has the burden to show it is erroneous.<sup>9</sup>

### Sec. 595. Costs—Attorney fees.

The Iowa statute allows the plaintiff attorney fees, and this statute also applies to actions prosecuted by the county attorney in the name of the State.<sup>10</sup> In the absence of evidence of their value, \$25 is allowed as a matter of course;<sup>11</sup> but if there be contention over the amount, the court will hear evidence and fix what they shall be.<sup>12</sup> If the fees cannot be collected from the defendant, then the county pays them, although the attorneys were not appointed by the State.<sup>13</sup> The statute allows the county attorney ten per cent. of the amount of a fine recovered in contempt proceedings, but that does not render the county liable to an attorney who assisted him.<sup>14</sup> The costs are a lien upon the premises abated, and in case of a dwelling house they are a lien on the cellar if the

<sup>7</sup> Campbell v. Manderscheid, 74 Iowa 708; 39 N. W. 82.

<sup>8</sup> Donnelly v. Smith, 128 Iowa 257; 103 N. W. 776.

As to appeals in North Dakota, see State v. Donovan, 10 N. D. 610; 88 N. W. 717.

As to what is not an abuse of discretion in imposing a fine, see Beatty v. Roberts, 125 Iowa 619; 101 N. W. 462.

<sup>9</sup> Barekell v. State, 106 N. W. 190.

<sup>10</sup> State v. Douglas, 75 Iowa 439; 39 N. W. 686; Farr v. Seward, 82 Iowa 221; 48 N. W. 67.

<sup>11</sup> Farley v. Geisheker, 78 Iowa 453; 43 N. W. 279; 6 L. R. A. 533; Campbell v. Manderscheid, 74 Iowa 708; 39 N. W. 92; Drummond v. Richland, etc. Co., 133 Iowa 266; 110 N. W. 471; Plank v. Hertha, 132 Iowa 213; 109 N. W. 732; Carter v. Bartel, 110 Iowa 211; 81 N. W. 462; State v. Gif-

ford, 111 Iowa 648; 82 N. W. 1034.

<sup>12</sup> Craig v. Werthmueller, 78 Iowa 598; 43 N. W. 606; State v. Plamondon, 75 Kan. 269; 89 Pac. 23.

<sup>13</sup> Newman v. Des Moines County, 85 Iowa 89; 52 N. W. 105.

As to amounts in various cases, see Farley v. O'Malley, 77 Iowa 531; 42 N. W. 435 (\$350); Nichols v. Thomas, 89 Iowa 394; 56 N. W. 540 (\$100); Hamilton v. Baker, 91 Iowa 100; 58 N. W. 1080 (\$40); State v. Plamondon, 75 Kan. 269; 89 Pac. 23.

<sup>14</sup> Sims v. Pottawottamie County, 91 Iowa 442; 59 N. W. 68. Ten per cent. must be taxed for the county attorney in such an instance. Brennan v. Roberts, 125 Iowa 615; 101 N. W. 460; Johnson v. Roberts (Iowa), 101 N. W. 1131.

liquors were stored there.<sup>15</sup> In an action to enjoin the enforcement of a decree abating a nuisance, and the injunction is awarded, judgment for costs will be rendered against the person who was the active party in obtaining the injunction to abate the nuisance.<sup>16</sup> But in the action to abate the nuisance the costs of the proceedings cannot be taxed to the plaintiff unless the action was brought maliciously.<sup>17</sup>

<sup>15</sup> Cameron v. Guinder, 89 Iowa 298; 56 N. W. 502.

<sup>16</sup> Beck v. Vaughn, 134 Iowa 331; 111 N. W. 994.

<sup>17</sup> Clark v. Riddle, 101 Iowa 270; 70 N. W. 207.

















UNIVERSITY OF CALIFORNIA LIBRARY

Los Angeles

This book is DUE on the last date stamped below.

REC'D LD-URL

APR 12 1990

UC SOUTHERN REGIONAL LIBRARY FACILITY



**AA** 000 838 251 7



